

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIRECT GRADING & PAVING,
L.L.C., a Nevada limited liability
company,

Petitioner,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT, in and for the
County of Clark, State of Nevada,
and THE HONORABLE ROB
BARE, District Judge,

Respondents,

and

CENTURY COMMUNITIES OF
NEVADA, L.L.C., a Nevada limited
liability company,

Real Party in Interest.

) Case No.

)
) Electronically Filed
) Oct 14 2020 08:53 a.m.
) Elizabeth A. Brown
) Clerk of Supreme Court

) Dist. Court Case No.
) A-18-773139-C

) Dept. No. XXXII

PETITION

**From the Eighth Judicial District Court
The Honorable Rob Bare, District Judge**

PETITIONER'S APPENDIX VOLUME IV

Matthew L. Johnson (6004)
Russell G. Gubler (10889)
JOHNSON & GUBLER, P.C.
8831 West Sahara
Las Vegas, Nevada 89117
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Attorneys for Petitioners

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PRE-FINAL INSPECTION OF RHODES RANCH PARCEL 43
WARM SPRINGS/DURANGO
PERMIT No. 14-14379

ELM REED

- Lot 24 replace one section of curb and gutter; replace electric utility collar.
- Lot 25 replace water utility collar.

ELM REED (at CCWRD easement) replace bolts on telephone vault utility box.

ELM REED

- Lot 28 replace one section of curb.
- Lot 29 replace two sections of curb and gutter; replace electric utility collar.
- Lot 30 replace electric utility collar.

ELM REED (at 10' drainage easement) replace curb so transition does not interfere with flow.

ELM REED

- Lot 24 replace one section of curb and gutter.
- Lot 32 replace three sections of curb and gutter.
- Lot 35 replace one section of curb and gutter; sawcut asphalt concrete and replace with permanent patch (12' x 12').

TREE SHOT

- Lot 36 replace one section of curb and gutter.
- Lot 37 replace two sections of curb and gutter.
- Lot 40 replace two sections of curb and gutter.

TREE SHOT (at drainage easement) replace curb on north and south entries to easement so transition does not interfere with flow.

TREE SHOT

- Lot 42 replace two sections of curb and gutter.
- Lot 43 replace electric utility collar.
- Lot 44 replace one section of curb and gutter.
- Lot 45 replace electric transformer pad.

TREE SHOT/GREEN POINT VIEW (northeast quadrant) replace two sections of curb and gutter.

DUCKHOOK

- Lot 49 replace one section of curb and gutter.
- Lot 50 replace three section of curb and gutter; sawcut asphalt concrete and replace with permanent patch (10' x 35').
- Lot 49 (opposite) replace one section of curb and gutter.
- Lot 47 (opposite) replace one section of curb and gutter.

DUCKHOOK (Sta 13+00 to n/o centerline) replace two sections of curb and gutter.

DUCKHOOK

- 113 (opposite) replace one section of curb and gutter.
- 105 replace water utility collar.
- 109 replace two sections of curb and gutter.
- 113 replace two sections of curb and gutter.
- Lot 4 replace two sections of curb and gutter.

NAVY STRAUSS

Lot 69 (opposite) replace one section of curb and gutter.

STOCKTON KINGS

Lot 5 replace two sections of curb and gutter.

Lot 6 replace one section of curb and gutter.

Lot 7 replace two sections of curb and gutter.

Lot 8 replace two sections of curb and gutter; remove form boards from utility collars.

Lot 9 replace one section of curb and gutter.

Lot 12 remove form boards from utility collars.

ELM REED

Lot 13 replace four sections of curb and gutter; replace water and electric utility collars.

Lot 14 replace two sections of curb and gutter; install bolts on telephone vault lid; replace water utility collar.

Lot 16 replace one section of curb and gutter; replace electric utility collar.

Lot 17 replace electric utility collar.

Lot 21 replace electric utility collar.

Lot 23 replace one section of curb and gutter; replace electric utility collar.

ELM REED (n/o centerline)

Sta 12+50 replace one section of curb and gutter.

ELM REED

Lot 23 (opposite) replace two sections of curb and gutter.

Lot 22 (opposite) replace one section of curb and gutter.

NAVY STRAUSS

Lot 61 install bolts on telephone vault lid.

DUCK HOOK (s/o centerline)

Sta 13+00 install bolts in telephone vault lid.

Sta 13+25 replace three sections of curb and gutter.

GREEN POINT VIEW

Lot 51 replace electric utility collar.

Lot 54 replace electric utility collar.

Lot 56 replace water utility collar.

Lot 57 replace two sections of curb and gutter.

Lot 58 replace one sections of curb and gutter.

Lot 59 install bolts in telephone vault lid.

WARM SPRINGS (e/o centerline)

Sta 63+94 replace one section of sidewalk; complete north end of drainage easement.

Sta 63+50 replace two sections of curb and gutter.

Sta 62+00 replace one section of curb and gutter.

WARM SPRINGS (at emergency entrance) replace four sections of sidewalk; replace one section of curb and gutter.

WARM SPRINGS

Sta 61+00 replace electric vault collar.

Sta 59+50 replace one section of sidewalk.

Sta 58+92 replace one section of curb and gutter; install steps in SDMH.

PRE-FINAL ELECTRICAL INSPECTION OF RHODES RANCH PARCEL 43
WARM SPRINGS/DURANGO
PERMIT No. 14-14379

WARM SPRINGS (s/o centerline)

Sta 63+23 install bolts in 3½box; duct seal conduits.
Sta 60+23 level luminaire
Sta 29+80 install collar on P-30 fiber optic box.

ELECTRIC SUMMARY

1. All circuit conductors to be tested with a 500 volt megohmmeter.
2. Burn test required prior to electrical final.
3. Submit GPS coordinates to Clark County Development Review at 500 South Grand Central Parkway, 1st Floor, attention Steve Prusky.

NOTE: Developer shall coordinate streetlight wiring inspection between electrical subcontractor and inspector prior to final inspection. An electrical sign-off is required and must be obtained prior to scheduling a final inspection. The developer is responsible for all costs associated with obtaining the electrical sign-off.

SUMMARY

1. This correction list is good for 120 days from the date of this letter, at which time an updated list may be made.
2. This project will be water tested prior to final inspection.
3. Clean and sweep all streets.
4. Repair all scarred and damaged asphalt. Corrected asphalt-concrete is to have a uniform appearance, which may include (but not be limited to) fog seal, slurry, skin patching, permanent patching, and/or overlay. Please call for inspection when correcting asphalt. If a slurry seal is used, a submittal is required of the proposed mix to determine the compatibility with the existing asphalt-concrete.
5. It is your responsibility that the asphalt concrete (A/C) placed for this project must be tested in accordance with Clark County Standard 401.03.12. Acceptance is governed by engineered test results reviewed and accepted prior to final by Clark County Public Works-Development. An asphalt sign-off is required and must be obtained prior to scheduling a final inspection. The developer is responsible for all costs associated with obtaining the asphalt sign-off.
6. Project wide: epoxy patch all chipped/damaged concrete; remove zip strips at all valley gutters and silicon caulk expansion joints; crack seal between all gutter lips and edge of asphalt concrete, including asphalt concrete patches; seal coat all interior streets.
7. CCWRD easement: install valley gutter per plan page G-1 and 20/D-2; remove existing manhole per note 32, plan page G1; install decorative rock flush at bollards at Elm Reed; replace electrical vault collar.
8. Provide evidence root barrier is installed over existing and new storm drain in landscaped area on Warm Springs.
9. Remove abandoned concrete pad in landscape area at Sta 57+50.
10. Developer must provide DVD video inspection of all storm drain pipe and drainage structures. Video inspection must show all joints at 360 degrees. All repair work will require a second video inspection showing repair work. The developer is responsible for obtaining a storm drain video sign-off. The Developer is responsible for all repairs, modifications, costs, fees, and expenses associated with obtaining the storm drain video sign-off. The storm drain video punch list items are not reflected in this punch list.

11. Developer must obtain a sign-off from the Clark County Water Reclamation District (CCWRD). The developer must coordinate with CCWRD in ensuring all of their punch list items are addressed to the satisfaction of the CCWRD in order to obtain their sign-off on the improvements associated with and reflected in the approved off-site plans. The developer is responsible for all repairs, modifications, costs, fees, and expenses associated with obtaining the sign-off from CCWRD. The CCWRD punch list items are not reflected in this punch list from CCPW.
12. The development must obtain a sign-off from Clark County Fire Department (CCFD). The developer must coordinate with the CCFD in ensuring all of their punch list items are addressed to the satisfaction of the CCFD in order to obtain their sign-off on the improvements associated with and reflected in the approved off-site plans. Developer is responsible for all repairs, modifications, costs, fees, and expenses associated with obtaining the sign-off from the CCFD. The CCFD punch list items are not reflected in this punch list from CCPW.

10/19/15
10/27/15

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Friday, November 06, 2015 6:30 PM
To: Tim Mulrooney
Cc: mel@directgrading.com
Subject: Freeway Plans

Tim have all the current plans for Freeway 50 sent to Mel at Direct ASAP!

Sent from my iPhone

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Thursday, November 05, 2015 1:50 PM
To: mel@directgrading.com
Subject: FW: Check ready for pick-up. Inspirada - BLM Mineral App

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Don Boettcher
Sent: Thursday, November 05, 2015 12:58 PM
To: Scott Prokopchuk
Subject: FW: Check ready for pick-up. Inspirada - BLM Mineral App

Did Mel lock down the other sources?

From: Don Boettcher
Sent: Thursday, November 05, 2015 12:57 PM
To: Bill Garrett
Cc: Robert Cunningham; Scott Prokopchuk; Don Boettcher
Subject: RE: Check ready for pick-up. Inspirada - BLM Mineral App

Any update.

Also, it looks like we are going to procure 40,000 cubic yards of the 120,000 +/- import we need for our Parcel 3-2 from KB and more particularly, one of KB's parcels located within Inspirada. How, if at all, does this affect the application we have before the BLM? Do we get the permit we have pending and then submit a revision of

3/9/2018

DIRECT000756

DGP0001281

it? Please advise.

From: Bill Garrett [<mailto:ventajas@aol.com>]
Sent: Monday, October 26, 2015 9:46 AM
To: Don Boettcher
Subject: Re: Check ready for pick-up. Inspirada - BLM Mineral App

Don,
The account has been set up and BLM is working on the final paperwork to get it out late this week or early next week.

Sent from my iPhone

On Oct 21, 2015, at 8:54 PM, Don Boettcher <Don.Boettcher@centurycommunities.com> wrote:

thanks.

From: Bill Garrett [<mailto:ventajas@aol.com>]
Sent: Wednesday, October 21, 2015 8:48 PM
To: Don Boettcher
Subject: Re: Check ready for pick-up. Inspirada - BLM Mineral App

Have it on my list of things to check on tomorrow. Will let you know what I find out.

Bill Garrett
Sent from my iPad

On Oct 21, 2015, at 8:25 PM, Don Boettcher <Don.Boettcher@centurycommunities.com> wrote:

Bill, any update on the below? Thanks.

From: Ventajas@aol.com [<mailto:Ventajas@aol.com>]
Sent: Friday, October 09, 2015 10:30 AM
To: Don Boettcher
Subject: Re: Check ready for pick-up. Inspirada - BLM Mineral App

Don,

Spoke to BLM yesterday and there appears that the State office has not completed the set up of the reimbursement account (BLM's fiscal year ended Sept. 29, and their accounting system is tied up with preparing all the end of year reports). Hopefully, the account will be set up next week and this office can get the contract finalized and out to you.

Bill Garrett
<[image001.jpg](#)>

PLEASE NOTE NEW ADDRESS AND PHONE NUMBER

3430 E. Russell Road, Suite 301-38
Las Vegas, Nevada 89120
(702) 473-1550- P
(702) 473-1551-F

"Your ADVANTAGE for environmental and federal land use permitting."

In a message dated 9/25/2015 9:56:19 A.M. Pacific Daylight Time,
Don.Boettcher@centurycommunities.com writes:

thanks. Our office is closed between noon and 1:00 so if you get here at
1:00 or shortly thereafter you will be ok. THANKS

From: Bill Garrett [<mailto:ventas@ventajas@aol.com>]
Sent: Friday, September 25, 2015 9:49 AM
To: Don Boettcher
Subject: Re: Check ready for pick-up. Inspirada - BLM Mineral App

Don,
Great. Will pick it up by 1:00PM today.

Thank you!

Bill Garrett
Sent from my iPad

On Sep 25, 2015, at 9:26 AM, Don Boettcher
<Don.Boettcher@centurycommunities.com> wrote:

Bill, I have the check up front for pick-up. It is in a with 8 x 11
envelop marked to your attention. '

Our address is 6345 So Jones, Ste 400. We are on the South
side of the building.

Please let me know if you need anything else.

Thanks.

My cell is 702-265-9360

From: Ventajas@aol.com [<mailto:Ventajas@aol.com>]
Sent: Thursday, September 24, 2015 2:10 PM
To: Don Boettcher
Subject: Re: Inspirada - BLM Mineral App

Don,

Here is the paper work I received this morning. If the
processing fee looks OK to you then I just need to get a check
to take over to BLM and get this finished up.

Let me know if you have any questions.

Bill Garrett
<image001.jpg>

**PLEASE NOTE NEW ADDRESS AND PHONE
NUMBER**

3430 E. Russell Road, Suite 301-38
Las Vegas, Nevada 89120
(702) 473-1550- P
(702) 473-1551-F
"Your **ADVANTAGE** for environmental and federal land use
permitting."

In a message dated 9/24/2015 1:21:56 P.M. Pacific Daylight
Time, Don.Boettcher@centurycommunities.com writes:

Great news. Thanks.

From: Bill Garrett [<mailto:ventas@ventajas@aol.com>]
Sent: Thursday, September 24, 2015 12:13 PM
To: Don Boettcher
Cc: Robert Cunningham
Subject: Re: Inspirada - BLM Mineral App

*Don,
Was at BLM this morning and got the paperwork
for the processing fee of \$1,769.00 (to cover
appraisal and staff costs).
Once paid, BLM can finalize the materials
contract for you to sign.*

*I will email you copies of the paper work after I
scan them.*

Sent from my iPhone

*On Sep 23, 2015, at 7:54 PM, Don Boettcher
<Don.Boettcher@centurycommunities.com>
wrote:*

*Bill, any update on our application to
BLM for Mineral Material Sales
Contract? Thanks.*

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Friday, October 30, 2015 10:27 AM
To: mel@directgrading.com; ben@directgrading.com; 'Louis Polish (louis@alphalandscapestv.com)'
Cc: Roselyn Kennedy
Subject: FW: Dust control @ Inspirada

Guys we need water on Inspirada!!
Rose, have you been able to track down the issue with the Hydrant Meter?

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Glen Arnold [mailto:garnold@shg-inc.com]
Sent: Friday, October 30, 2015 7:27 AM
To: Scott Prokopchuk
Cc: jim.rizzi@pardeehomes.com
Subject: Dust control @ Inspirada

Scott, I need your help!
Every time a truck pulls up on to your site, It is a dust cloud. Can you get a water truck onsite?
All of the Builders at Inspirada have worked for 2 years to gain a good reputation with Air Quality and they have kept their distance since they know we self-police the dust onsite.
We are here to work as a team, if there is anything we can do help, let us know.

Thanks in advance for your help on this issue.

FYI, today and Monday there is a wind advisory.

Glen Arnold
Senior Construction Manager
Cell: (702) 672-0074

SLATER HANIFAN GROUP

"The Benchmark of Our Profession."

LAS VEGAS

5740 S. ARVILLE STREET #216
LAS VEGAS, NEVADA 89118
PHONE: (702) 284-5300
FAX: (702) 284-5399
www.shg-inc.com

PHOENIX

11801 N. TATUM BLVD. #124
PHOENIX, ARIZONA 85028
PHONE: (602) 687-9664
FAX: (602) 687-9693

Any files contained within are to be used for information ONLY. Accuracy and/or design information to be verified from approved original plans.
Use of electronic media is at the sole risk of the user.

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, November 04, 2015 1:02 PM
To: mel@directgrading.com
Subject: FW: Inspirada - Grading Dirt
Attachments: image001.jpg; image002.jpg; Export location for Century Communities.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Don Boettcher
Sent: Tuesday, November 03, 2015 4:46 PM
To: Scott Prokopchuk
Subject: Fwd: Inspirada - Grading Dirt

Let me know ur thoughts. Map of area - if changes estimated 30000 yrs without screening what is ballpark of new estimate?

Will we need to screen and haul off? If so, can we get ball park?

Can we haul all in within time allowed?

----- Original message -----

From: "Page, Bart J. (Perkins Coie)"
Date: 11/03/2015 3:50 PM (GMT-08:00)
To: Don Boettcher

Subject: FW: Inspirada - Grading Dirt

See below response from KB. I am not sure that I understand the comments, but it appears that they are only committing to provide 40K CY. Also, not sure about 30 day time frame. We requested until March 15, 2016.

I can call Tony to get clarification if you would like, or do you want to talk to Rob?

Bart Page | Perkins Coie LLP

D +1.602.351.8073

M. +1.602.717.9374

F. +1.602.648.7199

E. BPage@perkinscoie.com

*Admitted in Arizona and Nevada

From: Gordon, Anthony [<mailto:tgordon@kbhome.com>]

Sent: Tuesday, November 03, 2015 4:39 PM

To: Page, Bart J. (Perkins Coie)

Cc: McGibney, Robert V; Vaughn, Perry

Subject: RE: Inspirada - Grading Dirt

Bart,

Below is the input I received from KB's team as to available dirt and comments to the proposed agreement. Let me know if these provisions work in general and then I will incorporate into the agreement for everyone's review (or, if you want, you can take the first crack at incorporating).

Quantity of 40K CY of RAW material to be exported from our POD 4-2 on the S/W corner of parcel to be staked out by KB Home (map attached), no screening operations on KB Home parcel. Under subpar 3 of agreement, 4th line, please add verbiage to include truck haul tickets to be provided to verify quantity. We would also ask that the period of export be established for 30 days start to finish. We would also be willing to provide additional quantity after our grading for 4-2 is complete, if available.

Anthony (Tony) Gordon

Senior Regional Counsel

KB Home

5795 Badura Ave, Suite 180

Las Vegas, NV 89118

(702) 266-8422

(702) 266-8623 (fax)

tgordon@kbhome.com

From: Page, Bart J. (Perkins Coie) [<mailto:BPage@perkinscoie.com>]

Sent: Tuesday, November 03, 2015 7:59 AM

To: Gordon, Anthony

Subject: RE: Inspirada - Grading Dirt

Tony—

I thought that I would check in with you on the Dirt Agreement. Have you had a chance to discuss with Rob yet?

3/9/2018

DIRECT000763

DGP0001288

Bart Page | Perkins Coie LLP

D. +1.602.351.8073

M. +1.602.717.9374

F. +1.602.648.7199

E. BPage@perkinscoie.com

*Admitted in Arizona and Nevada

From: Gordon, Anthony [<mailto:tgordon@kbhome.com>]

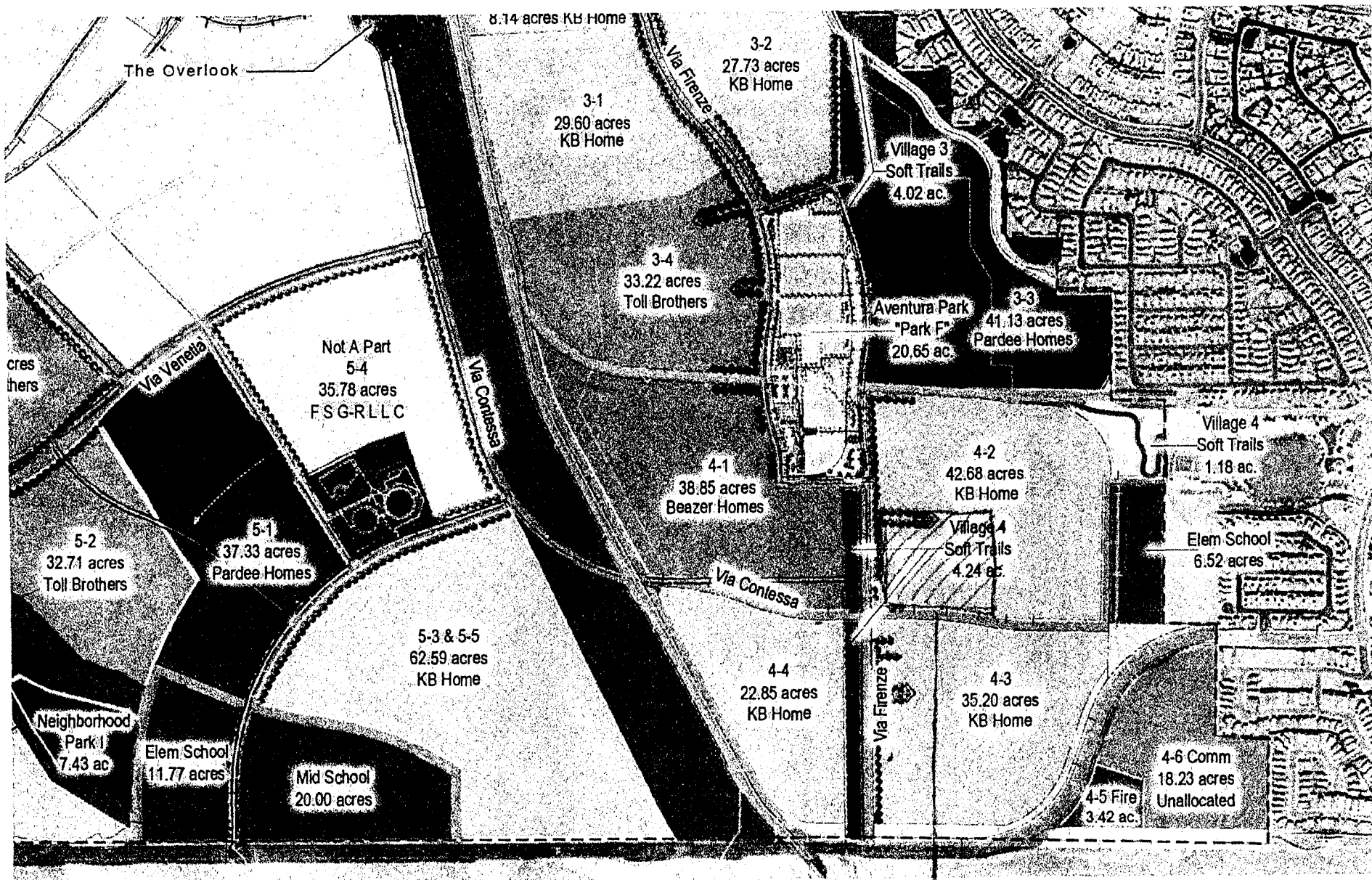
Sent: Monday, October 26, 2015 8:50 AM

To: Page, Bart J. (Perkins Coie)

Subject: RE: Inspirada - Grading Dirt

Bart – Does Century

DGP0001290



DIRECT000765

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Friday, October 30, 2015 3:43 PM
To: 'Dave Snyder (dave@freedomlv.com)'; Randy Reiner (stefnme@aol.com); 'Stephanie Reiner (sreiner@integritymasonrylv.com)'; Mando Del Toro (mando@envisionlasvegas.com); 'Devin Jones'; ben@directgrading.com; mel@directgrading.com; Mike Snyder (f350mike@gmail.com); 'Mario Fernandez (mf@freedomlv.com)'; 'Shonda Decker (shonda@affordablestripping.com)'; 'Brad Scow (brad@hirschmasonry.com)'; 'Chad Hirschi (chad@hirschmasonry.com)'; 'Louis Polish (louis@alphalandscape.lv.com)'
Subject: FW: Insurance - Field Inspections

Read below. Make sure all of your people have appropriate safety clothing and Hard Hats.

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Jon Wojtowicz
Sent: Friday, October 30, 2015 2:33 PM
To: 'mike.colvin@colvinconcrete.net'; Louis@alphalandscape.lv.com; 'Steve Christianson (SChristianson@WestCorFraming.com)'; DWadsworth@mmelectricinc.net; greglow@mmelectricinc.net; 'manny@desertplastering.com'; 'Cory@focusvegas.com' (Cory@focusvegas.com); andy@focusvegas.com; rocky@sierraairconditioning.com; bill@ssspecialties.net; 'scott@coopersolar.com'; 'Danny@powerhouseplastering.com'; 'Jerry Petty (jpetty@avantiwindow.com)'; 'Joet@delgrossofloor.com'; 'Lance Woolrich (Lancew@delgrossofloor.com)'; 'mike@cfi-nv.com'; 'John Hood (JHood@cfi-nv.com)'; 'Tim (tim@rystin.com)'; 'Dustin Wilder (dwilder@titanstairs.com)'; 'mando@envisionlasvegas.com' (mando@envisionlasvegas.com); john.segler@ferguson.com; Angie.Jenkins@Ferguson.com; dchavezcleanup@yahoo.com; Dave Canonico (DCanonico@WestCorFraming.com)
Cc: Scott Prokopchuk; Dale Juilfs; Eric Henry; Byron Jones; Clinton Cox; Steve Hahn; Steve March; Mike Nicotra (mcnicotra63@cox.net); James Romero; Joe Leas; Bob Stone; Dwight Schwertfeger; Jeff Barnes; Lucienne Ransom

3/9/2018

DIRECT000766

DGP0001291

Subject: Insurance - Field Inspections

All,

This Monday November 2, 2015 we will have our insurance representative doing a preliminary safety field and risk management inspection of Rhodes Ranch and possibly other Century Communities projects. This inspection will be followed up by a primary safety and risk management field inspection of all projects on Wednesday November 11, 2015.

Please make sure that your safety coordinators, project foreman's and crews are notified of these inspections dates, so that we are in full compliance in all areas related to your specific trade on all Century Communities projects. Please let me know if you have any questions related to these scheduled inspections.

Thank you,

Jon Wojtowitz

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, November 04, 2015 2:51 PM
To: mel@directgrading.com; 'Devin Jones'; ben@directgrading.com
Subject: FW: Interim Pavement Section Design Verification for Skye Canyon 1.4
Attachments: 12203-LVR1 - INTERIM PAVEMENT SECTION DESIGN VERIFICATION - SKYE CANYON 1.4 - 11-4-15.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Ethan Salove [mailto:esalove@geotekusa.com]
Sent: Wednesday, November 04, 2015 2:43 PM
To: Materials Testing
Cc: Ryne Stoker; Scott Prokopchuk; Wilson Encomienda
Subject: Interim Pavement Section Design Verification for Skye Canyon 1.4

Good Afternoon Everyone,

Attached is the Interim Pavement Section Design Verification for Skye Canyon 1.4.

CLV Project Number: 57648
CLV Plan Number: 107Y5009-1.4
GeoTek Number: 12203-LVR1

Thanks,

Ethan J. Salove, E.I.
Staff Professional
GeoTek
Cell: (208) 573-1844



GeoTek Residential, LLC
6835 South Escondido Street, Suite B
Las Vegas, Nevada 89119
(702) 897-1424 Office (702) 897-2213 Fax

REPORT SUBMITTAL FORM

CLV Project Name: Skve Canyon Parcel 1.4 Submittal Date: November 4, 2015

CLV Project Number: 57648 CLV Plan Number: 107Y5009-1.4

CLV Offsite Inspectors Name: Paul Burkin C-36

Project Location: NWC of Grand Canyon Drive and Grand Teton Drive

Project Developer Contact Information	Approved Project Geotechnical Investigation Report
---------------------------------------	--

Name: Scott Prokopchuk

Firm Name: GeoTek Inc.

Company: Century Communities of Nevada

Report Name: Geotechnical Exploration

Address: 6345 S. Jones Boulevard
Las Vegas, NV

Report Number: 11630-LVR6

Zip Code: 89118

Report Date: February 14, 2014

Fax Number: _____

QC Company Name: GeoTek Residential, LLC

Developer Email: scott.prokopchuk@centurycommunities.com

QC Contact Name: Ryne C. Stoker

QC Contact Email: rstoker@geotekusa.com

REPORT TYPE

UTILITY TRENCHES:

Type 3 Pipe Zone Backfill Material Report

- ☐ a. Interim Type 3 Pipe Zone Backfill Material
☐ b. Final Type 3 Pipe Zone Backfill Material

Utility Trench Backfill Material Report

- ☐ a. Interim Utility Trench Backfill Material
☐ b. Final Utility Trench Backfill Material

Trench Backfill Operation Report

- ☐ a. Interim Trench Backfill Operation
☐ b. Final Trench Backfill Operation

PAVEMENT DESIGN:

Pavement Section Design Verification Report

- ☒ a. Interim Pavement Section Design Verification
☐ b. Final Pavement Section Design Verification

OFFSITE GRADING REPORT:

- ☐ a. Interim Subgrade Verification Report – Curb and Gutter **ONLY**
☐ b. Interim Subgrade Verification Report – Street **ONLY**
☐ c. Interim Subgrade Verification Report – Curb/Gutter **AND** Street
☐ d. Interim Offsite Grading Report
☐ e. Final Offsite Grading Report



GeoTek Residential, LLC
6835 South Escondido Street Suite B
Las Vegas, Nevada 89119
(702) 897-1424 Office (702) 897-2213 Fax

November 4, 2015
Project No.: 12203-LVR1

CENTURY COMMUNITIES OF NEVADA

6345 S. Jones Boulevard, Suite 400
Las Vegas, Nevada 89118

Subject: **Interim Pavement Section Design Verification Report**
Skye Canyon I.4
Northwest Corner of Grand Teton and Grand Canyon
Las Vegas, Nevada
CLV Plan No. 107Y5009-I.4 CLV Project No. 57648

INTRODUCTION

In accordance with your request, presented herein are the results of laboratory testing performed to develop pavement section recommendations and determine the suitability of native material in lieu of Type I Aggregate Base. The area of acceptance is listed below.

Street Name	From Station	To Station
Wildflower Vista Avenue	10+00	15+75
Skye Oak Street	10+00	11+50
Skye Ranch Place	10+00	11+75
Red Rock Crest Street	13+25	15+00
Shadow Cliff Avenue	15+00	19+00

SAMPLING AND LABORATORY TESTING

A representative of GeoTek Residential, LLC (GeoTek) obtained representative samples of the native subgrade material. The table below and the attached Grading Plans show the sample locations and area represented.

Laboratory Test Number	Date Sampled	Location of Sample
26763	10/08/15	Shadow Cliff Avenue @ Sta. 17+50
26764	10/08/15	Wildflower Vista Avenue @ Sta. 15+00

Testing on the samples included particle size analysis (AASHTO T27 / T11), maximum dry density/optimum moisture content (AASHTO T 180), Atterberg Limits (liquid limit and plasticity index; ASTM D 4318 -98, wet preparation method), and R-value (ASTM D 2844). The test results are enclosed.

PAVEMENT SECTION RECOMMENDATIONS

Despite one of the gradation tests failing and based on the R-Value results, an assumed traffic index and The Uniform Standard Drawings Clark County Area (DRW. NO. 200 & 200A) Section 401.01.02 Rev. December 14, 2000, GeoTek Residential, LLC recommends pavement sections as follows. These recommendations are subject to the review and approval of the governing entities.

GEO TEK RESIDENTIAL, LLC

DIRECT000770

DGP0001295

Location	Right of Way (Feet)	Design R-Value	Traffic Index	Asphalt Concrete Thickness (Inches)	Type II Aggregate Base Thickness (Inches)
Wildflower Vista Avenue	<51	78	5.5	2.0	4.0
Skye Oak Street					
Skye Ranch Place					
Red Rock Crest Street					
Shadow Cliff Avenue					

A representative of GeoTek should observe the processed and mixed native materials to verify that adequate results have been obtained during the contractor's processing efforts. Material should be compacted to minimum of 90% of dry density per the Geotechnical Evaluation Report. The recommended pavement sections are meant as minimums. If a thinner or highly variable pavement section is constructed, increased maintenance and repair could be necessary. Positive site drainage should be maintained at all times. Water should not be allowed to pond or seep into the ground. If planters or landscaping are adjacent to paved areas, measures should be taken to minimize the potential for water to enter the pavement section. If the ADT (average daily traffic) or ADTT (average daily truck traffic) increases beyond that intended, increased maintenance and repair could be required for the pavement section.

Subgrade and aggregate base materials shall be processed, compacted, and constructed in accordance with the referenced Geotechnical Evaluation report and standards published in the Uniform Standard Specifications for Public Works Construction Off-Site Improvements for the Clark County Area, Nevada, Current Edition.

NATIVE IN-LIEU OF TYPE I AGGREGATE BASE (CURB AND GUTTER) RECOMMENDATIONS

The samples obtained are believed to be representative of material that is proposed to be used for aggregate base materials beneath curb and gutters. A sieve analysis, atterberg limit, an R-value and a maximum dry density/optimum moisture content test were performed on the samples. Our test results are enclosed. The results of our laboratory testing are summarized in the following table.

Sample No.	Street Name	Gradation*	Plasticity	Classification	R-Value
26763	Shadow Cliff Avenue	Fail	Pass	GM	79
26764	Wildflower Vista Avenue	Pass	Pass	GP-GM	78

*Gradation is based on Section 704.03.02 of *Uniform Standard Specification for Public Works' Off-site Improvements, Clark County Area, Nevada, Current Edition.*

Testing on both samples included particle size analysis; maximum dry density/optimum moisture content, Atterberg Limits, and R-value (see Laboratory Results enclosed). The samples did not meet specifications for Type I Aggregate Base as specified in the *Uniform Standard Specifications for*

Public Works Construction Off-Site Improvements for the Clark County Area, Nevada 1997. However, based on the materials free draining nature, overall gradation, and R-Value results, the materials are recommended as native in-lieu of Type I beneath curb and gutter sections.

REPORT LIMITATIONS

The materials encountered on the project site and utilized in our laboratory testing are believed representative of the total area; however, soil materials vary in characteristics between excavations. GeoTek assumes no responsibility or liability for work, testing or recommendations performed or provided by others. Since our report is based upon the site, materials observed, selective laboratory testing, and engineering analysis, the conclusions and recommendations are professional opinions. These opinions have been derived in accordance with current standards of practice and no warranty is expressed nor implied. The standard of practice is subject to change with time.

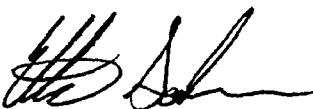
REGULATORY COMPLIANCE

The material, the pavement sections and grading and earthwork are also found to be in compliance with the requirements and recommendations of the referenced geotechnical report, project plans, specifications, and current City of Las Vegas policies and procedures. Our findings have been made and the recommendations prepared in conformance with generally accepted professional engineering practices and no further warranty is implied nor made. This report is subject to review by the controlling authorities for the project. GeoTek assumes no responsibility or liability for work testing or recommendations performed or provided by others.

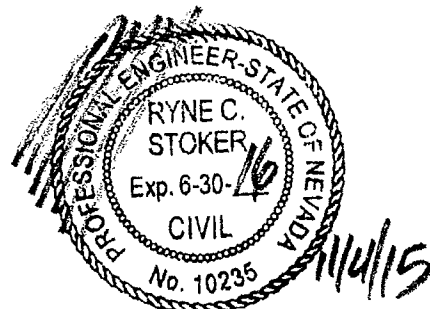
The opportunity to be of service is greatly appreciated. If you have any questions concerning this report or if we may be of further assistance, please do not hesitate to contact the undersigned.

Respectfully submitted,

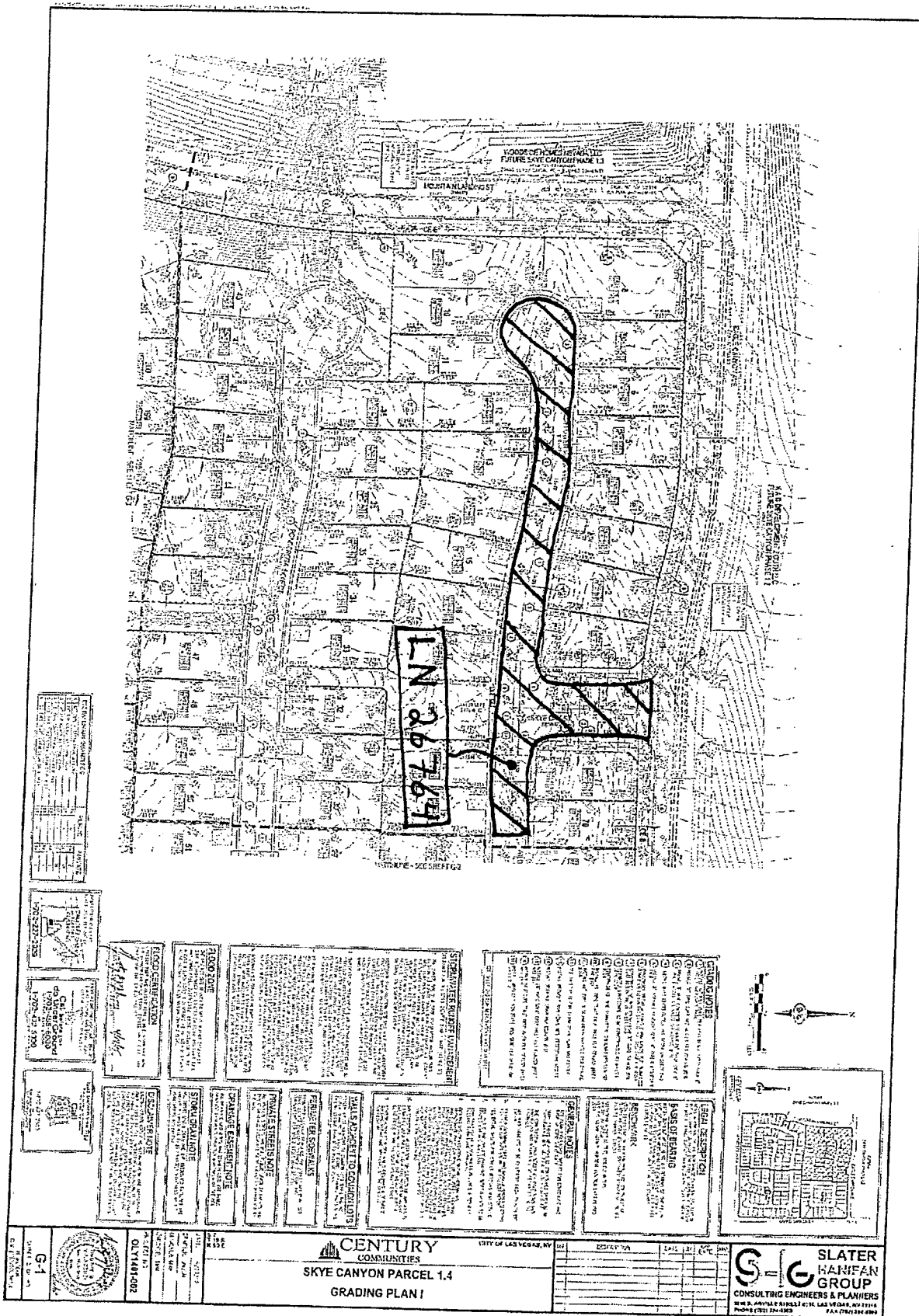
GeoTek Residential, LLC

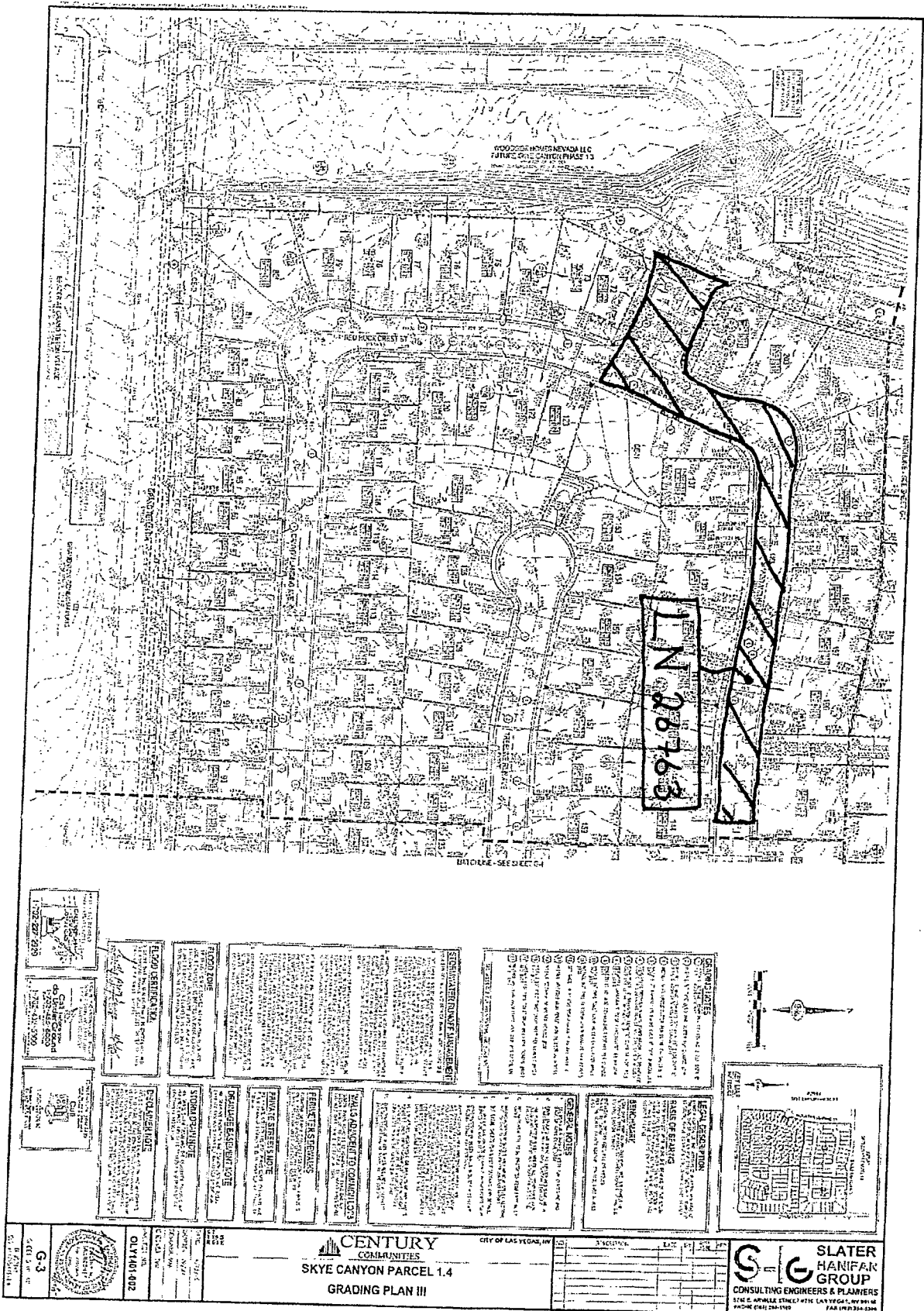


Ethan J. Salove, E.I.
Staff Professional



Ryne C. Stoker, P.E.
Principal Engineer







Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

Report No: MAT:LNS15/26763

Issue No: 1

Aggregate/Soil Test Report

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

Linda Coulter

AASHTO
Accredited
LN

Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26763
Field Sample ID:
Date Sampled: 10/08/2015
Source:
Material: Pavement Design
Specification: CCPW 704.03.02 Type I Agg Base, 2", 11.1-15 < #200
Sampling Method:
Location: Shadow Cliff Ave. @ Sta. 17+50

Other Test Results

Description	Method	Result	Limits
R Value	AASHTO T 190 - 02	79	≥60
Maximum Dry Density (lb/ft ³)	AASHTO T 180 - 01	140	
Optimum Moisture Content (%)		6	
Method		D	
Liquid Limit (%)	AASHTO T 89-02/T 90-00	N/A	≤35
Method		Method B	
Plastic Limit (%)		NP	
Plasticity Index (%)		NP	≤3
Sample History			
Preparation			
Retained 0.425mm (No. 40) (%)		0.0	
Group Symbol	ASTM D 2487 - 06	GM	
Group Name		Silty gravel with sand	

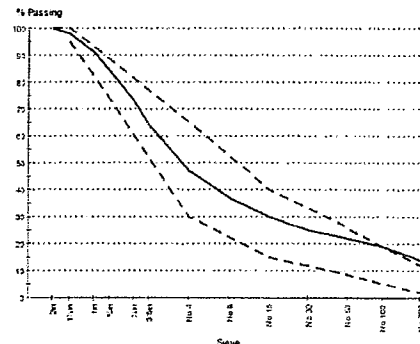
Particle Size Distribution

Method: AASHTO T 27 - 06, AASHTO T 11 - 05

Drying by:

Sieve Size	% Passing	Limits
2in (50.0mm)	100	=100
1½in (37.5mm)	98	95≤α≤100
1in (25.0mm)	91	
¾in (19.0mm)	84	
½in (12.5mm)	73	
3/8in (9.5mm)	64	
No.4 (4.75mm)	47	30≤α≤65
No.8 (2.36mm)	37	
No.16 (1.18mm)	30	15≤α≤40
No.30 (600µm)	25	
No.50 (300µm)	22	
No.100 (150µm)	19	
No.200 (75µm)	14	2≤α≤12

Chart



Comments

N/A



Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

Report No: PTR:LNS15/26763

Issue No: 1

Proctor Test Report

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

Linda Coulter

AASHTO
Accredited
LN

Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26763

Date Sampled: 10/8/2015

Sampling Method:

Source:

Material:

Pavement Design

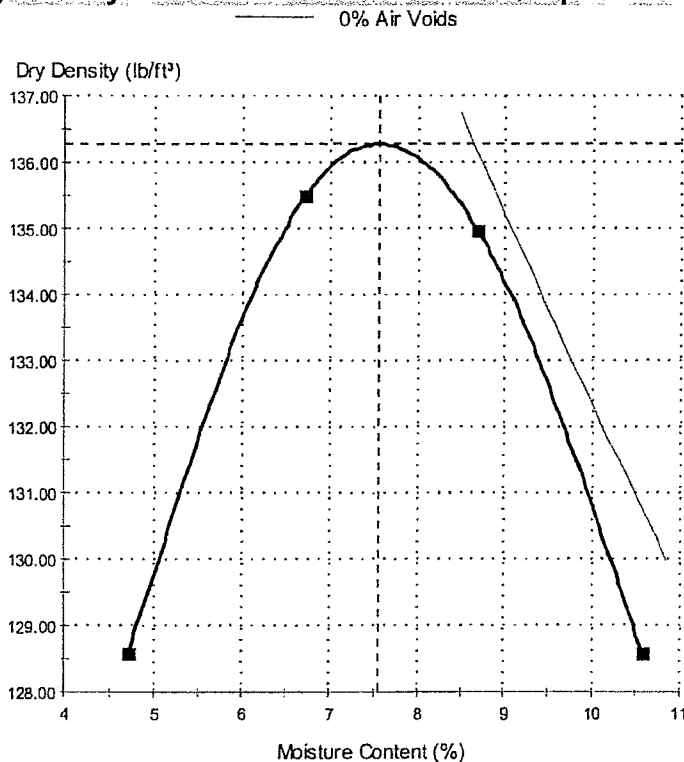
Specification: CCPW 704.03.02 Type I Agg Base, 2", 11.1-15 < #200

Location: Shadow Cliff Ave. @ Sta. 17+50

Tested By: Harvey McHugh

Date Tested: 10/12/2015

Dry Density - Moisture Content Relationship



Test Results

AASHTO T 180 - 01

Maximum Dry Density (lb/ft³): 140

Optimum Moisture Content (%): 6

Method: D

Comments



Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

R Value Report

Report No: RV:LNS15/26763

Issue No: 1

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

Linda Coulter

AASHTO
Accredited
LN

Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26763

Date Sampled: 10/8/2015

Sampling Method:

Source:

Material: Pavement Design

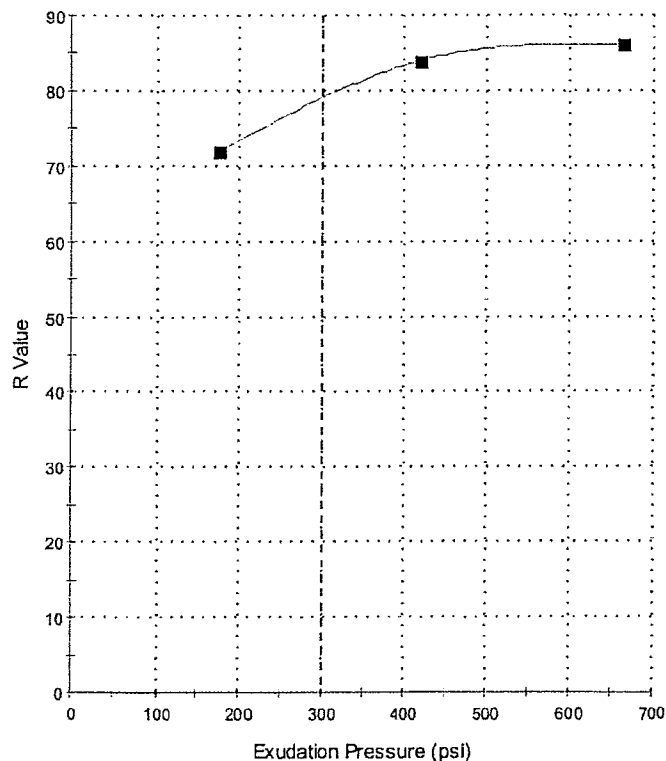
Specification: CCPW 704.03.02 Type I Agg Base, 2",
11.1-15 < #200

Location: Shadow Cliff Ave. @ Sta. 17+50

Tested By: Brian Wilkinson

Date Tested: 10/13/2015

R Value



Test Results

AASHTO T 190 - 02

R Value at 300 psi Exudation: 79 ≥ 60

MDD (lb/ft³):

OMC (%):

Specimen Results

Moisture Content (%)

Dry Density (lb/ft³)

Exudation Load (psi) 664 420 177

R Value 86 84 72

Comments



Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

Report No: MAT:LNS15/26764

Issue No: 1

Aggregate/Soil Test Report

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



AASHTO
Accredited
LN

This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

Linda Coulter

Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26764
Field Sample ID:
Date Sampled: 10/08/2015
Source:
Material: Pavement Design
Specification: CCPW 704.03.02 Type I Agg Base, 2", 8.1-11 < #200
Sampling Method:
Location: Wildflower Vista Ave. @ Sta. 15+00

Other Test Results

Description	Method	Result	Limits
R Value	AASHTO T 190 - 02	78	≥60
Maximum Dry Density (lb/ft³)	AASHTO T 180 - 01	138	
Optimum Moisture Content (%)		6	
Method		D	
Liquid Limit (%)	AASHTO T 89-02/T 90-00	N/A	≤35
Method		Method B	
Plastic Limit (%)		NP	
Plasticity Index (%)		NP	≤4
Sample History			
Preparation			
Retained 0.425mm (No. 40) (%)		0.0	

ASTM D 2487 - 06

Group Symbol GP-GM
Group Name Poorly graded gravel with silt and sand

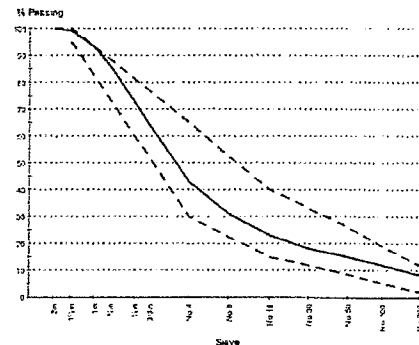
Particle Size Distribution

Method: AASHTO T 27 - 06, AASHTO T 11 - 05

Drying by:

Sieve Size	% Passing	Limits
2in (50.0mm)	100	=100
1½in (37.5mm)	99	95≤α≤100
1in (25.0mm)	93	
¾in (19.0mm)	86	
½in (12.5mm)	73	
3/8in (9.5mm)	64	
No. 4 (4.75mm)	43	30≤α≤65
No. 8 (2.36mm)	31	
No. 16 (1.18mm)	23	15≤α≤40
No. 30 (600µm)	18	
No. 50 (300µm)	15	
No. 100 (150µm)	12	
No. 200 (75µm)	8.5	2≤α≤12

Chart



Comments

N/A

DIRECT000778

DGP0001303



Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

Report No: PTR:LNS15/26764

Issue No: 1

Proctor Test Report

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

AASHTO
Accredited
LN

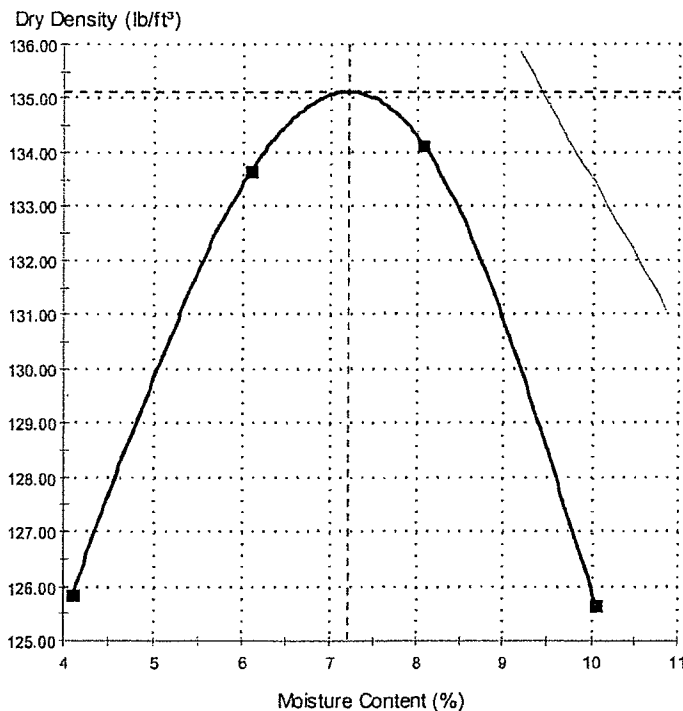
Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26764 Date Sampled: 10/8/2015
Sampling Method:
Source: Material: Pavement Design
Specification: CCPW 704.03.02 Type I Agg Base, 2", 8.1-11 < #200
Location: Wildflower Vista Ave. @ Sta. 15+00
Tested By: Brian Wilkinson Date Tested: 10/12/2015

Dry Density - Moisture Content Relationship

0% Air Voids



Test Results

AASHTO T 180 - 01

Maximum Dry Density (lb/ft³): 138

Optimum Moisture Content (%): 6

Method: D

Comments

DIRECT000779

DGP0001304



Geo Tek, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, Nevada 89119-3828

Telephone: (702) 897 1424

Facsimile: (702) 897 2213

Report No: RV:LNS15/26764

Issue No: 1

R Value Report

Client: Century Communities
6345 South Jones
Las Vegas
NV
Project: 12203-LVR
Skye Canyon Parcel 1.4

89118



AASHTO
Accredited
LN

This laboratory is accredited by AASHTO. The test(s) reported have been performed in accordance with its terms of accreditation

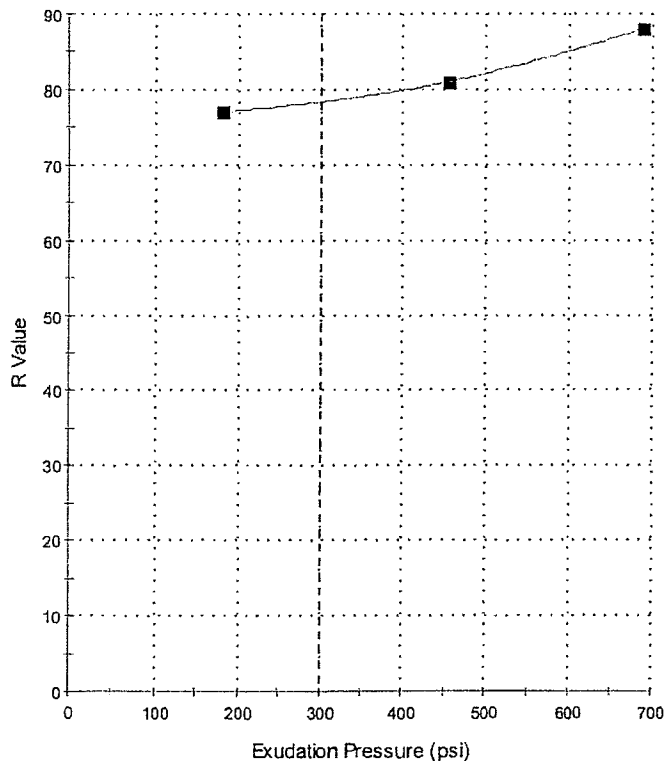
Linda Coulter

Date of Issue: 10/13/2015
Approved Signatory: Linda Coulter

Sample Details

Sample ID: LNS15/26764 Date Sampled: 10/8/2015
Sampling Method: Source:
Material: Pavement Design Specification: CCPW 704.03.02 Type I Agg Base, 2", 8.1-11 < #200
Location: Wildflower Vista Ave. @ Sta. 15+00 Tested By: Brian Wilkinson
Date Tested: 10/13/2015

R Value



Test Results

AASHTO T 190 - 02
R Value at 300 psi Exudation: 78 ≥60
MDD (lb/ft³):
OMC (%):

Specimen Results

Moisture Content (%)
Dry Density (lb/ft³)
Exudation Load (psi) 689 454 181
R Value 88 81 77

Comments

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, November 04, 2015 12:51 PM
To: mel@directgrading.com
Subject: FW: Interim Trench Backfill Operation Report for Skye Canyon Parcel 1.4
Attachments: Skye Canyon 1.4 - ITBO

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Materials Testing [mailto:clvmtl@LasVegasNevada.GOV]
Sent: Wednesday, November 04, 2015 8:53 AM
To: Ethan Salove; Materials Testing
Cc: Ryne Stoker; Scott Prokopchuk; Wilson Encomienda
Subject: RE: Interim Trench Backfill Operation Report for Skye Canyon Parcel 1.4

Good morning,

The following, Interim Trench Backfill Operation Report, has been reviewed and approved. See attached. A formal letter will follow at a later date. If you have any questions, please contact me.

Thank you

Joel Warwick
Sr. Material Testing Technician
City of Las Vegas-Department of Building & Safety

3/9/2018

DIRECT000781

DGP0001306

Offsite Inspection and Testing
3001 Ronemus Dr.
Las Vegas Nevada 89128
(702) 305-4399
jwarwick@lasvegasnevada.gov

Building Community to Make Life Better

City of Las Vegas Building & Safety

Your opinion is important! Click [here](#) to take a short survey.

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From: Ethan Salove [<mailto:esalove@geotekusa.com>]
Sent: Friday, October 30, 2015 12:22 PM
To: Materials Testing
Cc: Ryne Stoker; scott.prokopchuk@centurycommunities.com; Wilson Encomienda
Subject: Interim Trench Backfill Operation Report for Skye Canyon Parcel 1.4

Good Afternoon Everyone,

Attached is the Interim Trench Backfill Operation Report for Skye Canyon Parcel 1.4.

CLV Project Number: 57648
CLV Plan Number: 107Y5009-1.4
GeoTek Project No.: 12203-LVR1

Thanks,

Ethan J. Salove, E.I.
Staff Professional
GeoTek
Cell: (208) 573-1844

From: PW-Offsite Insp/Testing [MFD-034@LasVegasNevada.gov]
Sent: Wednesday, November 04, 2015 8:12 AM
To: Joel Warwick
Subject: Skye Canyon 1.4 - ITBO
Attachments: 2638_001.pdf



2638_001.pdf



GeoTek Residential, LLC
6835 South Escondido Street Suite B
Las Vegas, Nevada 89119
(702) 897-1424 Office (702) 897-2213 Fax

RECEIVED

OCT 30 2015

OFFSITE
INSPECTION
& TESTING

October 29, 2015

Project No.: 12203-LVR1

CENTURY COMMUNITIES OF NEVADA

6345 S. Jones Boulevard, Suite 400
Las Vegas, Nevada 89118

Subject: **Interim Trench Backfill Operation Report**
Skye Canyon Parcel 1.4
Northwest Corner of Grand Teton and Grand Canyon
Las Vegas, Nevada
CLV Plan No. 107Y5009-1.4, CLV Project No. 57648

CITY OF LAS VEGAS OFFSITE INSPECTION & TESTING	
REVIEW FOR GENERAL COMPLIANCE WITH CLV REQUIREMENTS AND STANDARD SPECIFICATIONS AND DRAWINGS.	
NO EXCEPTIONS NEEDED/APPROVED	<input checked="checked" type="checkbox"/>
AMEND & RESUBMIT	
Date 11-01-15 By [Signature]	

Reference: "Final Utility Trench Backfill Material Report – Select Backfill Report, Skye Canyon Parcel 1.4, Lots 1 through 202, Northwest Corner of Grand Teton and Grand Canyon, Las Vegas, Nevada, CLV Plan No. 107Y5009-1.4, CLV Project No. 57648," by GeoTek Residential, LLC, dated October 5, 2015, Project No.: 12203-LVR1, approved October 5, 2015.

This report presents a summary of the testing services provided by GeoTek Residential, LLC (GeoTek) during compaction of trench backfill. Testing frequency was on an on-call basis as requested by the project superintendent. A summary of field compaction testing is presented in Appendix A. The location of the area being submitted for review and acceptance is shown in the table below. GeoTek was not requested to do compaction testing for the water trench backfill since the LVVWD (Las Vegas Valley Water District) did their own testing.

Area of Acceptance				
Street Name	Type of Utility Trench	Station		Station
Wildflower Vista Avenue	Sewer	10+00	To	15+75
Skye Oak Street	Sewer	10+00	To	11+50
Skye Ranch Place	Sewer	10+00	To	11+75
Red Rock Crest Street	Sewer	13+25	To	15+00
Shadow Cliff Avenue	Sewer	15+00	To	19+00

Fill Placement and Field Testing

1. Utility trench backfill material consisted of approved Selected Backfill material and Type II Aggregate Base in pipe zone areas; these materials were moisture conditioned to near optimum moisture content and compacted to a minimum of 90 percent of maximum dry density.
2. Field compaction testing was performed at requested locations using nuclear methods (ASTM D6938).
3. The work performed on the subject project for utility trench backfill, as mentioned in the field compaction test report (Appendix A), substantially complies with the recommendations presented in the referenced report.

GEO TEK RESIDENTIAL, LLC

DIRECT000784

DGP0001309

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Monday, November 09, 2015 3:43 PM
To: mel@directgrading.com; 'Devin Jones'
Subject: FW: Skye Canyon 1.4 - ISV-CS NEW REPORT COVER SHEET

Attachments: Skye Canyon 1.4 - ISV-CS



Skye Canyon 1.4 -
ISV-CS

Thanks,

Scott Prokopchuk

Manager of Land Development

6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

-----Original Message-----

From: Materials Testing [mailto:clvmtl@LasVegasNevada.GOV]
Sent: Monday, November 09, 2015 3:42 PM
To: Ethan Salove; Materials Testing
Cc: Ryne Stoker; Scott Prokopchuk
Subject: RE: Skye Canyon 1.4 - ISV-CS NEW REPORT COVER SHEET

Good afternoon,

The following, Interim Subgrade Verification Report - Curb & Gutter and Street, has been reviewed and approved. See attached. A formal letter will follow at a later date. If you have any questions,

please contact me.

Thank you

Joel Warwick
Sr. Material Testing Technician
City of Las Vegas-Department of Building & Safety Offsite Inspection and Testing
3001 Ronemus Dr.
Las Vegas Nevada 89128
(702) 305-4399
jwarwick@lasvegasnevada.gov

Building Community to Make Life Better

City of Las Vegas Building & Safety

Your opinion is important! Click here to take a short survey.

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-----Original Message-----

From: Ethan Salove [mailto:esalove@geotekusa.com]
Sent: Monday, November 09, 2015 3:31 PM
To: Materials Testing
Subject: Skye Canyon 1.4 - ISV-CS NEW REPORT COVER SHEET

Here you go Joel, thanks again for the help!

Ethan J. Salove, E.I.
Staff Professional
GeoTek
Cell: (208) 573-1844

-----Original Message-----

From: geotek@geotekusa.com [mailto:geotek@geotekusa.com]

Sent: Monday, November 9, 2015 3:34 PM

To: Ethan Salove <esalove@geotekusa.com>

Subject: Scanned image from MX-M754N

Reply to: GeoTek <geotek@geotekusa.com>

Device Name: Not Set

Device Model: MX-M754N

Location: Not Set

File Format: PDF (Medium)

Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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<http://www.adobe.com/>

From: PW-Offsite Insp/Testing [MFD-034@LasVegasNevada.gov]
Sent: Monday, November 09, 2015 3:01 PM
To: Joel Warwick
Subject: Skye Canyon 1.4 - ISV-CS

Attachments: 2663_001.pdf



2663_001.pdf



GeoTek Residential, LLC
6835 South Escondido Street Suite B
Las Vegas, Nevada 89119
(702) 897-1424 Office (702) 897-2213 Fax

RECEIVED

NOV 09 2015

OFFSITE
INSPECTION
& TESTING

**INTERIM SUBGRADE VERIFICATION REPORT
(Street and Curb & Gutter)**

PROJECT NAME: Skye Canyon Parcel I.4

REPORT DATE: November 6, 2015

PROJECT LOCATION: Grand Canyon Drive and Grand Teton Drive

CLV PROJECT NO: 57648

CLV INSPECTOR: Paul Burkin C36

CLV PLAN NO: 107Y5009-I.4

DEVELOPER NAME: Century Communities of Nevada

QC COMPANY NAME: GeoTek Residential, LLC **QC PROJECT NO:** 12203-LVR

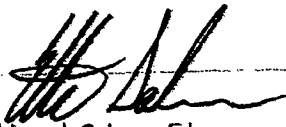
CITY OF LAS VEGAS OFFSITE INSPECTION & TESTING	
REVIEW FOR GENERAL COMPLIANCE WITH CLV REQUIREMENTS AND STANDARD SPECIFICATIONS AND DRAWINGS.	
NO EXCEPTIONS NEEDED/APPROVED	<input checked="" type="checkbox"/>
AMEND & RESUBMIT	<input type="checkbox"/>
Date <u>11-9-15</u> by <u>Paul Burkin</u>	

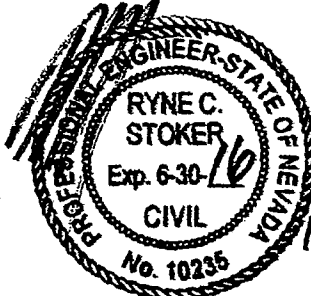
This report represents the following areas:

Area(s) of Acceptance								
Street Name	Curb/Gutter			Street Subgrade		Station		Station
	"NILO"	Subgrade	Side N,S,E,W	Half Street	Full Street			
Wildflower Vista Avenue	X		N, S		X	10+00	to	15+75
Skye Oak Street	X		W, E		X	10+25	to	11+25
Skye Ranch Place	X		N, S		X	10+25	to	11+25
Red Rock Crest Street	X		W, E		X	13+25	to	15+00
Shadow Cliff Avenue	X		N, S		X	15+00	to	18+00

Attached to this form are copies of associated Field Density tests representing the identified street and curb & gutter areas. Minimum density compaction requirement for the street and curb & gutter subgrade is 90%.

Based on a review of the CLV approved reports and testing performed for the above noted areas, the street and curb & gutter subgrade has been prepared in general accordance with the Geotechnical Evaluation of record, project plans and specifications, and current CLV policies and procedures.


Ethan J. Salove, E.I.
Staff Professional


Ryne C. Stoker, P.E.
Principal Engineer

GEO TEK RESIDENTIAL, LLC

DIRECT000789

DGP0001314

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, October 28, 2015 12:49 PM
To: mel@directgrading.com; 'Louis Polish (louis@alphalandscape.lv.com)'
Subject: FW: stockpiles
Attachments: pix4d qty 10-25-15.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Steve Dumovich [mailto:SteveD@taneycorp.com]
Sent: Wednesday, October 28, 2015 6:59 AM
To: Scott Prokopchuk
Subject: stockpiles

Scott,

Attached are the results from the stockpile analysis from flight dated 10-25-15. 9311 CY

DGP0001316



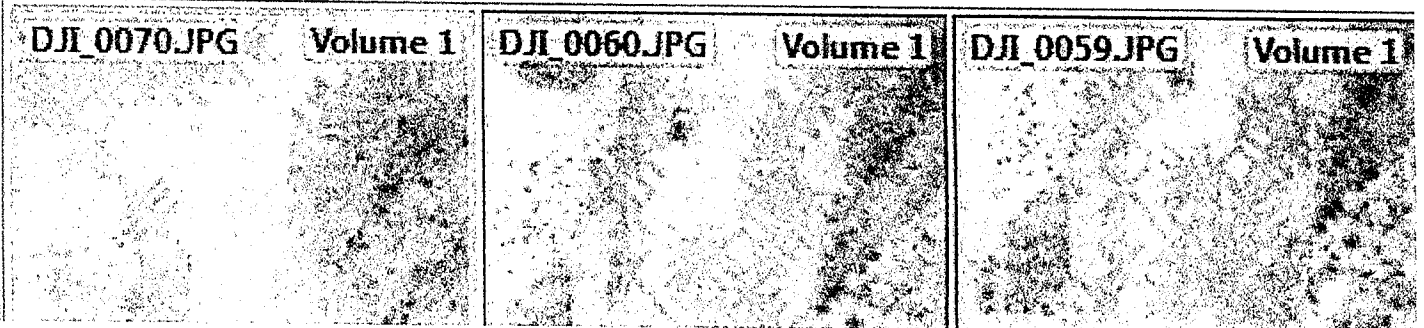
Terrain 3D Length [ft]: 4935.10
Projected 2D Length [ft]: 4913.94
Enclosed 3D Area [ft²]: 125831.16
Projected 2D area [ft²]: 125266.26
Terrain 3D Area [ft²]: 285477.10
Cut Volume [ft³]: 258651.27
Fill Volume [ft³]: -7243.26
Total Volume [ft³]: 251408.01

9311cy

Update Measure

▼ Images

Image Size Zoom



DIRECT000791

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Tuesday, September 29, 2015 10:52 AM
To: Tim Moreno; Ryne Stoker; mel@directgrading.com
Cc: Steve Dumovich
Subject: Fwd: Century Communities Horse and Jones

Tim, there is a suspected location that I believe GeoTek identified in their Soils report. Taney has staked this prior and you should still have the location.

Sent from my iPhone

Begin forwarded message:

From: Tim Moreno <TimM@taneycorp.com>
Date: September 29, 2015 at 10:35:10 AM PDT
To: Scott Prokopchuk <Scott.Prokopchuk@centurycommunities.com>
Cc: "mel@directgrading.com" <mel@directgrading.com>, Todd Stovall <Todd.S@taneycorp.com>, Robert Cunningham <rc@taneycorp.com>
Subject: RE: Century Communities Horse and Jones

Scott,
I thought we did not have any fissures on this job.

Tim S. Moreno, P.E.
Senior Project Manager
Taney Engineering
6030 S. Jones Blvd. Ste# 100
Las Vegas, NV 89118
(702) 362-8844
tim@taneycorp.com

From: LV Survey Scheduling
Sent: Tuesday, September 29, 2015 9:56 AM
To: Tim Moreno <TimM@taneycorp.com>
Subject: FW: Century Communities Horse and Jones

James Todd Stovall PLS CFedS
TANEY ENGINEERING
(702)362-8844 Office
(702)419-3432 Cell

From: mel@directgrading.com [mailto:mel@directgrading.com]
Sent: Tuesday, September 29, 2015 8:28 AM
To: LV Survey Scheduling
Cc: Scott Prokopchuk
Subject: Century Communities Horse and Jones

We need to have the Fissure staked 1st thing Thursday morning 10/01/2015
Thank you

Mel Westwood
Direct Grading
(702) 303-3058

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Tuesday, October 13, 2015 10:10 AM
To: mel@directgrading.com; Louis Polish
Subject: Fwd: Lake Las Vegas G SWPPP inspection 10/13/15
Attachments: Lake Las Vegas G-inspection-10-13-2015.docx; ATT00001.htm

Read attached

Sent from my iPhone

Begin forwarded message:

From: Jeff Ball <jeff@eros-environmental.com>
Date: October 13, 2015 at 8:06:57 AM PDT
To: 'Scott Prokopchuk' <Scott.Prokopchuk@centurycommunities.com>
Subject: Lake Las Vegas G SWPPP inspection 10/13/15

Scott, on these corrections would you like for me to have my guys go ahead and take care of them?

Let me know.

Thank you and have a good day!

Jeff Ball
Compliance Specialist
Eros-Environmental
10161 Park Run Dr. STE.150
Las Vegas, NV. 89145
C.702-498-7067
E- jeff@eros-environmental.com



Date: 10/13/2015

Time: 0700

Date/Time Storm Began: _____ Approx. Rainfall Amount (Inches): _____

Duration of Storm Event: _____ Date of Last Storm: 10/5/15

Current Weather: ☒ Clear ☐ Cloudy ☐ Mist ☐ Rain ☐ Sleet ☐ Fog ☐ Snow ☐ Windy

STORM WATER CONSTRUCTION SITE INSPECTION REPORT

General Information

Project Name: Lake Las Vegas G NPDES Permit #: 40721Project Location: Lake Las Vegas Pkwy & Grand Mediterra Blvd.Inspection Performed By: Jeff Ball, Compliance Specialist, Eros-Environmental
(Print Name, Title, and Company)Phase of Construction: ☒ Development ☐ Residential ☐ CommercialType of Inspection: ☒ Routine Inspection ☐ Rain Event ☐ Final Inspection

Project Inspection

Item	SWPPP Items	Not Applicable	Acceptable	Action Item	Assigned To
Erosion Control					
1	Protection of Disturbed Areas / Stockpiles	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
2	Slope Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3	Dust Control	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
4	Velocity Reduction Devices/ Outlet Protection	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Sediment Control					
5	Check Dams (rock, gravel, or other)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	_____
6	Silt Fence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7	Berms, Dikes, Straw Wattles	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
8	Detention Basins/Sediment Traps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9	Stockpiles Protected/Stabilized	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
10	Storm Water Inlet Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
11	Cut-back Curbs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Housekeeping/Trade Compliance					
12	Waste and Trash Management	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
13	Spill and Leak Prevention	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
14	Sanitary Stations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
15	Concrete and Construction Washouts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
16	Material Storage Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
17	Equipment Storage and Maintenance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
18	Construction Exits & Entrances	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	_____
19	Street Sweeping	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Other					
20	Non- Storm Water Flows	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
21	Project's Weathering of rain events	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
22	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
23	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
24	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Action Item Response

[illegible]

Notes

--

"I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Duly Authorized Representative:

Inspected By:

Print Name and Title

Signature (Use Ink) _____ Date* _____

Date*

Jeff Ball, Compliance Specialist

Print Name and Title

10/13/15

Signature (Use Ink)

*Date**

From: mel@directgrading.com
Sent: Tuesday, October 13, 2015 7:54 AM
To: Geotek Larry
Subject: Fwd: Lake Las Vegas Lot G-1 - Approved IP

Mel Westwood
Direct Grading
(702) 303-3058

----- Original message -----

From: Scott Prokopchuk
Date: 10/08/2015 7:28 PM (GMT-08:00)
To: Dave Snyder , mel@directgrading.com, don@directgrading.com, Devin Jones , Scott Sorenson , Shonda Decker , Susan Bingson , Ryne Stoker , Jeff Neal , 'Greg Jones' , Brad Scow , John Mann , John Hanna , Anthony Sclafani , Carl Kuhns , Louis Polish
Subject: Fwd: Lake Las Vegas Lot G-1 - Approved IP

Sent from my iPhone

Begin forwarded message:

From: Erwin Sacundo <esacundo@shg-inc.com>
Date: October 8, 2015 at 3:20:18 PM PDT
To: Scott Prokopchuk <Scott.Prokopchuk@centurycommunities.com>, "Roselyn Kennedy (Roselyn.Kennedy@centurycommunities.com)" <Roselyn.Kennedy@centurycommunities.com>
Cc: Tim Mulrooney <tmulrooney@shg-inc.com>, Hung Nguyen <hnguyen@shg-inc.com>
Subject: Lake Las Vegas Lot G-1 - Approved IP

Good afternoon,

Please find the link to the approved IP set of Lake Las Vegas Lot G-1.

<https://www.dropbox.com/s/m6j3y4a1xu4pzix/151008%20Lake%20Las%20Vegas%20Lot%20G-1-Appr%20IPs.pdf?dl=0>

Thanks,

Erwin Sacundo E.I.
Engineering Intern I

SLATER HANIFAN GROUP
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LAS VEGAS

5740 S. ARVILLE STREET #216

LAS VEGAS, NV 89118

PHONE: (702) 284-5300

FAX: (702) 284-5399

www.shq-inc.com

PHOENIX

11201 N. TATUM BLVD. #250

PHOENIX, AZ 85028

PHONE: (602) 687-9664

LAKE HAVASU CITY

60 S. ACOMA BLVD. #C104

LAKE HAVASU CITY, AZ 86403

PHONE: (928) 202-4104

FAX: (602) 483-1007

Any files contained within are to be used for information ONLY. Accuracy and/or design information to be verified from approved original plans. Use of electronic media is at the sole risk of the user.

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Monday, October 05, 2015 10:17 AM
To: Dave Snyder; mel@directgrading.com; Devin Jones
Subject: Fwd: Rhodes Ranch South Ph 3 (CCPW Offsite Nos. 15-3586,15-6303 CCPW GEO No. 15-3591) Select Backfill

Sent from my iPhone

Begin forwarded message:

From: Ryne Stoker <rstoker@geotekusa.com>
Date: October 5, 2015 at 9:55:24 AM PDT
To: "Scott Prokopchuk - Dunhill Homes (Scott.Prokopchuk@centurycommunities.com)" <Scott.Prokopchuk@centurycommunities.com>
Subject: FW: Rhodes Ranch South Ph 3 (CCPW Offsite Nos. 15-3586,15-6303 CCPW GEO No. 15-3591) Select Backfill

FYI

Ryne C Stoker, PE
Principal Engineer
702-939-1603 direct
702-897-1424 office
702-210-2168 cell

From: PW Soil Reports [mailto:dssoilrpt@ClarkCountyNV.gov]
Sent: Monday, October 5, 2015 9:48 AM
To: Ryne Stoker <rstoker@geotekusa.com>
Subject: Rhodes Ranch South Ph 3 (CCPW Offsite Nos. 15-3586,15-6303 CCPW GEO No. 15-3591) Select Backfill

MSB – Approved (AP)

The native material meets the requirements of CCAUSS 207.02.01 for use as selected backfill, above the pipe zone, for the utility trenches in Clark County Public Works (CCPW) jurisdiction (i.e. Storm Drain pipe) for CCPW Off-Site Nos. 15-3586,15-6303.

The material has been approved for use in CCPW jurisdiction ONLY. The material may need to be approved by another entity for use as select backfill if it falls within their jurisdiction (Water Reclamation, Las Vegas Valley Water District, NV Energy, Century Link, Cox Communications, etc).

Proctor data:
Glacier Springs Dr., Sta. 12+00, 141.0 pcf @ 5.0 percent; Glacier Springs Dr., Sta. 15+75,

143.0 pcf @ 6.0 percent; Bronze Creek St., Sta. 14+00, 142.0 pcf @ 5.0 percent and Caddy Drop Ln., Sta. 13+75, 140.0 pcf @ 6.0 percent. Water Soluble Sulfates = 0.02, 0.01, 0.01 and 0.06 respectively.

The material shall be compacted above the optimum moisture content to a minimum of 90 percent of the maximum density per CCAUSS 208.03.15 and if "Selected Backfill" is used in trenches 2 feet or less in width, no stones or lumps greater than 3 inches will be permitted.

Approval to use selected backfill material does not constitute acceptance of the material. All construction materials are subject to inspection and/or testing by the responsible agency personnel. Any material that does not conform to the engineering characteristics of those materials approved for use shall be removed and replaced with acceptable material.

Respectfully,

Timothy Bruce

Construction Management Inspector
Clark County Public Works
Construction Management- Development
Office NO. 455-4902

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Friday, November 06, 2015 9:34 AM
To: mel@directgrading.com; ben@directgrading.com
Subject: Hydrant Meter at Inspirada

The Hydrant Meter for Inspirada was supposedly set yesterday.

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Monday, October 26, 2015 12:20 PM
To: mel@directgrading.com
Subject: Inspirada Village Maps
Attachments: 1553_001.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development

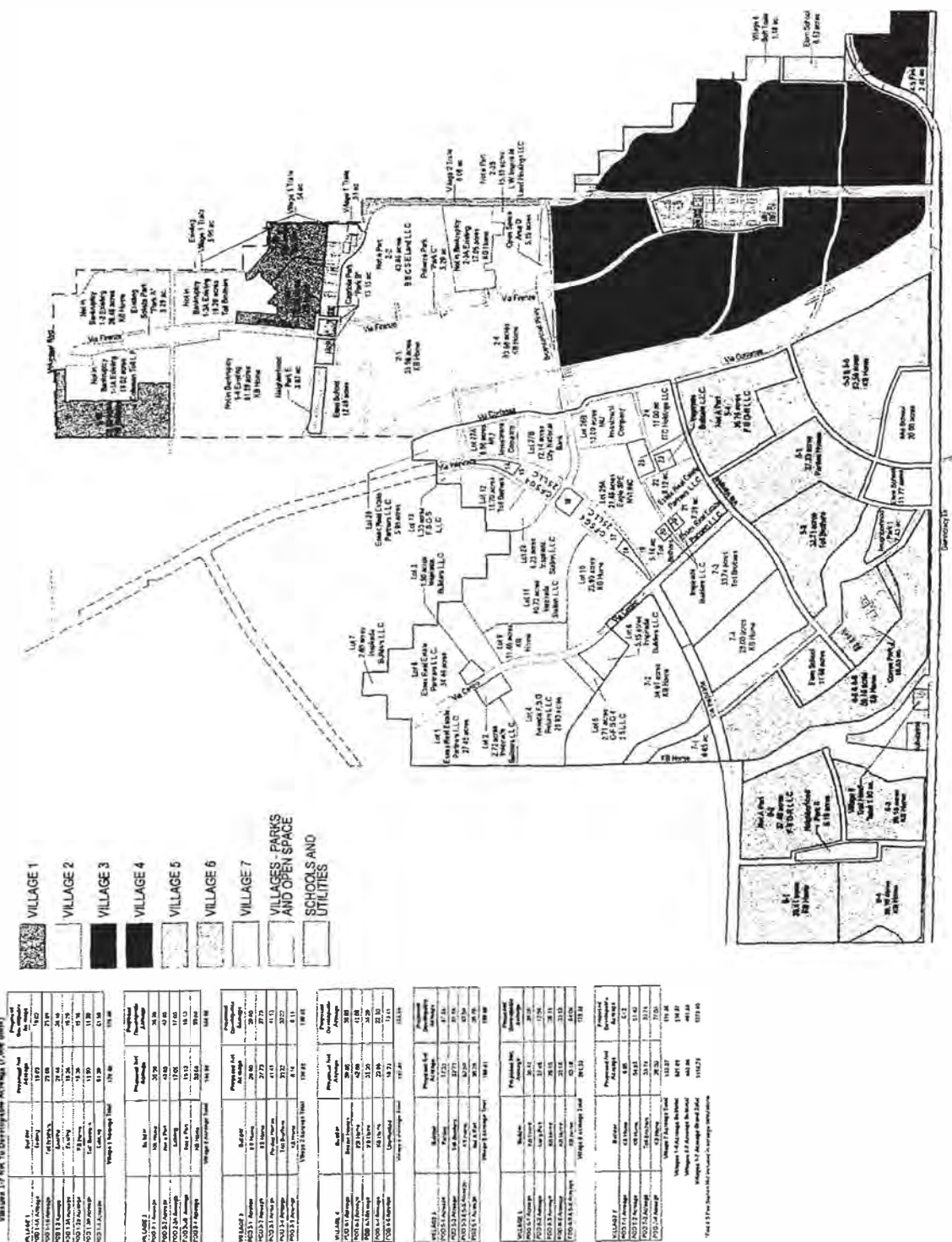


6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: DoNotReply@dhlvportal.com [mailto:DoNotReply@dhlvportal.com]
Sent: Monday, October 26, 2015 12:08 PM
To: Scott Prokopchuk
Subject: Attached Image



Subject: Land Development Schedule Coordination Meeting
Location: Century Communities Large Conference Room

Start: Wed 2/10/2016 8:00 AM
End: Wed 2/10/2016 10:00 AM
Show Time As: Tentative

Recurrence: Weekly
Recurrence Pattern: every Tuesday from 8:00 AM to 10:00 AM

Meeting Status: Not yet responded

Required Attendees: Dave Snyder (dave@freedomlv.com); Mel Westwood (mel@directgrading.com); Louis Polish (louis@alphalandscape.com); Devin Jones; Rick Barron; Natasha Johnson

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Thursday, October 01, 2015 7:14 PM
To: 'Ryne Stoker (rstoker@geotekusa.com)'; mel@directgrading.com; 'Devin Jones'; 'Dave Snyder (dave@freedomlv.com)'
Subject: Materials Report requirements for Horse and Jones
Attachments: 1378_001.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: DoNotReply@dhlvportal.com [mailto:DoNotReply@dhlvportal.com]
Sent: Thursday, October 01, 2015 7:06 PM
To: Scott Prokopchuk
Subject: Attached Image



LAS VEGAS CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STEVEN D. ROSS
MAYOR PRO TEM

LOIS TARKANIAN
RICKI Y. BARLOW
STAVROS S. ANTHONY
BOB COFFIN
BOB BEERS

ELIZABETH N. FRETWELL
CITY MANAGER

Building & Safety
333 North Rancho Drive
Las Vegas, NV 89106

TDD 702-386-9108
Administration 702-229-6092
Permits 702-229-6251
Inspections 702-229-6914
Off-site Inspections 702-229-6337
Land Development 702-229-6371

www.lasvegasnevada.gov

Department of Building and Safety
Offsite Inspection and Testing
Materials Testing Laboratory
3001 Ronemus Drive
Las Vegas, NV 89128
(702) 229-6484, Fax (702) 229-6699

June 25, 2015

Century Communities
6345 S. Jones Blvd.
Las Vegas, NV 89118

Dear Sirs:

RE: Geotechnical Report Review
Horse and Jones, Hansen No. 59831
GeoTek, Inc.
Report No. 12220-LVR, dated February 4, 2015

The subject report has been reviewed and conditionally accepted. The following pavement design has been approved for this project.

Preliminary Pavement Section Design			
Street	Interior	Horse Dr.	Jones Blvd.
R.O.W.	< 51'	80'	100'
Subgrade R-Value	30	30	30
Layer Thickness			
Asphalt	2.5	4.5	5.5
Type 2	7.0	4.0	4.0
Type 1		9.0	13.5

Subgrade Density per Geotechnical Report	90%
Over-Excavation/Processing (Scarification) Requirements	* 124" *Minimum

* Requirements per approved project Geotechnical Investigation Report and updates

The City of Las Vegas (CLV) requires different Construction Phase Reports to be submitted for review and approval during the earthwork phase of the project. These reports are required from the company performing the Quality Control Testing / Inspections. The reports to be submitted for review / approval will be determined by the project scope of work. These reports may be one or more of the following:

Report Submittal

- Submittal of Report (CLV Procedure No. 101)

Utility Trenches

- Type III Pipe Zone Backfill Material Report (if used) (CLV Procedure No. 102)
- Utility Trench Backfill Material Report (CLV Procedure No. 103)
- Trench Backfill Report (CLV Procedure No. 104)

Pavement Area

- Pavement Section Design Verification Report (CLV Procedure No. 105)

Offsite Area

- Offsite Grading Report (CLV Procedure No. 107)

A processing period of two (2) working days is required for our review of the report. A longer processing period may be required if supporting data / information is missing from the report or the report contains incorrect information.

A pre-inspection meeting with the City of Las Vegas area inspector should be arranged as early in the project as possible.

If you should have any questions, or if I can provide any assistance, please contact this office at (702) 229-6484.

Sincerely,

Joel Warwick
Joel Warwick
Senior Materials Testing Technician

JW:sd

c: CLV Land Development
• Ryne C. Stoker, P.E., GeoTek, Inc.
• Timoteo S. Moreno, P.E., Taney Engineering
File

F:\BS_OIT\GEO TECH REVIEW LETTER\15_Geotech Review Letter\15_Horse and Jones_06-25-15.docx

FAXED
6/25/15

DIRECT000807

DGP0001332

DEPARTMENT OF BUILDING and SAFETY
OFFSITE INSPECTION and TESTING
MATERIALS TESTING LABORTORY

Construction Phase Report Scope of Work Information Sheet

DATE ISSUED: 9-30-15

PERMIT NO.: 59831

REVIEW BY: [Signature]

PLAN NO.: 107Y 5030

Project Name: Horse and Jones

CONSTRUCTION PHASE REPORT TYPE ¹	REQUIRED	
	YES	NO
Type 3 Backfill Material	*	
Utility Trench Backfill Material	✓	
Trench Backfill Operation	✓	
Pavement Section Design Verification	✓	
Final Grading	✓	

¹ Per current CLV procedures

* If used

Comments:

Attachments: Geotechnical Review Letter and Offsite Construction Permit Hard Card

MEETING DATE:

Quality Control Company:

QC Contact Name:

Phone No.:

Email:

Fax No.:

Does Quality Control Company have copies
of approved project plans

YES

NO

Meeting Comments:

NOTE: Responsible QC field personnel are to meet with the CLV Off Site Inspector prior to or on the 1st visit to the project for sampling / testing to review Scope of Work.

QC Company Signature

CLV Signature

cc: Project Developer / Representative
Quality Control Company
CLV Offsite Inspector

CLV Materials Testing Laboratory
Project File

Subject: Meet at Lake Las Vegas to discuss Grading
Location: Parcel G Lake Las Vegas

Start: Mon 1/18/2016 11:30 AM
End: Mon 1/18/2016 1:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Ryne Stoker (rstoker@geotekusa.com); Mel Westwood (mel@directgrading.com)

Subject: Meet on Grading Projects
Location: Century Offices

Start: Tue 3/15/2016 11:00 AM
End: Tue 3/15/2016 11:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Mel Westwood (mel@directgrading.com); Rick Barron

Subject: Meet with City of Las Vegas for Phasing Horse and Jones
Location: City of Las Vegas

Start: Tue 2/9/2016 8:00 AM
End: Tue 2/9/2016 9:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Dave Snyder (dave@freedomlv.com); Mel Westwood (mel@directgrading.com); Devin Jones

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, October 14, 2015 6:42 PM
To: Natalie Bowers; Dale Juilfs; Jon Wojtowitz; Don Boettcher; Ryan Soucie; Hadley Goddard; DeAnna Forsyth; Jimmy Jones; Gail Van Deursen
Cc: mel@directgrading.com
Subject: Paving on Durango Lots
Attachments: 1457_001.pdf

Attached are the exhibits that we will be handing out to the Homeowners adjacent to the Durango Lots. The road will be closed from 7:00 am until 7:00 pm on October 26, 2015. Please note this date as the Lots will not be accessible.

Jon and Dale, if you need to get in to do something on the homes that day, we can arrange for access. The Association will provide noticing and Security will be posted at the ends of both areas from 7:00 am until 7:00pm. There will be Pre Notice signs posted from a couple of days prior.

Thanks,

Scott Prokopchuk

Manager of Land Development

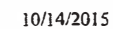


6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: DoNotReply@dhlportal.com [mailto:DoNotReply@dhlportal.com]
Sent: Wednesday, October 14, 2015 6:28 PM
To: Scott Prokopchuk
Subject: Attached Image





From: Tim Moreno [TimM@taneycorp.com]
Sent: Tuesday, September 29, 2015 10:56 AM
To: Scott Prokopchuk; Ryne Stoker; mel@directgrading.com
Cc: Todd Stovall
Subject: RE: Century Communities Horse and Jones

Todd,
I believe a few months back Steve sent a crew out there to look. It was late last year or early this year.
Thanks,

Tim S. Moreno, P.E.
Senior Project Manager
Taney Engineering
6030 S. Jones Blvd. Ste# 100
Las Vegas, NV 89118
(702) 362-8844
timm@taneycorp.com

From: Scott Prokopchuk [mailto:Scott.Prokopchuk@centurycommunities.com]
Sent: Tuesday, September 29, 2015 10:52 AM
To: Tim Moreno <TimM@taneycorp.com>; Ryne Stoker <rstoker@geotekusa.com>; Mel Westwood <mel@directgrading.com>
Cc: Steve Dumovich <SteveD@taneycorp.com>
Subject: Fwd: Century Communities Horse and Jones

Tim, there is a suspected location that I believe GeoTek identified in their Soils report. Taney has staked this prior and you should still have the location.

Sent from my iPhone

Begin forwarded message:

From: Tim Moreno <TimM@taneycorp.com>
Date: September 29, 2015 at 10:35:10 AM PDT
To: Scott Prokopchuk <Scott.Prokopchuk@centurycommunities.com>
Cc: "mel@directgrading.com" <mel@directgrading.com>, Todd Stovall <Todd.S@taneycorp.com>, Robert Cunningham <rc@taneycorp.com>
Subject: RE: Century Communities Horse and Jones

Scott,
I thought we did not have any fissures on this job.

Tim S. Moreno, P.E.
Senior Project Manager
Taney Engineering
6030 S. Jones Blvd. Ste# 100
Las Vegas, NV 89118
(702) 362-8844
timm@taneycorp.com

From: LV Survey Scheduling
Sent: Tuesday, September 29, 2015 9:56 AM
To: Tim Moreno <TimM@taneycorp.com>
Subject: FW: Century Communities Horse and Jones

James Todd Stovall PLS CFedS
TANEY ENGINEERING
(702)362-8844 Office
(702)419-3432 Cell

From: mel@directgrading.com [<mailto:mel@directgrading.com>]
Sent: Tuesday, September 29, 2015 8:28 AM
To: LV Survey Scheduling
Cc: Scott Prokopchuk
Subject: Century Communities Horse and Jones

We need to have the Fissure staked 1st thing Thursday morning 10/01/2015
Thank you

Mel Westwood
Direct Grading
(702) 303-3058

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, November 04, 2015 12:56 PM
To: Steve Dumovich
Cc: mel@directgrading.com
Subject: RE: Inspirada Stock Piles

No I don't think any dirt was taken from there.

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Steve Dumovich [mailto:SteveD@taneycorp.com]
Sent: Wednesday, November 04, 2015 9:39 AM
To: Scott Prokopchuk
Cc: Brian Myers
Subject: Inspirada Stock Piles

Scott,

We ran the quantities on the stock piles and it doesn't look like there was a measureable increase to the amount of dirt that was there compared to last week. It even looks to us that they may have taken dirt away. Is that possible? Please let us know when you get a chance.

Thanks, Steve

From: Larry Calimag [lcalimag@geotekusa.com]
Sent: Tuesday, October 13, 2015 8:45 AM
To: mel@directgrading.com
Subject: Re: Lake Las Vegas Lot G-1 - Approved IP

Got it thanks!

Sent from my iPhone

On Oct 13, 2015, at 7:53 AM, "mel@directgrading.com" <mel@directgrading.com> wrote:

Mel Westwood
Direct Grading
(702) 303-3058

----- Original message -----

From: Scott Prokopchuk
Date: 10/08/2015 7:28 PM (GMT-08:00)
To: Dave Snyder , mel@directgrading.com, don@directgrading.com, Devin Jones , Scott Sorenson , Shonda Decker , Susan Bingson , Ryne Stoker , Jeff Neal , 'Greg Jones' , Brad Scow , John Mann , John Hanna , Anthony Sclafani , Carl Kuhns , Louis Polish
Subject: Fwd: Lake Las Vegas Lot G-1 - Approved IP

Sent from my iPhone

Begin forwarded message:

From: Erwin Sacundo <esacundo@shg-inc.com>
Date: October 8, 2015 at 3:20:18 PM PDT
To: Scott Prokopchuk <Scott.Prokopchuk@centurycommunities.com>, "Roselyn Kennedy (Roselyn.Kennedy@centurycommunities.com)" <Roselyn.Kennedy@centurycommunities.com>
Cc: Tim Mulrooney <tmulrooney@shg-inc.com>, Hung Nguyen <hnguyen@shg-inc.com>
Subject: Lake Las Vegas Lot G-1 - Approved IP

Good afternoon,

Please find the link to the approved IP set of Lake Las Vegas Lot G-1.

<https://www.dropbox.com/s/m6j3y4a1xu4pzix/151008%20Lake%20Las%20Vegas%20Lot%20G-1-Appr%20IPs.pdf?dl=0>

Thanks,

Erwin Sacundo E.I.
Engineering Intern I

SLATER HANIFAN GROUP

"The Benchmark of Our Profession."

LAS VEGAS

5740 S. ARVILLE STREET
#216
LAS VEGAS, NV 89118
PHONE: (702) 284-5300
FAX: (702) 284-5399
www.shg-inc.com

PHOENIX

11201 N. TATUM BLVD. #250
PHOENIX, AZ 85028
PHONE: (602) 687-9664

LAKE HAVASU CITY

60 S. ACOMA BLVD. #C104
LAKE HAVASU CITY, AZ 86403
PHONE: (928) 202-4104
FAX: (602) 483-1007

Any files contained within are to be used for information ONLY. Accuracy and/or design information to be verified from approved original plans. Use of electronic media is at the sole risk of the user.

From: mel@directgrading.com
Sent: Thursday, October 01, 2015 7:19 PM
To: Scott Prokopchuk; 'Ryne Stoker (rstoker@geotekusa.com)'; 'Devin Jones'; 'Dave Snyder (dave@freedomlv.com)'
Subject: RE: Materials Report requirements for Horse and Jones

Thanks

Mel Westwood
Direct Grading
(702) 303-3058

----- Original message -----

From: Scott Prokopchuk
Date: 10/01/2015 7:14 PM (GMT-08:00)
To: "'Ryne Stoker (rstoker@geotekusa.com)'" , mel@directgrading.com, 'Devin Jones' , "'Dave Snyder (dave@freedomlv.com)'"
Subject: Materials Report requirements for Horse and Jones

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard

Suite 400

3/9/2018

DIRECT000820

DGP0001345

Las Vegas, Nevada 89118

Office (702) 873-5338

Direct (702) 730-4330

Fax (702) 730-4333

Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: DoNotReply@dhlyportal.com [mailto:DoNotReply@dhlyportal.com]

Sent: Thursday, October 01, 2015 7:06 PM

To: Scott Prokopchuk

Subject: Attached Image

From: Don Boettcher [Don.Boettcher@centurycommunities.com]
Sent: Sunday, October 25, 2015 1:52 PM
To: Scott Prokopchuk; Natalie Bowers; Dale Juilfs; Jon Wojtowitz; Ryan Soucie; Hadley Goddard; DeAnna Forsyth; Jimmy Jones; Gail Van Deursen
Cc: mel@directgrading.com
Subject: RE: Paving on Durango Lots

friendly reminder of below to all.

From: Scott Prokopchuk
Sent: Wednesday, October 14, 2015 6:42 PM
To: Natalie Bowers; Dale Juilfs; Jon Wojtowitz; Don Boettcher; Ryan Soucie; Hadley Goddard; DeAnna Forsyth; Jimmy Jones; Gail Van Deursen
Cc: 'Mel Westwood (mel@directgrading.com)'
Subject: Paving on Durango Lots

Attached are the exhibits that we will be handing out to the Homeowners adjacent to the Durango Lots. The road will be closed from 7:00 am until 7:00 pm on October 26, 2015. Please note this date as the Lots will not be accessible.

Jon and Dale, if you need to get in to do something on the homes that day, we can arrange for access. The Association will provide noticing and Security will be posted at the ends of both areas from 7:00 am until 7:00pm. There will be Pre Notice signs posted from a couple of days prior.

Thanks,

Scott Prokopchuk

Manager of Land Development



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Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: DoNotReply@dhlportal.com [mailto:DoNotReply@dhlportal.com]
Sent: Wednesday, October 14, 2015 6:28 PM
To: Scott Prokopchuk
Subject: Attached Image

From: mel@directgrading.com
Sent: Thursday, November 05, 2015 4:20 PM
To: Scott Prokopchuk
Subject: RE: Rhodes Ranch Model parking Lot

Yes I'll take care of it

Mel Westwood
Direct Grading
(702) 303-3058

----- Original message -----

From: Scott Prokopchuk
Date: 11/05/2015 3:42 PM (GMT-08:00)
To: mel@directgrading.com, ben@directgrading.com
Subject: Rhodes Ranch Model parking Lot

I would call Tom Hart but I know he's just going to tell me the subgrade is "jacked up"! Do I have a warranty on this??????

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard

Suite 400

3/9/2018

DIRECT000824

DGP0001349

Las Vegas, Nevada 89118

Office (702) 873-5338

Direct (702) 730-4330

Fax (702) 730-4333

Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: mel@directgrading.com
Sent: Wednesday, October 14, 2015 7:30 PM
To: Scott Prokopchuk
Subject: RE: See this notice

I better give them a call and schedule an inspection. I not sure if they know you're not building houses yet.

Mel Westwood
Direct Grading
(702) 303-3058

----- Original message -----
From: Scott Prokopchuk
Date: 10/14/2015 7:03 PM (GMT-08:00)
To: mel@directgrading.com
Subject: See this notice

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard

Suite 400

3/9/2018

DIRECT000826

DGP0001351

Las Vegas, Nevada 89118

Office (702) 873-5338

Direct (702) 730-4330

Fax (702) 730-4333

Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: John Holden
Sent: Wednesday, October 14, 2015 6:08 PM
To: Scott Prokopchuk
Cc: Kevin Corbett
Subject: FW: Message from KMBT_C364

John Holden

Controller

Century Communities of Nevada, LLC

702-730-4377

From: Marcia O'Connor
Sent: Wednesday, October 14, 2015 10:49 AM
To: John Holden

3/9/2018

DIRECT000827

DGP0001352

Cc: Kevin Corbett
Subject: FW: Message from KMBT_C364

Correspondence received in Denver office. Thanks.

Marcia O'Connor

Land Acquisition

 cid:image002.jpg

8390 E. Crescent Pkwy, Ste 650

Greenwood Village, CO 80111

Office: (303) 770-8300

Direct: (303) 268-8374

Fax: (303) 770-8320

MarciaO@centurycommunities.com

www.centurycommunities.com

From: Executive@centurycommunities.com [mailto:Executive@centurycommunities.com]

Sent: Wednesday, October 14, 2015 1:03 PM

To: Marcia O'Connor

Subject: Message from KMBT_C364

From: Louis Polish [Louis@alphalandscapestv.com]
Sent: Wednesday, October 28, 2015 12:58 PM
To: Scott Prokopchuk
Cc: mel@directgrading.com
Subject: Re: stockpiles
Attachments: image001.jpg; image001.jpg

Thanks

Louis Polish jr
Owner
Alpha Landscapes
Cell 702-373-6912

On Oct 28, 2015, at 12:49 PM, Scott Prokopchuk <Scott.Prokopchuk@centurycommunities.com> wrote:

Thanks,

Scott Prokopchuk

Manager of Land Development

<image001.jpg>

6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Steve Dumovich [<mailto:SteveD@taneycorp.com>]
Sent: Wednesday, October 28, 2015 6:59 AM
To: Scott Prokopchuk
Subject: stockpiles

Scott,

Attached are the results from the stockpile analysis from flight dated 10-25-15. 9311 CY

<pix4d qty 10-25-15.pdf>

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Thursday, November 05, 2015 3:42 PM
To: mel@directgrading.com; ben@directgrading.com
Subject: Rhodes Ranch Model parking Lot
Attachments: photo.JPG

I would call Tom Hart but I know he's just going to tell me the subgrade is "jacked up"! Do I have a warranty on this??????

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: Roselyn Kennedy [Roselyn.Kennedy@centurycommunities.com]
Sent: Tuesday, November 10, 2015 2:18 PM
To: Dave Snyder; mel@directgrading.com
Cc: Scott Prokopchuk
Subject: RR Parcel 43 (Hillcrest)

Hi, I just called Clark County to try and schedule a final inspection for our Bond and they told me the following items have not been signed off as of yet:

1. Final Elect Inspection
2. Fire Department
3. Sanitation
4. Asphalt

Scott wanted me to let you know these items are outstanding and for you to let us know the status of these sign offs.

Thank you!

Rose Kennedy

Land Coordinator
Century Communities
6345 South Jones Boulevard, Suite 400
Las Vegas, Nevada 89118
Direct – 702-730-4340
Fax – 702-730-4333
Roselyn.Kennedy@centurycommunities.com

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Wednesday, October 14, 2015 7:03 PM
To: mel@directgrading.com
Subject: See this notice
Attachments: Executive_15101412030.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com

From: John Holden
Sent: Wednesday, October 14, 2015 6:08 PM
To: Scott Prokopchuk
Cc: Kevin Corbett
Subject: FW: Message from KMBT_C364

John Holden
Controller
Century Communities of Nevada, LLC
702-730-4377

From: Marcia O'Connor

Sent: Wednesday, October 14, 2015 10:49 AM
To: John Holden
Cc: Kevin Corbett
Subject: FW: Message from KMBT_C364

Correspondence received in Denver office. Thanks.

Marcia O'Connor

Land Acquisition



8390 E. Crescent Pkwy, Ste 650
Greenwood Village, CO 80111
Office: (303) 770-8300
Direct: (303) 268-8374
Fax: (303) 770-8320
MarciaO@centurycommunities.com
www.centurycommunities.com

From: Executive@centurycommunities.com [<mailto:Executive@centurycommunities.com>]
Sent: Wednesday, October 14, 2015 1:03 PM
To: Marcia O'Connor
Subject: Message from KMBT_C364



CITY OF HENDERSON
240 Water Street
P.O. Box 95050
Henderson, NV 89009

BUILDING & FIRE SAFETY
702-267-3610

October 4, 2015

CENTURY COMMUNITIES NEVADA L L C
%T AMBERRY
8390 E CRESCENT PKWY #650
GREENWOOD VILLAGE, CO 80111-0000

RE.: BSTK 2015005798
Prime Contractor: DIRECT GRADING & PAVING, L.L.C.
Permit Name: THE FALLS PARCEL G-1 AND G-2
0 NO ADDRESS
HENDERSON, NV 89011

Please be advised that pursuant to Section 15.01.285 of the Building and Fire Safety Administrative Code, permits expire 180 days from the date of the last approved inspection. The last approved inspection on this permit occurred on 04-MAY-15, therefore if there is no further approved inspections the permit will expire on 31-OCT-15.

If the work specific to this permit is complete, please call our automated inspection request line at 702-267-3777 and request an inspection prior to 31-OCT-15. If the work is not ready to be inspected prior to the expiration date, this permit may be entitled to a one-time, 180-day extension at no charge if it is requested prior to expiration.

If you have any questions, please contact the Building and Fire Safety Department Permit Division at 702-267-3620.

Thank you,

Building and Fire Safety
City of Henderson

DIRECT000834

DGP0001359

From: Scott Prokopchuk [Scott.Prokopchuk@centurycommunities.com]
Sent: Friday, September 25, 2015 7:20 PM
To: mel@directgrading.com
Attachments: 150925 Freeway 50 Overall-Color Site Plan.pdf

Thanks,

Scott Prokopchuk

Manager of Land Development



6345 South Jones Boulevard
Suite 400
Las Vegas, Nevada 89118

Office (702) 873-5338
Direct (702) 730-4330
Fax (702) 730-4333
Cell (702) 325-9518

scott.prokopchuk@centurycommunities.com



DIRECT000836

DGP0001361

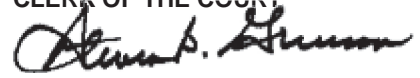


EXHIBIT 9

DIRECT000837

Nicholas J. Santoro
James E. Whitmire
Andrew J. Glendon
Oliver J. Pancheri
Jason D. Smith
Jenapher Lin

10100 W Charleston Blvd, Ste.250 Las Vegas, Nevada 89135

(702) 948-8771 FAX (702) 948-8773



SANTORO WHITMIRE

January 18, 2019

Via Email Transmission and Hand Delivery

Donald Williams, Esq.
Williams and Associates
612 S. 10th Street
Las Vegas, Nevada 89101

Re: Direct Grading & Paving, LLC ("***Direct***") v. Century Communities of Nevada, LLC ("***Century***") – **Century's Motion for Discovery Sanctions against Direct Regarding (1) Falsification of Evidence; (2) Spoliation of Evidence; and (3) Failure to Comply with the Arbitrator's Orders and Motion to Expunge Liens Recorded against Century's Properties Pursuant to NRS 108.2275 and 108.2421.**

Dear Mr. Williams:

Introduction

Century respectfully submits this Motion for Discovery Sanctions against Direct based upon: (1) Direct's admitted alteration of evidence in this matter; (2) Direct's spoliation of evidence; (3) Direct's repeated failure to comply with the Arbitrator's Orders; and (4) Direct's attempt to commit fraud upon this tribunal and ultimately the Eighth Judicial District Court where it seeks to foreclose on its mechanic's liens recorded against Century's properties. Century further respectfully moves for an award from the Arbitrator pursuant to NRS 108.2275 removing the liens recorded by Direct against its properties.¹

Direct's bad faith conduct in this matter has undermined this *entire* proceeding. "When a party falsifies evidence of central importance to a case, this shows bad faith, willfulness, or fault, and thus supports the Court's exercise of its inherent power to dismiss a case... Indeed, '[t]here is no point to a lawsuit, if it merely applies law to lies. True facts must be the foundation for any just result.'" *Vogel v. Tulaphorn, Inc.*, No. CV 13-464 PSG (PLAX), 2013 WL 12166212, at *4-5 (C.D. Cal. Nov. 5, 2013), *aff'd*, 637 F. App'x 344 (9th Cir. 2016) (quoting *Valley Eng'rs Inc. v. Electric Eng'g Co.*, 158 F.3d 1051, 1058 (9th Cir. 1998)). Here, Direct has admitted to altering material evidence, the object of which was to conceal Direct' fraudulent billing practices upon which Direct wrongfully recorded liens against Century's properties and initiated the Lawsuit to foreclose on those Liens. Thus, Direct sought to defraud both this tribunal and the state court in the Lawsuit. When Century discovered the altered evidence and brought it to

¹ Direct recorded a Notice of Lien (the "***Mechanic's Liens***") against the Inspirada, Lake Las Vegas, Rhodes Ranch and Freeway 50 Projects. On April 19, 2018, Direct filed an action with the Eighth Judicial District Court as Case No. A773139 pending before Department 32 (the "***Lawsuit***") to foreclose on the Mechanic Liens and seeking to recover against the bonds posted by Century to remove the Mechanic's Liens.

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Direct's attention, Direct immediately blamed the fabrication of the evidence on its controller, Linda Middleton, as if Direct was not responsible for the conduct of its agents. As discussed below, the law does not support such a notion – particularly given the fact that the alterations were made to hide Direct's fraudulent billing. Furthermore, Ms. Middleton, who continues to remain employed at Direct, testified in her deposition that she informed the owner of Direct, Mel Westwood, of the alterations shortly after making them.² Yet, Mr. Westwood never informed Century's counsel or the Arbitrator of these alterations obviously in the hope that no one would actually compare Direct's production with the documents actually on file with the Bureau of Land Management (the "**BLM**"). However, the altered evidence was uncovered by Century and Mr. Westwood's ratification of the alterations undermines Direct's efforts to paint them as an innocent mistake of a bumbling employee, which efforts were never credible from the start.

Discovery conducted over the last several months has only further confirmed the bad faith and fraudulent conduct on the part of Direct. In fact, Direct has compounded its efforts to conceal its fraudulent conduct with additional attempts to conceal evidence from the Arbitrator and with willful non-compliance with the Arbitrator's Orders. As set forth in the report of the third-party forensic computer expert, Michael Holpuch, Direct failed to comply with the Arbitrator's Order regarding a forensic inspection of the altered BLM documents. Mr. Holpuch concludes in his report, among other things, that: (1) the data Direct provided did **not** include the altered BLM documents and Mr. Holpuch was therefore unable to analyze how the documents were altered and by whom; (2) Mr. Holpuch was unable to determine who accessed the altered BLM documents; (3) Direct did not provide him the computer (or hard drive) utilized by Ms. Middleton in February 2018 (despite the Arbitrator's Orders to do so); (4) Direct's explanation regarding the change in Ms. Middleton's computer to Windows 10 one day after the Arbitrator ordered it be imaged was **not** consistent with Windows 10 upgrades offered at that time; and (5) that there is evidence of another server utilized by Direct that Mr. Holpuch was not allowed to access (also in violation of the Arbitrator's Orders).³ These conclusions from Mr. Holpuch confirm that Direct blatantly disobeyed the Arbitrator's Orders and has continued with its efforts to conceal the truth in this matter.

Direct's misconduct and flouting of the Arbitrator's Orders is not limited to its efforts to conceal its alteration of evidence. Rather, Direct refused to comply with the Arbitrator's Orders concerning its communications with Scott Prokopchuk., Century's Land Development Manager, who was secretly employed by Direct at the same time he was responsible to oversee Direct's work. Direct failed to produce its communications with Mr. Prokopchuk, claiming they either could not be recovered or did not exist. As detailed below, Direct's various explanations for the non-production have been contradictory and unsupported by the evidence. Like the altered BLM documents, Direct has attempted to conceal the truth from the Arbitrator regarding the true nature of Mr. Prokopchuk's relationship with Direct – and the resulting and blatant conflict of interest – by failing to comply with the Arbitrator's Orders and through its discovery abuses.

Despite Direct's efforts at concealment and claims that it did not have communications with Mr. Prokopchuk, Mr. Holpuch was able to recover numerous emails between Mr.

² See Dep. Tr. of Linda Middleton attached hereto as **Exhibit "A,"** at p. 78-79.

³ A copy of the expert report prepared by Mr. Holpuch is attached hereto as **Exhibit "B."**

Prokopchuk and Direct that Direct failed to produce. While Century suspects that there are even more communications with Mr. Prokopchuk that Direct concealed, the forensic examination by Mr. Hopluch revealed that Direct again violated the Arbitrator's Order by failing to produce responsive documents in its possession and that its statements that it could not produce any of the emails ordered to be produced by the Arbitrator were simply false.

Direct's discovery abuses and bad faith conduct in this matter have been intentional and the law compels the striking of Direct's Complaint for such knowing and intentional misconduct. *See Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) ("In light of appellants' repeated and continued abuses, the policy of adjudicating cases on the merits would not have been furthered in this case, and the ultimate sanctions were necessary to demonstrate to future litigants that they are not free to act with wayward disregard of a court's orders."). The Arbitrator is also empowered to make express findings against Direct as a sanction for its discovery abuses and bad faith conduct in this matter. *See* AAA Construction Industry Rule R-25(d) ("[I]n the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance[.]"). "The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator." R-60(a). Century respectfully requests that the Arbitrator issue an award: (1) striking Direct's claims; (2) entering adverse findings against Direct; and (3) awarding fees and costs in favor of Century.

Additionally, Century respectfully requests that the Arbitrator issue an award pursuant to NRS Chapter 108 removing the Mechanic's Liens and dismissing any claims Direct has against the bonds procured by Century. Direct bears the burden of demonstrating that the Mechanic's Liens are valid and not excessive. However, Direct's bad faith conduct and failure to comply with the Arbitrator's Orders precludes the Arbitrator from relying on any evidence submitted by Direct. The law does not require Century or the Arbitrator to make a determination of the validity of Direct's claims based upon the knowingly-false and factually incomplete record that Direct has perpetuated. Rather, "[i]t is well settled that dismissal is warranted where...a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings." *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995). As such, the Arbitrator should issue an award in favor of Century ordering the Liens be entirely expunged and that Direct's claims against the bonds be dismissed with prejudice.

Procedural History

The current Motion is the culmination of a series of discovery motions and hearings resulting from Direct's bad faith conduct and discovery abuses. A summary of these discovery motions and hearings reveals Direct's pattern and practice of bad faith discovery tactics and Direct's efforts to conceal the truth from the Arbitrator. The summary also provides a background and explanation as to why Direct engaged in its bad faith and prejudicial discovery tactics. Where relevant, Century has also referenced pertinent excerpts from the deposition transcripts of Direct's employees and other evidence showing the inconsistent and false representations Direct has perpetrated on this tribunal.

Century's First Motion to Compel

On October 19, 2017, Century filed its first Motion to Compel Direct to provide complete answers to its discovery requests (the “***First Motion to Compel***”). The Arbitrator will recall that Direct prominently featured Mr. Prokopchuk in its discovery objections by claiming that “...DGP has performed many services for Century since 2010. DGP never received any complaints concerning its services until Scott Prokopchuk left his employment with Century in 2016.” Direct failed to mention in those repeated objections that Mr. Prokopchuk was also employed by it during most of 2016. However, this revelation did not come until after the Arbitrator granted the First Motion to Compel. On November 2, 2017, the Arbitrator granted the First Motion to Compel (the “***November Order***”) and ordered Direct to, among other things, provide information regarding its employees and agents and to certify that it had produced all communications between Direct and Scott Prokopchuk irrespective of the email address used by Mr. Prokopchuk.⁴ Direct failed to comply with the November Order.

Century's Motion to Continue

On January 9, 2018, Century submitted a Motion to Extend the Arbitration Schedule and to Continue the Arbitration Hearing (the “***Motion to Continue***”) based upon the revelation made in Direct’s partial production in response to the November Order. Direct’s production contained payroll documents, which evidenced that Scott Prokopchuk was actually secretly employed by Direct at the same time that he was working as Century’s Land Development Manager. The employment records showed that Mr. Prokopchuk was on Direct’s payroll from at least January 2016 through his departure from Century in September 2016. Indeed, Mr. Prokopchuk received nearly the same amount of pay from Direct during this time period as he received from Century (approximately \$60,000). Direct undoubtedly wanted to conceal this clear conflict of interest when it originally objected to providing the employee information. Pursuant to the Master Subcontractor Agreement (the “***MSA***”), Direct expressly agreed to avoid any actions or conditions that would conflict with Century’s best interests:

8.1 Good Faith. Subcontractor shall exercise all reasonable care and diligence to prevent any actions or conditions that could result in conflict with Contractor’s best interests. This obligation shall apply to the activities of the employees and agents of Subcontractor in their relations with the employees and agents of Contractor and Owner.

See MSA attached hereto as **Exhibit “D.”** [Emphasis added].⁵

⁴ A copy of the November Order is attached to this Motion as **Exhibit “C.”**

⁵ Direct’s secret employment of Century’s Land Development Manager is likely one of the main reasons why Direct claimed at the outset of these proceedings that it was not bound by the MSA. Direct obviously knew that its employment of Mr. Prokopchuk was a clear violation of Section 8.1 of the MSA and thus attempted to distance itself from this contractual obligation. Direct initially claimed that it did not recall signing the MSA and then later

A contractor secretly employing a developer's Land Development Manager is an impermissible conflict of interest (even without a contractual provision prohibiting the conduct). This is particularly the case considering Mr. Prokopchuk's significant position of trust and responsibility with Century. At Century, Mr. Prokopchuk was responsible for (among other things) the following: (1) obtaining job costs estimates and bids from contractors; (2) participating in awarding jobs to contractors; (3) overseeing the actual work performed by the contractors; (4) approving any change orders and purchase orders for the contractors; and (5) authorizing payment to the contractors. In performing these duties for Century, Mr. Prokopchuk oversaw Direct in each of these regards.⁶

In response to the Motion to Compel, Direct argued that Mr. Prokopchuk performed consulting work for a company related to Direct and that he was merely paid by Direct to "avoid tax liabilities." Direct further claimed that Mr. Prokopchuk performed no work for Direct. (*See* January 29, 2018 Opp'n. submitted by Direct at p. 3-4). Despite every effort to conceal evidence to the contrary, Century has discovered that these statements are demonstrably false and are simply additional attempts on the part of Direct to conceal its improper conduct from the Arbitrator. Attached hereto are Declarations from Ben Wyatt, a former Direct superintendent employed by Direct for 17 years through 2017, and Tim Wyatt, a general manager at Direct from February 2015 through March 2016.⁷ Mr. Mifflin and Mr. Wyatt testified that, contrary to Direct's representations, Mr. Prokopchuk: (1) had his own office at Direct while they were employed there; (2) was issued a Direct cell phone; (3) utilized a Direct email address of PD@directgrading.com; (4) attended budgeting meetings for Direct; and (5) regularly attended internal scheduling meetings for Direct concerning Century projects and the projects of other homebuilders with whom Direct was working. *See* Exs. E and F. This testimony, from two former Direct employees with first-hand knowledge, contradicts Direct's representations that Mr. Prokopchuk never worked for Direct and only worked for an entity related to Direct. Moreover and as discussed below, emails recovered by Mr. Holpuch, which Direct failed to produce, substantiate the testimony of Mr. Mifflin and Mr. Wyatt.

Century's Second Motion to Compel

On March 6, 2018, Century submitted its Motion to Compel, Renewed Motion to set a New Arbitration Schedule, Motion for Leave to file an Amended Complaint against Direct and Direct's Owner, Mel Westwood (the "***Second Motion to Compel***"). Century brought the Second Motion to Compel in light of its discovery of Direct's misconduct by altering documents in order

challenged it because it was originally executed with Century's predecessor-in-interest (despite the fact that Direct executed a number of Project Work Authorizations with Century, which expressly incorporated the terms of the MSA by reference). The Arbitrator, in the Order dated May 11, 2018, found that the MSA does in fact apply to this matter.

⁶ Mr. Prokopchuk was clearly compromised. Just by way of example, it appears Mr. Prokopchuk approved payment on a number of pay requests from Direct prior to the work actually being performed. Likewise, Mr. Prokopchuk signed a Purchase Work Authorization that Direct is attempting to enforce in this matter ***the day prior to his resignation from Century*** (and without Century's approval). However, as discussed below, this is only the tip of the iceberg regarding the depth of Mr. Prokopchuk's betrayal.

⁷ The Declaration of Ben Mifflin is attached hereto as **Exhibit "E"** and the Declaration of Tim Wyatt is attached hereto as **Exhibit "F."**

to conceal its fraudulent billing practices. After discovering the evidence of Mr. Prokopchuk's dual employment, Century engaged Mike Rosten, a certified fraud examiner, to assist in reviewing the billing submitted by Direct (specifically starting with the Inspirada project).⁸ Mr. Rosten explained that between April and May 2016, Direct invoiced Century for some 93,120 cubic yards of import soil allegedly purchased from the BLM. These invoices included trucking charges and totaled \$871,457.40. However, as noted in his report, approximately two-thirds of these charges are fraudulent.

Century requested through discovery that Direct provide the underlying BLM documentation (contracts, proof of payments, etc.) in connection with any of the Projects. In response, Direct produced the documents bates stamped DPG000991-994. Direct's production consisted of: (1) a January 14, 2016 letter from the BLM to Direct referencing a sales contract between the BLM and Direct (contract N-93876) for the removal of 100,000 cubic yards of sand and gravel; (2) the actual contract showing the quantity amount as 100,000 cubic yards; and (3) an August 22, 2017 letter from the BLM to Direct referencing the contract for 100,000 cubic yards of mineral material, that Direct had used 94,395 cubic yards of mineral material for a total charge of \$148,200.15 (and stating that Direct had paid \$145,052.30 leaving a balance of \$3,147.85).⁹

Mr. Rosten went to the BLM to compare the documents produced by Direct to the file documents maintained by the BLM. Mr. Rosten's review of the BLM file caused him to conclude that the documents produced by Direct in this arbitration had been falsified. The BLM file contained numerous documents indicating that BLM contract N-93876 with Direct was for 50,000 cubic yards and that Direct had only purchased about a third of the amount of cubic yards that it charged Century (33,395 cubic yards compared to 94,395). In fact, the BLM file contained the identical three documents outlined above, but with material differences: (1) the January 14, 2016 letter from the BLM to Direct referenced a sales contract between the BLM and Direct (contract N-93876) for the removal of 50,000 cubic yards of sand and gravel; (2) the actual contract showing the quantity amount as 50,000 cubic yards; and (3) the August 22, 2017 letter from the BLM to Direct referenced the contract for 50,000 cubic yards of mineral material, that Direct had only used 33,395 cubic yards of mineral material for a total charge of \$52,430.15 (and stating that Direct had paid \$49,282.30 leaving a balance of \$3,147.85).¹⁰ In order to conceal the overbilling, Direct apparently fabricated entries on truck logs provided to Century by including "ghost trucks" (trucks that did not actually exist). (Wyatt Decl. at ¶¶ 14-17). The discovery of the falsified evidence called into question all of the documents produced by Direct.

Century's Second Motion to Compel also addressed Direct's failure to comply with the November Order, which states that "Direct shall confirm that it has produced all Communications it had with Scott Prokopchuk during the Timeframe, irrespective of the email address or telephone number utilized by Mr. Prokopchuk (or Procopchuck)." Direct should have produced all of the communications Direct had with Mr. Prokopchuk relating to his employment

⁸ A copy of Mr. Rosten's report is attached hereto as **Exhibit "G."**

⁹ The altered BLM documents produced by Direct are included with this letter as **Exhibit "H."**

¹⁰ The documents from the BLM file are included with this letter as **Exhibit "I."** Additionally, attached to this Motion as **Exhibit "J"** is a summary of the alterations made by Direct to the BLM documents.

at Direct. However, in violation of the November Order, Direct failed to provide any such confirmation or to produce any additional emails or texts relating to Mr. Prokopchuk's employment at Direct (where he was paid approximately the same as he was making with Century during that same time period). Instead, Direct claimed that its "server has changed" and that it was unable to produce the communications with Mr. Prokopchuk "for this disclosure." See Direct's answers to Century's Second set of Requests for Production attached hereto as **Exhibit "K"** at p. 5.

Century advised the Arbitrator in the Second Motion to Compel that it was informed and believes that Mr. Prokopchuk had an office at Direct, was given a Direct cell phone, and that he utilized a Direct email address – PD@directgrading.com. However, Direct failed to produce any of these emails and sought to excuse this non-compliance by claiming, without any corroboration or detail, that the documents are unavailable because they changed servers. Direct, on the heels of altering evidence in this matter, was also willfully withholding or concealing evidence in violation of the November Order. All of the communications with Mr. Prokopchuk should have been preserved and produced.

In response to the Second Motion to Compel, Direct argued that Mel Westwood instructed his staff to produce the BLM documents and to "verify that all of the numbers corresponded." However, the numbers did not "correspond" due to Direct's fraudulent billing. In order to get the numbers to "correspond," Direct had to alter the BLM documents as Direct had billed Century approximately *three times* the amount it reported to the BLM. Regarding the Prokopchuk production, Direct admitted in its Opposition that it had failed to provide the certification to the Arbitrator that it had produced all of the communications with Mr. Prokopchuk. (See March 9, 2018 Opp'n. at p. 2). Direct instead claimed it could not recover any communications with Mr. Prokopchuk. Direct also represented that it could not locate any emails used with the pd@directgrading.com email address. See *id.* Direct claimed that Joe Morgan, who assists Direct with computer issues from time to time, assisted in trying to recover the Prokopchuk emails without success. (See Direct's March 9, 2018 Opp'n. at p. 3). However, Century deposed Joe Morgan, who testified that he did not have any involvement in preserving, collecting or recovering emails in connection with this litigation.¹¹ Conversely, Mr. Holpuch was able to recover numerous emails with Mr. Prokopchuk. Direct's statements regarding its attempts to recover the Prokopchuk emails have proven to be false.

¹¹ Mr. Morgan testified as follows:

Q. Did you have any involvement in trying to preserve any of the Direct emails, documents, electronic data -- electronic data, metadata, things of that nature in connection with the arbitration and the litigation between Century and Direct?

A. No.

Q. Did you have any involvement in trying to collect emails, texts, recover those types of items in connection with this litigation?

A. No.

Q. That was never something you were asked -- asked to do?

A. No.

See Dep. Tr. of Joe Morgan attached hereto as **Exhibit "L"** at p. 29.

At the hearing on the Second Motion to Compel, Century proposed that an IT analyst be engaged to analyze the metadata trail of these documents and locate any electronic communications concerning the alteration of the documents. Investigating the metadata trail would require an analysis of the three modified documents concerning when and how they were created, when and how they were altered, who accessed the documents during this process, to whom were the documents distributed, and is there any evidence of any deletions in an effort to conceal these actions. The Arbitrator ordered, as set forth in the March 13, 2018 Order, that an independent third-party information technology specialist perform a “sweep” of Ms. Middleton’s computer, Mr. Westwood’s computer, their cell phones, and Direct’s server (the “**March Order**”).¹² The purpose of the sweep was primarily to test Direct’s assertions regarding the alteration of the BLM evidence and its failure to produce the Prokopchuk correspondence.

Mr. Holpuch’s Efforts to Obtain the Data Ordered by the Arbitrator

On April 5, 2018, Mr. Holpuch sent an email summarizing some of the preliminary issues he had encountered after analyzing the data and computers Direct permitted him to access.¹³ Disturbingly, Mr. Holpuch discovered that Direct had upgraded Ms. Middleton’s computer to Windows 10 on March 15, 2018 (*two days after* the issuance of the March Order calling for the inspection of her computer). Even more disturbing was the fact that the computer represented to be Ms. Middleton’s did not appear to have been in use prior to March 15, 2018. In fact, Mr. Holpuch explained that **Direct had not provided the devices utilized to alter the BLM documents, which was one of the primary purposes of his examination.** *See id.* In other words, Direct again failed to comply with the Arbitrator’s Order in an effort to conceal the truth.

In response to Mr. Holpuch’s email, the parties had a series of communications and conferences with the Arbitrator. In those conferences, Direct again attempted to conceal its misconduct by falsely contending that Mr. Holpuch had exceeded the scope of his engagement.¹⁴ Century responded on April 9, 2018, pointing out that Direct’s assertions had no merit and reminding Direct that a major part of the purpose of Mr. Holpuch’s investigation was to examine the alteration of the BLM documents, which had been frustrated by Direct’s obvious attempts to conceal that metadata evidence.¹⁵ In order to avoid further delay and expense, Century eventually proposed that Direct either: (1) submit a Declaration from Linda Middleton setting forth a detailed explanation regarding the alteration of the BLM documents and detailing every device and person whom the BLM documents were shared; or (2) allow Mr. Holpuch to image the remainder of its servers, computers and phones in order to locate the altered BLM documents. This proposal was adopted by the Arbitrator in his order dated May 11, 2018 (the “**May Order**”), which is attached hereto as **Exhibit “Q.”**

¹² A copy of the March 13, 2018 Order is attached hereto as **Exhibit “M.”**

¹³ A copy of Mr. Holpuch’s email is attached hereto as **Exhibit “N.”**

¹⁴ *See* April 7, 2018 email from Attorney Gubler attached hereto as **Exhibit “O.”**

¹⁵ *See* April 9, 2018 email from Attorney Pancheri attached hereto as **Exhibit “P.”**

The Declaration of Linda Middleton

On April 17, 2018, Direct advised the Arbitrator that it had elected to pursue the option of Ms. Middleton signing a Declaration, but that it might require some additional time while Ms. Middleton obtained her own personal counsel.¹⁶ Finally, on May 14, 2018, Direct produced a Declaration signed by Ms. Middleton in an email from Attorney Gubler with the statement that “[his] client intends to supplement it.”¹⁷ No supplement was ever made and the Declaration failed to comply with the May Order. The Declaration failed to identify the devices used by Ms. Middleton to make the alteration or explain how she made the alterations. Further, the Declaration failed to identify the devices or other persons with whom the altered documents were shared. In light of these failures, the Arbitrator ordered in the July 9, 2018 Order (the “**July Order**”) that, among other things, Mr. Holpuch image two additional Direct computers based upon the representation from Direct that Mr. Holpuch had already “imaged all of its devices with the exception of these two computers.”¹⁸ Mr. Holpuch imaged the additional computers, but was nevertheless unable to locate the altered BLM documents. *See* Ex. B. Moreover, Mr. Holpuch concluded that, contrary to Direct’s representations to the Arbitrator, Direct had not provided access to all of its computers and servers. *See id.*

Ms. Middleton, despite altering the evidence in this matter, remains employed at Direct.¹⁹ This is noteworthy considering the statement by Direct’s counsel in his May 15, 2018 email that “**there may be possible criminal implications related to her actions in changing the BLM documents.**”²⁰ Nevertheless, Direct requested that Ms. Middleton sign the Declaration confessing to the alterations of the BLM documents. Interestingly, Ms. Middleton, who was not represented by counsel, testified in her deposition that she could not recall who had prepared the Declaration, although she did not think that she had typed it. (Middleton Dep. Tr. at p. 18). Ms. Middleton indicated that she could check her computer to find out who prepared the Declaration and that she would fill in a blank in her deposition transcript. (Middleton Dep. Tr. at p. 20-21). This never occurred. Meanwhile, Mr. Westwood testified that there were multiple drafts of the Declaration prepared by Ms. Middleton, which he and his counsel reviewed. (Westwood Dep. Tr. at p. 99-100). Mr. Westwood then testified that he may have drafted the Declaration or at least provided some of the information contained in the drafts of the Declaration. (Westwood Dep. Tr. at p. 99-101). **However, Mr. Westwood testified that the prior drafts of the Declaration were destroyed.** *Id.* These drafts would have been discoverable and Direct’s destruction of these drafts is further evidence of spoliation of documents in this matter.

¹⁶ *See* April 17, 2018 email from Attorney Gubler attached hereto as **Exhibit “R.”**

¹⁷ *See* May 14, 2018 email from Attorney Gubler and Declaration of Ms. Middleton attached hereto as **Exhibit “S.”**

¹⁸ A true and correct copy of the July Order is attached hereto as **Exhibit “T.”**

¹⁹ However, Mr. Westwood testified that once this litigation with Century is completed, she will likely be fired. (Westwood Dep. Tr. at p. 158). A copy of the deposition transcript of Mr. Westwood is attached hereto as **Exhibit “U.”**

²⁰ A true and correct copy of the May 15, 2018 email from Direct’s counsel is attached hereto as **Exhibit “V.”**

Ironically, despite the Declaration being drafted by some combination of Ms. Middleton and Mr. Westwood, **both of them testified that the Declaration contained false statements.** Thus, rather than answering the questions required by the July Order, the Middleton Declaration actually contained statements that both Ms. Middleton and Mr. Westwood testified were false. The Middleton Declaration indicates that Mr. Westwood asked Ms. Middleton to compile the BLM documents and that he asked her to “**make sure that all of the numbers matched before sending them to Direct’s counsel.**” *See* Ex. S. Because Direct had reported taking out approximately 33,000 cubic yards of material to the BLM and had billed Century as if it had taken out nearly 94,000 cubic yards, the numbers did not “match.” Accordingly, Ms. Middleton ensured the numbers would match - per the instruction from Mr. Westwood - by altering the BLM documents in order to conceal the overbilling. However, rather than conceding that the alteration was done to conceal overbilling, Ms. Middleton originally claimed in her Declaration that she altered the BLM documents because they did not match with the payments made by Direct to the BLM. *See* Ex. S. This statement was false as Direct actually paid the BLM in full for the dirt it reported was removed from the BLM site. When presented with evidence that the payments by Direct to the BLM matched Direct’s reports to the BLM, both Ms. Middleton and Mr. Westwood admitted in their depositions that this portion of Ms. Middleton’s Declaration, signed under oath, was false. (Middleton Dep. Tr. at p. 42-43; Westwood Dep. Tr. at p. 107-108). In her deposition, Ms. Middleton testified that she had, contrary to the final draft of her Declaration, compared the BLM documents to the truck tickets, which is what prompted the alteration. However, this explanation also does not make sense as Direct has not produced truck tickets substantiating the amount billed to Century. In fact, Century requested that Ms. Middleton produce the exact truck tickets she relied upon to alter the BLM documents during her deposition, which she agreed to do. (Middleton Dep. Tr. at p. 104-107). However, the truck tickets were never produced by Ms. Middleton. Conversely, Mr. Westwood testified that Ms. Middleton was actually referring to the fact that the money Direct paid the BLM did not match the invoicing to Direct. (Westwood Dep. Tr. at p. 108). Thus, other than agreeing on the fact that Ms. Middleton’s Declaration contained false statements, neither Mr. Westwood or Ms. Middleton could get their stories straight on what documents Ms. Middleton actually reviewed in order to discover that the BLM documents needed to be altered. More importantly, Direct again attempted to defraud this tribunal by submitting a knowingly false Declaration in order to conceal its fraudulent conduct.

Finally, Ms. Middleton’s Declaration indicates that she discovered that the numbers did not match after normal business hours and could not reach Mr. Westwood to ask him any questions. *See* Ex. S. Ms. Middleton testified that she attempted to call Mr. Westwood and Don Mayhall at Direct when she discovered the discrepancy but that neither of them were available. (Middleton Dep. Tr. at p. 72). She did not leave a voicemail. *See id.* Conversely, Mr. Westwood testified that Ms. Middleton texted him to call her and that when he tried to call her she did not answer. (Westwood Dep. Tr. at p. 41-42). This noteworthy discrepancy in their testimony is made even more noteworthy by Mr. Westwood’s testimony that he did not preserve the text message from Ms. Middleton. *See id.* Century also requested that Direct produce the telephone records for the day in question, which Direct failed to do.²¹ The destruction of the text messages with Ms. Middleton and the refusal to produce the telephone records is only further

²¹ *See* November 26, 2018 email from Attorney Pancheri to Attorney Gubler, attached hereto as **Exhibit “W.”**

evidence of concealment and spoliation on the part of Direct. More importantly, while Mr. Westwood denies this, Ms. Middleton testified that she informed Mr. Westwood (and possibly Don Mayhall) of the alteration of the BLM documents within a few days of making the alterations. (Middleton Dep. Tr. at p. 78-79). Ms. Middleton further testified that she showed Mr. Westwood the alterations. *See id.* However, Direct never brought the alterations to the attention of Century or the Arbitrator.

The Depositions of the Direct Witnesses, the Holpuch Expert Report and the Violations of the Arbitrator's Orders

Century deposed Mr. Westwood, Ms. Middleton and Mr. Morgan regarding the discovery abuses and the alteration of evidence. Additionally, Mr. Holpuch provided his expert analysis of the documents he was able to gather in accordance with the Arbitrator's Orders. Century further obtained declarations from the former employees of Direct. This discovery evidences Direct's pattern and practice of seeking to defraud this tribunal and to conceal evidence. The numerous violations, false statement, fraudulent acts are summarized in the table below.

<i>Direct's Alteration of the BLM Evidence</i>	<ul style="list-style-type: none">• Ms. Middleton, Direct's controller responsible for submitting billing to Century, admitted that she altered the BLM documents that were produced in this matter. (Middleton Dep. Tr. at p. 12).• Mr. Westwood asked Ms. Middleton to make sure the documents relating to the BLM documents "balanced" <u>before</u> producing them. (Middleton Dep. Tr. at p. 37-39).• Ms. Middleton purchased Adobe Acrobat Pro on February 8, 2018 using a Direct credit card in order to make the alterations to the BLM documents. (Middleton Dep. Tr. at p. 96-97).²²
<i>The Mysterious Creation of Ms. Middleton's Declaration</i>	<ul style="list-style-type: none">• Ms. Middleton does not recall who created the Declaration but does not think she typed it. She was not represented by counsel. (Middleton Dep. Tr. at p. 17-18).• Ms. Middleton failed to supplement her deposition transcript with the identity

²² See receipt for purchase of Adobe Acrobat Pro included with this letter as **Exhibit "X."**

	<p>of the person who prepared her Declaration. (Middleton Dep. Tr. at p. 21-22).</p> <ul style="list-style-type: none">• Ms. Middleton claims there were no drafts of her Declaration. (Middleton Dep. Tr. at p. 21).• Mr. Westwood testified that there were several versions of the declaration drafted (possibly by Ms. Middleton or possibly by him) and that he and his counsel reviewed those drafts. However, those drafts were not preserved, but were destroyed. (Westwood Dep. Tr. at p. 99-100).• When Direct provided the executed copy of the Declaration to Century and the Arbitrator, it was transmitted with a cover email that Direct intended to supplement it. <i>See</i> Ex. S. Direct never provided any supplement.
<i>False Statements Contained in the Middleton Declaration</i>	<ul style="list-style-type: none">• Paragraph 4 of the Declaration was false as the payments made by Direct to the BLM matched the actual BLM contracts. (Middleton Dep. Tr. at p. 42-43).• Ms. Middleton's explanation that she actually altered the BLM documents based upon her review of the truck tickets is not supported by the documents produced in this matter. Ms. Middleton (and Direct) failed to produce the truck tickets supporting the amount billed to Century. (Middleton Dep. Tr. at p. 104-107). Mr. Westwood testified that he did not think that Ms. Middleton used the truck tickets as part of her review. (Westwood Dep. Tr. at p. 14).• Mr. Westwood testified that both the statements contained in paragraphs 2

	<p>and 4 of Ms. Middleton's Declaration were false. (Westwood Dep. Tr. at p. 102-104, 107).</p>
<i>Failure to Preserve Evidence</i>	<ul style="list-style-type: none">• Ms. Middleton has no knowledge of doing anything to preserve Direct's emails and text messages. (Middleton Dep. Tr. at p. 26).• Ms. Middleton made no effort to locate the altered documents on her computer. (Middleton Dep. Tr. at p. 80, 90).• Mr. Westwood testified that nothing was done to preserve emails or text messages for this case. (Westwood Dep. Tr. at p. 19-20).• Mr. Westwood testified that Mr. Morgan, Direct's IT person, did not do anything to implement a legal hold for this matter. (Westwood Dep. Tr. at p. 27).• After the Arbitrator ordered that Direct's computers and server be imaged, Mr. Westwood never advised his employees not to do anything to their computers in the meantime. (Westwood Dep. Tr. at p. 98). Two days later, the upgrade to Windows 10 took place eliminating data from what was purported to be Ms. Middleton's computer.
<i>Ms. Middleton's Computer</i>	<ul style="list-style-type: none">• Ms. Middleton claims that she has only used one computer during her last couple of years at Direct. (Middleton Dep. Tr. at p. 28).• Ms. Middleton claims that she just came into work one day and her computer was upgraded to Windows 10. (Middleton Dep. Tr. at p. 94-95).• Mr. Holpuch's report indicates that there were no automatic upgrades to

	<p>Windows 10 offered by Microsoft in March 2018. <i>See</i> Ex. B at 3.0. Thus, contrary to Ms. Middleton's assertions, someone had to <i>intentionally</i> install Windows 10, which resulted in a loss of data.</p> <ul style="list-style-type: none">• Mr. Holpuch's report states that there is no record that Adobe Acrobat Pro was installed on the computer Direct represented belonged to Ms. Middleton. <i>See</i> Ex. B at 3.0.• Mr. Holpuch opined that the computer provided by Direct and represented to be Ms. Middleton's computer was not the computer she as using when she altered the BLM documents in February 2018. <i>See</i> Ex. B at 3.0.
<p><i>Direct's Failure to Provide Access to Mr. Holpuch</i></p>	<ul style="list-style-type: none">• Mr. Holpuch opined that Direct has another active server, QBSEVER, which was operational and could be accessed in February and March 2018. However, Direct did not provide access to this server. <i>See</i> Ex. B at 3.0.• Direct previously argued that Joe Morgan would testify with an explanation as to why there was evidence that the QBSEVER server had been accessed after it was allegedly no longer in existence. <i>See</i> Ex. O. However, when Mr. Morgan was deposed, he did not know why there was evidence of access to the server as discovered by Mr. Holpuch. He speculated as to an explanation but ultimately indicated that he was "confused." (Morgan Dep. Tr. at p. 51-53).• Mr. Holpuch was not provided with the device utilized to alter the BLM documents. <i>See</i> Ex. B at 3.0.

<i>The Ghost Trucks</i>	<ul style="list-style-type: none">• Mr. Wyatt testified in his Declaration that a Direct employee informed him that Mr. Westwood instructed him to alter the truck logs to include “Ghost trucks,” which were trucks that did not actually exist but were referenced in the truck logs as “cc.” This was done in order to inflate the invoices to Century. (Wyatt Decl. at ¶¶ 16-17).• Mr. Westwood denied that there were ghost trucks and agreed to produce invoicing and payment evidence for the CC trucking entries during his deposition, but his counsel later refused to do so. (Westwood Dep. Tr. at p. 140-145). To date, no such evidence has been produced.
<i>Ms. Middleton’s Attempts to Reach Mr. Westwood before Altering the Documents and her Discussions with him Shortly thereafter</i>	<ul style="list-style-type: none">• Ms. Middleton claims she tried to call Mr. Westwood and Mr. Mayhall to discuss the discrepancies with the BLM documents, but could not reach them because it was after hours. (Middleton Dep. Tr. at p. 71-72). This testimony contradicts her testimony and the evidence that she purchased Adobe Acrobat Pro at 3:29 pm. (Middleton Dep. Tr. at p. 106).²³• Mr. Westwood testified that Ms. Middleton texted her on the day she made the alterations, but that when he tried to call her back, she did not answer. Mr. Westwood testified that the text message was not preserved. (Westwood Dep. Tr. at p. 41-42).• Direct failed to produce the telephone records between Ms. Middleton and Mr. Westwood.• Ms. Middleton testified that she informed Mr. Westwood (and possibly

²³ See Ex. X.

	<p>Don Mayhew) of the alteration of the BLM documents within a few days of making the alterations. (Middleton Dep. Tr. at p. 78-79).</p>
<i>The Prokopchuk Emails</i>	<ul style="list-style-type: none">• Mr. Westwood initially denied that <u>pd@directgrading.com</u> was an email used by Scott Prokopchuk, but after seeing a number of the emails recovered by Mr. Holpuch during his deposition, Mr. Westwood finally had to concede that Scott was likely using that email. However, when presented with additional <u>pd@directgrading.com</u> emails, which evidenced that Mr. Prokopchuk was working for Direct, Mr. Westwood reverted back to denying that it was an email used by Mr. Prokopchuk. (Westwood Dep. Tr. at p. 65-82).• Despite being ordered to search for and produce all <u>pd@directgrading.com</u> emails, Direct did not search for those emails. (Westwood Dep. Tr. at p. 93-94).• Mr. Holpuch was able to recover numerous <u>pd@directgrading.com</u> emails, which evidence, among other things, that Mr. Prokopchuk had an office at Direct while employed at Direct and attended numerous internal Direct budget and scheduling meetings.²⁴ Further, this evidences that Direct had these emails from the start and failed to produce them in violation of the Arbitrator's Orders.• Additional emails between Mr. Westwood and Mr. Prokopchuk were recovered evidencing their close relationship and that Mr. Westwood has been asking Mr. Prokopchuk for his

²⁴ Examples of PD@directgrading.com emails are attached hereto as **Exhibit "Y."**

	<p>input regarding Direct's dispute with Century. For example, on October 2, 2016, Mr. Prokopchuk emailed Mr. Westwood stating "I don't think I have to tell you how much you mean to me and my family. You have made my life so much more! Thanks for everything my friend! And for being that person, I'm counting on you to look out for my family. And I don't even have to ask that of you!"²⁵ This email (and others) should have been produced as part of the December Order, but it was withheld by Direct.</p>
<p><i>Mr. Prokopchuk's Conflict of Interest</i></p>	<ul style="list-style-type: none"> • Mr. Westwood testified that Mr. Prokopchuk: (1) did not perform any work for Direct while he worked for Century; (2) did not attend any internal budgeting meetings for Direct; (3) did not have a Direct email address while employed with Century; (4) did not utilize the email address pd@directgrading.com; and (5) did not have an office at Direct. (Westwood Dep. Tr. at p. 48-52). • Mr. Westwood testified that Mr. Prokopchuk was rarely at the Direct's offices and that when he was there, it was in the evenings. (Westwood Dep. Tr. at p. 73-74). • Mr. Mifflin and Mr. Wyatt testified that, contrary to Direct's representations, Mr. Prokopchuk: (1) had his own office at Direct while they were employed there; (2) was issued a Direct cell phone; (3) utilized a Direct email address of PD@directgrading.com; (4) attended budgeting meetings for Direct; and (5) regularly attended internal scheduling meetings for Direct concerning Century

²⁵ Copies of these emails from Mr. Prokopchuk from other email addresses are attached hereto as **Exhibit "Z."**

	projects and the projects of other homebuilders with whom Direct was working. (Mifflin Decl. at ¶¶ 3-9; Wyatt Decl. at ¶¶ 6-13).
<i>Direct's Admitted Additional Overbilling of Century</i>	<ul style="list-style-type: none"> • Direct reported to the BLM that a single truck load contained 15 cubic yards of soil and that a double truck load contained 25 cubic yards of soil. Conversely, Direct billed Century for 18 cubic yards of soil for a single and 27 cubic yards for a double. Thus, Direct reported one set of numbers to the BLM and another set of numbers to Century for the same trucks. (Westwood Dep. Tr. at p. 123-127).²⁶
<i>Mr. Westwood's Failure to Prepared to be a NRCP 30(b)(6) witness</i>	<ul style="list-style-type: none"> • Mr. Westwood testified that he did not review any documents to prepare to be Direct's NRCP 30(b)(6) designee. (Westwood Dep. Tr. at p. 17).²⁷ • Despite one of the NRCP 30(b)(6) topics being the alteration of the BLM documents, Mr. Westwood did nothing to prepare for this topic. (Westwood Dep. Tr. at p. 34).

Legal Argument

The Arbitrator has Broad Authority to Enforce Orders

The Arbitrator is authorized in this matter to sanction Direct for violating the discovery orders in this case and for seeking to defraud this tribunal. The Arbitrator has enforcement powers under the AAA's Construction Industry Arbitration Rules. *See, e.g.*, R-25(d) ("[I]n the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance[.]"). Further, "[t]he arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator." R-60(a). R-25(e) authorizes the

²⁶ See Direct's Monthly Reports to the BLM attached hereto as **Exhibit "AA"** and Direct truck logs attached hereto as **Exhibit "BB."**

²⁷ A copy of the Amended Notice for the Deposition of the Person Most Knowledgeable for Direct is attached hereto as **Exhibit "CC."**

Arbitration to issue any “enforcement orders which the arbitrator is empowered to issue under applicable law.” R-25(e). Moreover, R-25 generally states that “the arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-23 and R-24 (discovery) and to otherwise achieve a fair, efficient and economical resolution of the case.” An arbitrator may impose a sanction as deemed appropriate under the circumstances. *See Seagate Tech. v. W. Digital Corp.*, 834 N.W.2d 555, 564 (Minn. Ct. App. 2013) affirmed in *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750 (Minn. 2014) (“Accordingly, we reject the argument that the specific authorization of sanctions in other arbitration rules compels the conclusion that the AAA rules for employment disputes do not authorize sanctions.”). Arbitrators and judges regularly impose sanctions when parties violate orders. Those sanctions may include dismissing a case, striking a pleading, and prohibiting a party from asserting a claim. *See* FRCP 16; FRCP 37(b); AAA, 2012 WL 363639 (January 24, 2012) (dismissing case because claimant failed to follow arbitrator’s orders).

Direct’s Claims Against Century Should be Stricken

There can be no question that severe sanctions and remedies are mandated for Direct’s misconduct. The law authorizes sanctions for, *inter alia*, noncompliance with discovery orders and abusive litigation practices. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (“Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute”); *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913 (1987); *see also TeleVideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987); *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike order where the defaulting party’s “constant failure to follow [the court’s] orders was unexplained and unwarranted”). “‘Courts need not tolerate flagrant abuses of the discovery process’ and have ‘inherent power’ to exclude evidence as a sanction for such abuses.” *Merrick v. Paul Revere Life Ins. Co.*, 500 F.3d 1007, 1014 (9th Cir. 2007) (quoting *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27 (9th Cir. 1980)). “A court has the inherent power to sanction a party for destroying relevant evidence which it knows or should know it has a duty to preserve even absent a preservation order.” *Koninklike Philips Elecs. N.V. v. KXD Tech., Inc.*, No. 2:05-CV1532RLHGWf, 2007 WL 3101248, at *16–17 (D. Nev. Oct. 16, 2007) (citing *Leon v. IDX Systems Corp.*, 464 F.3d 951, 958–59 (9th Cir. 2006)).

In this matter, Direct altered evidence in order to conceal its fraudulent billing practices.²⁸ Direct has continued with its efforts to defraud this tribunal by concealing evidence and making

²⁸ Ms. Middleton was an authorized agent of Direct. She is Direct’s controller and signed invoicing on behalf of Direct. Direct is bound by her conduct in altering the evidence in this matter. She altered the evidence in the course and scope of her employment. “Agency can be established expressly, by a showing of actual authority, or inferred, by finding apparent authority or ratification.” *Stedeford v. Wal-Mart Stores, Inc.*, No. 214CV01429JADPAL, 2016 WL 3462132, at *9 (D. Nev. June 24, 2016) (citing Restatement (Third) of Agency §§ 2.01, 2.03, 4.01 (2006)). “[T]he imputation doctrine recognizes that principals generally are responsible for the acts of agents committed within the scope of their authority.” *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 494 (3d Cir. 2013) (quotation omitted). “This rule of liability is not based on any presumed authority in the agent to do the acts, but on the ground of public policy . . . that the principal who has placed the agent in the position of trust and confidence should suffer, rather than an innocent stranger.” *Id.* at 494–95 (quotation omitted); *see also In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 478 (9th Cir. 2015) (citing Belmont); *State Farm Fire & Cas. Co. v. Sevier*, 272 Or. 278, 537

numerous misrepresentations. This conduct warrants the striking of Direct's claims in this matter. *See Hutchinson v. Hensley Flying Serv., Inc.*, 210 F.3d 383, 2000 WL 11432, at *1 (9th Cir. 2000) ("Given the district judge's finding, supported by the evidence, that appellants had knowledge that the attorney was submitting a falsified document, this court cannot say that the trial judge abused his discretion in ordering the dismissal sanction."); *Magarian v. Monarch Life Ins. Co.*, 25 F. App'x 618, 619–20 (9th Cir. 2002) ("Glenn A. Magarian appeals an order of the district court dismissing his case and imposing sanctions for tampering with evidence produced in discovery. . . . Because of the seriousness of Magarian's misconduct, the district court did not abuse its discretion in dismissing the case without expressly considering lesser alternatives."); *N. Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1451 (9th Cir. 1986) (affirming dismissal of defendant's counterclaim under court's inherent power for concealing documents and violating court's discovery order).

Further, the striking of Direct's claims is warranted given its repeated and willful failure to comply with the Arbitrator's Orders. *See Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court's strike order where the defaulting party's "constant failure to follow [the court's] orders was unexplained and unwarranted"); *Valley Engineers Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) ("Dismissal is appropriate where a 'pattern of deception and discovery abuse made it impossible' for the district court to conduct a trial 'with any reasonable assurance that the truth would be available.'").

The Arbitrator Should Make Express Findings Against Direct

Additionally, the Arbitrator should issue an award making express findings against Direct and precluding Direct from offering evidence to defend the counterclaims made by Century. NRCP 37(b)(2) provides that "[i]f a party or an officer, director, or managing agent of a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;"

NRCP 37(b)(2)(A)–(B); *see also* NRCP 37(c).²⁹

P.2d 88, 96 (1975) ("[O]ne who selects an agent and delegates authority to him should incur the risks of the agent's infidelity or want of diligence rather than innocent third persons."). Further, Ms. Middleton testified that she informed Mr. Westwood of the alteration. His failure to correct the alteration (in addition to his continued employment of Ms. Middleton) serves as a ratification.

²⁹ Direct further abused discovery by failing to produce a prepared 30(b)(6) witness. Mr. Westwood, the designated NRCP 30(b)(6) witness, admitted he had virtually done nothing to prepare for his deposition. This conduct further warrants sanctions. *Commodity Futures Trading Comm'n v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 772 (9th Cir.

Given Direct's repeated and blatant failure to comply with the Arbitrator's Orders and its clear spoliation of evidence, the Arbitrator should make the following adverse rulings against Direct:

1. Direct is precluded from making any recovery from Century due to its breach of the MSA caused by the conflict of interest created by employing Mr. Prokopchuk;
2. The conflict of interest was material in that Century relied upon the undivided loyalty of its Land Development Manager, Mr. Prokopchuk, in allowing him to oversee Direct's work and approve Direct's payments;
3. Century's Agreement with Direct expressly required Direct "to prevent any actions or conditions that could result in a conflict with Contractor's best interests. This obligation shall apply to the activities of the employees and agents of Subcontractor in their relations with the employees and agents of Contractor and Owner;" MSA, ¶ 8.1;
4. Despite the fact that the Arbitrator ordered Direct to produce all of its communications with Mr. Prokopchuk, Direct has failed and refused to do so. Direct's failure to comply with the Arbitrator's Order and the consequences associated therewith evidences that Direct has spoliated evidence;
5. Direct failed to comply with the Arbitrator's Orders concerning the inspection of data by Mr. Holpuch;
6. Director perpetrated billing fraud upon Century during the time that Mr. Prokopchuk was overseeing Direct's work and approving Direct's payments;
7. Much of the information regarding Direct's billing fraud is particularly within the control of Direct and is uniquely known to it, while concealing the same information from Century. In submitting their invoices to Century for payment, Direct represented, expressly or impliedly, that the charges contained therein were true, accurate and honest. In actuality, this was not remotely the case;
8. Direct submitted invoices to Century for import of material from the BLM. Direct purported to charge Century for the actual cost it incurred from the BLM for the material, as well as additional charges for the hauling and transport of the material to Inspirada. In the aggregate, these charges amounted to nearly \$900,000;

1995) (concluding that "the district court did not abuse its discretion in imposing its Rule 37(b)(2) sanction ordering that the allegations of the complaint be taken as established for the purposes of the action" where "[b]oth the magistrate judge and the district court specifically found that Noble and Moorgate willfully violated the court's orders by repeatedly failing to designate a representative who would testify at a discovery deposition"); *see also Reilly v. Natwest Markets Grp. Inc.*, 181 F.3d 253, 268 (2d Cir. 1999) ("When a party fails to comply with Rule 30(b)(6), Rule 37 allows courts to impose various sanctions, including the preclusion of evidence." (citing FRCP 37(b)(2)(B); *Commodity Futures Trading Comm'n*)).

9. In the discovery phase of this arbitration, Century requested from Direct the backup to support its charges for the BLM material and hauling to Inspirada. Direct produced documents Bates-labeled DPG000991-DPG000994, all of which purport to be documents from the BLM;
10. Century subsequently obtained the pertinent documents directly from the BLM. A comparison of the BLM documents produced by Direct and the actual documents obtained from the BLM shows that the BLM documents have been altered to show substantially larger quantities (93,120 cubic yards) than Direct actually purchased from the BLM (33,395 cubic yards);
11. The alterations are consistent with the invoices that Direct previously presented to Century, leading to the conclusion that Direct fraudulently overcharged Century approximately \$550,000 for the BLM materials it represented were hauled to Inspirada;
12. These fraudulent bills were approved by Mr. Prokopchuk;
13. The submission of the altered and false BLM documents as part of the evidentiary record in this case constitutes fraud upon Century and upon this tribunal; and
14. Direct, by its fraudulent billing and breaches, is not entitled to any recovery whatsoever against Century.

Century is entitled to an Award of Fees and Costs

Unraveling the web of deceit Direct perpetrated in this matter has been time-consuming and expensive. The Arbitrator should award Century its fees and costs (including the costs incurred by the experts in this matter).

The Liens should be Expunged and all Claims against the Bonds Dismissed

Pursuant to NRS Chapter 108, the Liens recorded against the Century properties should be removed.³⁰ In *J.D. Construction, Inc. v. IBEX International Group, LLC*, 126 Nev. Adv. Op. 36, 240 P.3d 1033 (2010), the Nevada Supreme Court explained that (1) when a property owner seeks to remove a lien by arguing that it is frivolous or excessive, the district court must determine the material facts in order to reach a conclusion regarding whether a lien is frivolous or excessive; (2) the district court need not hold a full evidentiary hearing to determine the material facts, but instead may base its decision on affidavits and documentary evidence submitted by the parties; and (3) that the lien claimant bears the burden of proof (by a preponderance of the evidence). *See id.* Direct has the burden of proving the validity of these Liens. However, Direct's fraud upon this tribunal and refusal to comply with the Arbitrator's Orders precludes Direct from meeting that burden. Accordingly, Century respectfully requests that the Arbitrator issue an award removing the Liens and dismissing Direct's claims against the

³⁰ Because the fraud perpetrated in this arbitration also relates to the case pending before the Honorable Judge Bare, Century reserves the right to raise the issues set forth herein with the Court as well.

Arbitrator Donald Williams
January 18, 2019
Page 23 of 24

surety bonds. Additionally, the Arbitrator has the authority under NRS Chapter 108 to issue an award of fees and costs in favor of Century.

Conclusion

Direct had falsified evidence, spoliated evidence and refused to comply with the Arbitrator's Orders. Accordingly, the relief requested by Century in this Motion is warranted.

We thank you for your time and attention to this matter.

SANTORO WHITMIRE

/s/ Oliver J. Pancheri

NICHOLAS J. SANTORO, ESQ.

Nevada Bar No. 0532

OLIVER J. PANCHERI, ESQ.

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Las Vegas, Nevada 89135

*Attorneys for Century Communities of
Nevada, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of January, 2019, a true and correct copy of **Century's Motion for Discovery Sanctions against Direct Regarding (1) Falsification of Evidence; (2) Spoliation of Evidence; and (3) Failure to Comply with the Arbitrator's Orders and Motion to Expunge Liens Recorded against Century's Properties Pursuant to NRS 108.2275 and 108.2421** was electronically transmitted and addressed to the following:

(Via Email and Hand-Delivery)

Donald E William, Esq.
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612 S. Tenth Street
Las Vegas, Nevada 89101
Email: dwilliams@dhwlawlv.com
Arbitrator

(Via Email Only)

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rgubler@mjohnsonlaw.com
Attorneys for Plaintiff Direct Grading & Paving, LLC

/s/ Rachel Jenkins

An employee of SANTORO WHITMIRE

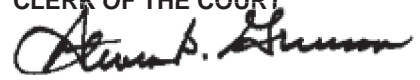


EXHIBIT 10

DIRECT000862

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2 Dwilliams@dhwlawlv.com
3 WILLIAMS ♦ STARBUCK
612 South Tenth Street
4 Las Vegas, Nevada 89101
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5 (702) 320-7760 (Facsimile)
6 *Arbitrator*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 DIRECT GRADING & PAVING, LLC,)
a Nevada limited liability company;)
11 Plaintiff,)

12)
13 vs.)

14 CENTURY COMMUNITIES OF)
NEVADA, LLC, a Delaware limited)
15 liability company; DOES I through X;)
16 and ROE CORPORATIONS I through)
X, inclusive,)
17 Defendants.)

18)
19 CENTURY COMMUNITIES OF)
20 NEVADA, LLC;)

21 Defendant/ Counterclaimant,)

22 vs.)

23 DIRECT GRADING & PAVING,)
24 LLC,)

25 Plaintiff/ Counterdefendant,)
26)
27)

28 AMENDED ORDER REGARDING CENTURY'S MOTION FOR DISCOVERY

SANCTIONS AGAINST DIRECT REGARDING (1) FALSIFICATION OF

**EVIDENCE; (2) SPOILIATION OF EVIDENCE; AND (3) FAILURE TO COMPLY
WITH THE ARBITRATOR'S ORDERS AND MOTION TO EXPUNGE LIENS
RECORDED AGAINST CENTURY'S PROPERTIES PURSUANT TO NRS 108.2275
AND 108.2421.**

**TO: RUSSEL G. GUBLER, ESQ. and MATT JOHNSON, ESQ., JOHNSON
& GUBLER, P.C., attorneys for Plaintiff/Counterdefendant Direct Grading &
Paving, LLC.**

**TO: NICHOLAS J. SANTORO, ESQ. and OLIVER J. PANCHERI, ESQ.,
SANTORO WHITMIRE, attorneys for Defendant/ Counterclaimant Century
Communities of Nevada.**

The above referenced Motion came before the undersigned Arbitration on April 5th, 2019. Said Motion and Opposition has been properly briefed and argued. After a thorough review of the briefs and of the record in this case, the Arbitrator finds as follows.

The Arbitrator has authority to enforce Orders. The Arbitrator has specific authority to issue appropriate sanctions where a party has failed to comply with the Arbitrator's Orders. *CAA Construction Industry Rule 25(d), et. al.*

The Arbitrator does not feel compelled at this time to strike any of the claims in this case. The Arbitrator may revisit this issue upon completion of Discovery. Having said that, the Arbitrator is bothered, to say the least, regarding the conduct of Linda Middleton and the fraudulent billing practice related to the BLM documents. While the Arbitrator is not moved at this time to question all of the documentation provided by Direct in support of its claims, the alteration of said documentation by Ms. Middleton is an abomination. Ms. Middleton admitted she altered the subject BLM documents. *See Middleton deposition transcript at page 12.* Ms. Middleton was an employee of Direct at the time of the alteration. She remains employed at Direct. Direct is responsible for her actions under the Doctrine of respondeat superior.

///

1 Furthermore, Ms. Middleton and other Direct employees have seemingly failed to
2 preserve evidence in this case. The Arbitrator will not make a ruling with regard to the failure
3 to preserve evidence at this time, but reserves the right to Supplement this Order or make a
4 further ruling on the same at the conclusion of Discovery.

5 When the issues of document preservation, etc., came up in this case, Century
6 retained an independent third-party information technology specialist to perform a sweep of
7 Ms. Middleton's computer, as well as other functions. Michael Holpuch discovered that Direct
8 had upgraded Ms. Middleton's computer two (2) days after the March 2018 Order. The
9 Arbitrator is disturbed, to say the least, that computers in this matter were being upgraded
10 while in the midst of a discovery dispute.

11 The Arbitrator is not thoroughly convinced at this time that Direct engaged in a
12 spoliation of evidence. At this time, as noted above, the Arbitrator is convinced, based on the
13 admission of Ms. Middleton, that evidence has been altered.

14 Sanctions against Direct must be severe for failure to comply with the Arbitrators
15 orders.

16 IS HEREBY ORDERED THAT Plaintiff/Counterdefendant pay the sum of
17 \$130,000.00 as and for sanctions. Said sanction is to be paid within thirty (30) days from the
18 date of this order. To the extent that said sanction is not timely paid, the Arbitrator will
19 consider other appropriate sanctions.

20 IT SO ORDERED this 31st day of May, 2019.

21 WILLIAMS ✦ STARBUCK

22
23 DONALD H. WILLIAMS, ESQ.

24 Nevada Bar No. 5548
25 612 South Tenth Street
26 Las Vegas, Nevada 89101
27 Arbitrator
28

*to not destroy
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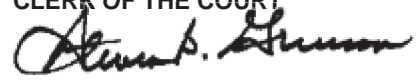


EXHIBIT 11

DIRECT000866

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SANTORO WHITMIRE

June 7, 2019

Via Email Transmission and Hand Delivery

Donald Williams, Esq.
Williams and Associates
612 S. 10th Street
Las Vegas, Nevada 89101

Re: Direct Grading & Paving, LLC ("***Direct***") v. Century Communities of Nevada, LLC ("***Century***") –

Century's Motion for Clarification and Reconsideration of Arbitrator's May 15, 2019 Order Regarding Century's Motion for Discovery Sanctions against Direct Regarding (1) Falsification of Evidence; (2) Spoliation of Evidence; and (3) Failure to Comply with the Arbitrator's Orders and Motion to Expunge Liens Recorded against Century's Properties Pursuant to NRS 108.2275 and 108.2421.

Dear Mr. Williams:

Introduction

The Arbitrator's Amended Order dated May 31, 2019 failed to include an express ruling on Century's Motion to Expunge Liens Recorded against Century's Properties Pursuant to NRS 108.2275 and 108.2421. As the Arbitrator is aware, Direct recorded a Notice of Lien (the "***Liens***") against the Inspirada, Lake Las Vegas, Rhodes Ranch and Freeway 50 Projects. On April 19, 2018, Direct filed an action with the Eighth Judicial District Court as Case No. A773139 pending before Department 32 (the "***Lawsuit***") to foreclose on the Liens and seeking to recover against the bonds posted by Century to remove the Liens. Century was forced to post bonds (the "***Bonds***") in order to have the frivolous and excessive Liens Direct recorded against its projects removed. Direct sued Argonaut Insurance Company ("***Argonaut***") to recover against those Bonds. Century should not be forced to continue paying to keep the Bonds in place, to defend Argonaut and to have its properties encumbered when Direct (1) has engaged in extensive discovery misconduct, (2) failed to meet its burden to establish the validity of the Liens; and (3) filed the Lawsuit after its fraudulent alteration of evidence was brought to light. Accordingly, the law clearly dictates that the Liens should be removed and the Bonds released.

Further, the Arbitrator's finding that Ms. Middleton altered the Bureau of Land Management evidence and that Direct is responsible for this conduct under the doctrine of respondeat superior should be given the weight it deserves and Direct's Lien and claims

DIRECT000867

pertaining the Inspirada project should be stricken. Direct offered virtually no evidence in support of the Inspirada Mechanic's Lien and certainly did not meet its burden to establish the validity of the lien and that it is not excessive. *See J.D. Construction, Inc. v. IBEX International Group, LLC*, 126 Nev. Adv. Op. 36, 240 P.3d 1033 (2010) ("**the standard for evaluating whether a lien is excessive, pursuant to NRS 108.2275, requires [Direct] to prove its validity by a preponderance of the evidence.**"). Despite its efforts to conceal its fraudulent billing, it is painfully clear that Direct overbilled Century for the BLM soil and then tried to hide the overbilling by altering evidence in this matter. Any award in favor of Direct in relation to the Inspirada project and lien would be procured by fraud or other undue means in violation of Nevada law.

It is also clear that Direct breached the parties' agreement by employing Mr. Prokopchuk while he was acting as Century's Land Development Manager. As set forth in the expert report of William Striegel, attached hereto as **Exhibit "A,"** Mr. Prokopchuk's conflict of interest was far from inconsequential and Direct was able to get away with being hundreds of days late completing its work while overcharging Century all because Direct had an "inside man" running interference and approving contracts and payments that never should have been made to Direct. *See Striegel Report* at p. 21-27. Further, Direct refused to comply with the Arbitrator's Orders concerning its communications with Scott Prokopchuk, Century's Land Development Manager, who was secretly employed by Direct at the same time he was responsible to oversee Direct's work. Direct failed to produce its communications with Mr. Prokopchuk, claiming they either could not be recovered or did not exist. As detailed below, Direct's various explanations for the non-production have been contradictory and unsupported by the evidence. Like the altered BLM documents, Direct attempted to conceal the truth from the Arbitrator regarding the true nature of Mr. Prokopchuk's relationship with Direct (and the resulting and blatant conflict of interest) by failing to comply with the Arbitrator's Orders and through its discovery abuses. Regardless of the discovery abuses, the conflict of interest is a clear breach of the parties' agreement and precludes Direct from making any recovery in this matter for any of the projects. Any ruling to the contrary would express a manifest disregard of the law and would result in an arbitrary and capricious award.

NRS 108.2275(3) requires a Court (or the Arbitrator) to conduct a hearing within the timeframe established by statute (not less than 15 days but no more than 30 days after the court issues the order for a hearing). Century submitted its Motion on January 18, 2019. The Arbitrator conducted the hearing on Century's Motion on April 5, 2019. The Arbitrator issued an award on May 15, 2019 and then modified that interim award on May 28, 2019. However, the Arbitrator failed to expressly rule on Century's request to expunge the Mechanic's Liens and to release the Bonds. Century is entitled to an Order removing the Mechanic's Liens and releasing the Bonds. Pursuant to NRS 108.2275, Direct was under an obligation to establish the validity of the Mechanic's Liens, which it failed to do (and cannot do considering the discovery abuses and the evidence before the Arbitrator). The Arbitrator had three options with respect to the Mechanic's Liens under NRS 108.2275. The first was to expunge the Mechanic's Liens because they were frivolous. The second was to reduce the Mechanic's Liens to the extent they were excessive. Finally, the third option was to do neither *if* the lien claimant (Direct) established that the Mechanic's Liens were not frivolous (made with reasonable cause) and were

not excessive. Direct failed to establish either in this matter. Accordingly, the law requires the Mechanic's Liens to be expunged and for the Bonds to be released.

Legal Argument

1. Century Is Entitled to an Award Expunging the Liens and Releasing the Bonds

In Nevada, a property owner has the statutory right to removal of an improper lien imposed on its property. Nevada Revised Statute 108.2275(1) states as follows:

1. The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.

6. If, after a hearing on the matter, the court determines that:

(a) The notice of lien is **frivolous and was made without reasonable cause**, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(b) The amount of the notice of lien is **excessive; the court may make an order reducing the notice of lien** to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(c) The notice of lien is not frivolous and was made with reasonable cause or that the amount of the notice of lien is not excessive, the court shall make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the motion.

In *J.D. Construction*, the Nevada Supreme Court explained that when a property owner seeks to remove a lien by arguing that it is frivolous or excessive, the district court must determine the material facts in order to reach a conclusion regarding whether a lien is frivolous or excessive, the district court need not hold a full evidentiary hearing to determine the material facts, but instead may base its decision on affidavits and documentary evidence submitted by the parties; and that the lien claimant bears the burden of proof (by a preponderance of the evidence). *See id.* At the hearing and in its briefs, Century established that: (1) Direct altered evidence in order to conceal its overbilling with respect to the Inspirada Mechanic's Lien; (2) Direct had no basis to recover in connection with the other Liens due to its breach of the MSA by employing Scott

Prokopchuk; and (3) Direct violated the Arbitrator's Orders and spoliated evidence in order to conceal Mr. Prokopchuk's blatant conflict of interest. In response, Direct failed to offer evidence of the validity of its Liens nor did it provide any valid excuse for its discovery abuses. As such, the law required the Arbitrator to expunge the Liens and release the Bonds.

2. Century Established That the Inspirada Lien Is Based upon Fraudulent Billing and Falsified Evidence

Ms. Middleton admitted to altering the BLM evidence. The Arbitrator correctly found that Direct is responsible for Ms. Middleton's conduct in altering the evidence. Further, Ms. Middleton testified that she showed Mr. Westwood the alterations shortly after they were made. (Middleton Dep. Tr. at p. 78-79).¹ Most importantly, Ms. Middleton altered the evidence for a reason. She altered the evidence in order to cover up Direct's overbilling. The Middleton Declaration indicates that Mr. Westwood asked Ms. Middleton to compile the BLM documents and that he asked her to **"make sure that all of the numbers matched before sending them to Direct's counsel."**² Because Direct had reported taking out approximately 33,395 cubic yards of material to the BLM and had billed Century as if it had taken out nearly 94,000 cubic yards, the numbers did not "match." Accordingly, Ms. Middleton ensured the numbers would match - per the instruction from Mr. Westwood - by altering the BLM documents in order to conceal the overbilling.

The parties' contractual relationship was governed by the Master Subcontract Agreement (the "**MSA**") and each individual project included a separate Project Work Authorization (a "**PWA**"). The MSA did not contain specific pricing for the work to be performed. Rather, the specific scope of work and pricing was included as an exhibit to the PWA.³ Specifically, the pricing was contained in a draw schedule executed by Scott Prokopchuk. The draw schedules for Inspirada included lump sum pricing in the amount of \$439,820.16 (rough grading) and \$488,753.84 (finish grading) for a total of \$928,574.00. (See Direct's Am. Statement of Facts at ¶ 4). Direct alleges there was an additional \$1,480,020.55 in change orders for Inspirada and that it was paid a total of \$2,118,575, leaving a balance owed of \$290,018.55. (See Direct's Am. Statement of Facts at ¶¶ 5-7). Thus, Direct asserts that the change orders were approximately 157% greater than the original contract amount.

The MSA required that any change orders first be submitted by Direct in writing with a proposal requiring a change in the PWA contract amount. See MSA at § 5.1. Further, the MSA required that all change order work proposals from Direct be accompanied by a work order signed by Direct and that the change order be itemized to include all actual costs for materials and labor. See MSA at § 5.2. Costs for change orders was expressly defined in § 5.3 –

¹ See excerpts of Deposition Transcript of Linda Middleton attached hereto as **Exhibit "B."**

² A true and correct copy of the Declaration of Linda Middleton is attached hereto as **Exhibit "C."**

³ A true and correct copy of the MSA and the PWA for the Inspirada Project are included with the Striegel Report in Footnotes Exhibits 2 and 21. The PWA exhibit contains the initial draw schedules.

5.3 Costs. Subcontractor shall provide Contractor an itemized accounting together with appropriate supporting data within five (5) working days of being informed of or encountering a proposed change or changed conditions. Costs shall be limited to: (1) labor; costs of materials, and supplies, including cost of transportation; (2) rental costs of machinery and equipment, exclusive of hand tools; and (3) costs of permit fees, and taxes related to the Work. ... Change order pricing submitted by Subcontractor that is not reasonably justifiable or exceeds reasonable industry costs shall be an event of default, and entitle Contractor to remedies pursuant to 2.4 and 2.5.

Accordingly, Direct was to provide the proposal **prior** to undertaking any additional work. Then, after Century approved the proposal, a draw schedule would be created to include the additional work and the agreed upon price. This rarely ever occurred under Mr. Prokopchuk's supervision. Rather, Mr. Prokopchuk and Mr. Westwood created draw schedules without any prior documentation from Direct proposing a lump sum price or extra work on a time and materials basis. Further, the draw schedules were provided **after the fact** – often months after the work had allegedly been performed. This was not only a violation of the MSA, but it was also a clear manifestation of the compromised nature of Mr. Prokopchuk with regard to Century.

The BLM overcharges were all additional work and no change orders were submitted or approved by Century. Rather, Direct had Mr. Prokopchuk execute draw schedules **after** the work was already allegedly performed. See invoices, draw schedules and related documents included with this Motion as **Exhibit "D."** Based upon the invoices and draw schedules submitted by Direct, Direct charged Century \$1.57 per cubic yard of soil from the BLM, \$1.25 to load every cubic yard of BLM soil, trucking costs from the BLM site and sweeper costs. See *id.* However, as previously addressed, these costs charged to Century were fabricated. Direct took advantage of Century by charging as if 93,200 cubic yards of soil had been purchased from the BLM and transported from the BLM site. Direct was only contracted to remove up to 50,000 cubic yards from the BLM site. Direct reported to the BLM that only 33,395 cubic yards were removed from the BLM site. Thus, Direct overcharged Century to the tune of approximately \$550,000 just with respect to the BLM dirt.⁴ Direct then altered the BLM documents produced in this matter to conceal this overbilling. Direct does not contest these facts other than to say Century "got its dirt" even though Direct appears to have obtained the dirt at no cost to Direct from other Century projects or from other sites that were never approved by Century. In either event, Direct fraudulently billed Century as if the dirt came from the BLM. Direct overbilled Century at least twice the amount that it now claims is owed to it by Century in connection with the Inspirada Lien. Given these facts and the context for Direct's alteration of the BLM documents, there is no question that the Inspirada Lien should be immediately expunged.

⁴ See Rosten Report attached hereto as **Exhibit "E."**

3. Direct Cannot Recover on the Remaining Liens

Direct cannot recover on the remaining Liens as a result of Direct's breach of the MSA by employing Mr. Prokopchuk. Pursuant to the MSA, Direct expressly agreed to avoid any actions or conditions that would conflict with Century's best interests:

8.1 Good Faith. Subcontractor shall exercise all reasonable care and diligence to prevent any actions or conditions that could result in conflict with Contractor's best interests. This obligation shall apply to the activities of the employees and agents of Subcontractor in their relations with the employees and agents of Contractor and Owner.

See Ex. A-FN2 [emphasis added].⁵ By secretly employing Century's Land Development Manager, Mr. Prokopchuk, Direct clearly breached an express provision of the MSA. Mr. Prokopchuk was responsible for, among other things, the following: (1) obtaining job costs estimates and bids from contractors; (2) participating in awarding jobs to contractors; (3) overseeing the actual work performed by the contractors; (4) approving any change orders and purchase orders for the contractors; and (5) authorizing payment to the contractors. In performing these duties for Century, Mr. Prokopchuk oversaw Direct in each of these regards.

Mr. Prokopchuk's compromised loyalty is addressed, in part, in the expert report of William Striegel. *See* Ex. A. Mr. Prokopchuk, among other things, engaged in the following misconduct:

- Mr. Prokopchuk approved change orders without requiring Direct to submit the proper documentation;
- Mr. Prokopchuk entered into draw schedules after work had already allegedly been performed;
- Mr. Prokopchuk approved payment of the fraudulent BLM invoicing;
- Mr. Prokopchuk approved payment of Direct invoicing for work that had not yet been performed;
- Mr. Prokopchuk awarded projects to Direct without seeking or considering competitive proposals;

⁵ Direct's secret employment of Century's Land Development Manager is likely one of the main reasons why Direct claimed at the outset of these proceedings that it was somehow not bound by the MSA. Direct obviously knew that its employment of Mr. Prokopchuk was a clear violation of Section 8.1 of the MSA and thus attempted to distance itself from this contractual obligation. Direct initially claimed that it did not recall signing the MSA and then later challenged it because it was originally executed with Century's predecessor-in-interest (despite the fact that Direct executed a number of Project Work Authorizations with Century, which expressly incorporated the terms of the MSA by reference). The Arbitrator, in the Order dated May 11, 2018, found that the MSA does in fact apply to this matter.

- Mr. Prokopchuk attempted to award Direct an additional PWA days after he resigned from Century;
- Mr. Prokopchuk allowed Direct to continue on the various projects despite being months behind schedule (on average 252 behind schedule for the various projects); and
- Mr. Prokopchuk approved over \$5,000,000 in invoicing from Direct without requiring Direct to submit any back-up or supporting documentation.

See Ex. A.

Direct's violation of the MSA by hiring Mr. Prokopchuk was a blatant breach of the MSA that caused significant damages to Century. Moreover, by breaching the MSA in this manner, Direct forfeited any rights it had under the parties' agreements. *Laguna Construction Company, Inc. v. Carter*, 828 F.3d 1364 (Fed. Cir. 2016) (holding the government excused on performance of a contract because of the contractor's initial material breach); *Jay Dee/Mole Joint Venture v. Mayor and City Council of Baltimore*, 725 F. Supp. 2d 513, 529 (D. Md. 2010) ("[A] material breach discharges the non-breaching party of its duty to perform . . . [the contractor] materially breached first and it cannot recover for the [owner's] subsequent non-performance"); *Faulkner v. Tom Emmett Const. Co.*, No. E201000361COAR3CV, 2010 WL 4671008, at *9 (Tenn. Ct. App. Nov. 18, 2010) ("We conclude that Defendant's admitted failure to use a gravel base prior to pouring the driveway extension constitutes a material breach of the contract, thereby prohibiting Defendant from challenging Plaintiffs' later material breach of failing to pay the balance of the contract price."); *Mississippi Power Co. v. Water & Power Techs., Inc.*, No. 103CV763LG-RHW, 2006 WL 3457026, at *9 (S.D. Miss. Nov. 28, 2006) ("Because MPC breached the contract by failing to provide influent according to the terms of the contract, MPC cannot maintain its claims for breach of contract against WPT. These claims must therefore be dismissed with prejudice."); *Argee Corp. v. Solis*, 932 S.W.2d 39, 51 (Tex. App. 1995), *rev'd on other grounds sub nom. Green Int'l, Inc. v. Solis*, 951 S.W.2d 384 (Tex. 1997) ("Argee's failure to perform its obligations under the Dayton Subcontract, not preceded by any breaches by Solis, negates the performance element of Argee's action against Solis. We find no legal basis upon which to support the jury's award of \$28,853.00 favoring Argee."). Direct has no right of recovery with regard to the remaining Mechanic's Liens due to its prior breach of the MSA.

Direct's argument that Mr. Prokopchuk only performed consulting work for a company related to Direct should be rejected. Even assuming this is true, it would still be a violation of the MSA. Moreover, this assertion by Direct is false. Direct attempted to conceal the falsity of this assertion by engaging in discovery abuses and violating the Arbitrator's Orders. Despite every effort to conceal evidence to the contrary, Century discovered that Direct's explanation is false and is simply an additional attempt on the part of Direct to conceal its improper conduct from the Arbitrator. Century presented the Declarations from Ben Wyatt, a former Direct superintendent employed by Direct for 17 years through 2017, and Tim Wyatt, a general

manager at Direct from February 2015 through March 2016.⁶ Mr. Mifflin and Mr. Wyatt testified that, contrary to Direct's representations, Mr. Prokopchuk: (1) had his own office at Direct while they were employed there; (2) was issued a Direct cell phone; (3) utilized a Direct email address of PD@directgrading.com; (4) attended budgeting meetings for Direct; and (5) regularly attended internal scheduling meetings for Direct concerning Century projects and the projects of other homebuilders with whom Direct was working. *See* Exs. F and G. This testimony, from two former Direct employees with first-hand knowledge, contradicts Direct's representations that Mr. Prokopchuk never worked for Direct and only worked for an entity related to Direct.

4. *Direct Should Not Be Permitted to Disobey the Arbitrator's Orders*

Direct failed to produce the computer utilized to alter the BLM documents to HOLO as ordered by the Arbitrator. Holo, the independent IT expert engaged to investigate the discovery issues, expressly stated that Direct failed to comply with the Arbitrator's Order. Direct further altered the computer it presented to belong to Ms. Middleton in an effort to defraud this tribunal. *See* reports by Mr. Holpuch attached hereto as **Exhibits "H" and "I."** Direct further failed to produce the e-mails relating to Mr. Prokopchuk as ordered by the Arbitrator. This discovery misconduct is *in addition to* Direct altering evidence to conceal its overbilling to Century. However, the only sanction imposed by the Arbitrator for this blatant discovery misconduct is for Direct to pay a monetary sanction that is less than the actual fees and costs incurred by Century litigating these matters over the past year. This sanction does not come anywhere close to rectifying the prejudice suffered by Century. Century will not have the e-mails needed to properly cross examine witnesses in this matter and to refute the anticipated testimony from Mr. Westwood. A discovery sanction is typically not a tool to punish an offender but a means to rectify a discovery abuse to avoid prejudice to the other party. *See Parker v. Wolters Kluwer United States, Inc.*, 149 Cal.App.4th 285, 301, 57 Cal. Rptr. 3d 18 (2007). "The trial court should consider both the conduct being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should 'attempt[] to tailor the sanction to the harm caused by the withheld discovery.'" *Id.* This sanction fails to rectify Direct's discovery misconduct.

Direct's misconduct was clearly not deterred in the slightest by Century's discovery of the alteration of the BLM documents. Century brought its discovery of the alteration to Direct's attention in early March 2018. Century outlined the fact that Direct altered the documents in order to fraudulently conceal its overbilling for the BLM dirt in the Motion to Compel submitted on March 6, 2018. Yet, Direct, on April 19, 2018, filed its Statement of Facts Constituting a Lien with the State Court alleging that the full amount of the Inspirada lien was due and owing – despite the fact that the Inspirada lien was based upon fraudulent invoices. Direct's brazen misconduct cannot be permitted to continue.

Century respectfully requests that the Arbitrator reconsider its ruling on the discovery sanctions. To the extent the Arbitrator would like to hear evidence on the issues pertaining to the discovery sanctions – including testimony from Holo and Ms. Middleton, Century proposes that

⁶ The Declaration of Ben Mifflin is attached hereto as **Exhibit "F"** and the Declaration of Tim Wyatt is attached hereto as **Exhibit "G."**

a hearing be scheduled immediately so that the Arbitrator can make a final ruling on these issues rather than postponing the issues to the ultimate hearing. A postponement will only serve to prejudice Century with additional costs and force Century to present its case **without the evidence Direct was ordered to produce.**

Finally, with reference to the monetary sanction contained in the Arbitrator's Order, the recent modification of the Order without providing Century an opportunity to respond to it is highly prejudicial to Century. At the hearing, the Arbitrator indicated it was inclined to order – at a minimum – that Direct pay Century's reasonable fees and costs from the date it discovery the alteration of the BLM documents through the date of the hearing. *See* April 5th Hrg Tr. at p. 100-101 attached hereto as **Exhibit "J."** The Arbitrator's Order reflected a similar ruling ordered as follows:

Sanctions against Direct must be severe for failure to comply with the Arbitrator's orders, and based upon the conduct of Ms. Middleton. Direct is ordered to pay as a sanction reasonable attorney's fees and costs expended by Century from the inception of the discovery dispute, March of 2018 (*See* March 6, 2018 Motion to Compel of Century) to the present.

Order at p. 3. However, after Century submitted its fees and costs, Direct argued that it could not tell what fees and costs related to the fabrication of the BLM evidence. Century rejected this argument as Century was never ordered to allocate fees and costs during the time period specifically to the discovery misconduct (although the vast majority of the fees and costs directly related to these issues). Yet, without modifying the Order or providing Century an opportunity to respond, the Arbitrator adopted Direct's argument by indicating that the Arbitrator could not tell if some of the entries relate to the "discovery dispute." While this may have been the intent to the Arbitrator, it was not the Order. Further, by altering the "bare minimum sanction" in this manner, the Arbitrator has not only failed to rectify the substantive prejudice suffered by Century as a result of Direct's discovery abuses, but the Order now fails to even reimburse Century for the expenses it incurred in unraveling and exposing Direct's pervasive and wide-ranging discovery misconduct. Accordingly, Century respectfully requests that the Arbitrator maintain the minimum sanction previously ordered in addition to reconsidering the additional sanctions previously requested by Century (and holding an evidentiary hearing on the issue of sanctions if needed).

5. *The Arbitrator's Order Failed to Address Several Acts of Discovery Misconduct*

The Arbitrator's Order references the alteration of the BLM documents, the fraudulent billing practice, the failure to preserve evidence and the upgrade to Windows 10. (Order at p. 2-3). However, a number of serious issues raised in Century's Motion were not addressed. For example, the Arbitrator's Order fails to address the following:

- Direct's Submission of the Admittedly False Declaration of Ms. Middleton;
- Direct's testimony that it did not preserve emails and text messages in this matter;

- Holo's finding that the computer provided by Direct and represented to be Ms. Middleton's computer was not the computer she as using when she altered the BLM documents in February 2018;
- Holo's conclusion that Direct did not provide access to the computer utilized to alter the BLM documents, in violation of the Arbitrator's orders;
- Holo's conclusion that Direct failed to provide access to one of its servers in violation of the Arbitrator's orders; and
- The evidence that- contrary to Mr. Westwood's testimony - Mr. Prokopchuk utilized the pd@directgrading.com e-mail and had an office at the Direct offices.

(See Century's Mot. at p. 4-18). Each of these issues alone warrant significant redress from the Arbitrator. Century respectfully requests that the Arbitrator consider and rule on these issues in the context of the discovery sanctions that should be imposed against Direct.

Conclusion

Direct's bad faith conduct and failure to comply with the Arbitrator's Orders precludes the Arbitrator from relying on any evidence submitted by Direct. The law does not require Century or the Arbitrator to make a determination of the validity of Direct's claims based upon the knowingly-false and factually incomplete record that Direct has perpetuated. Rather, "[i]t is well settled that dismissal is warranted where...a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings." *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995). As such, the Arbitrator should issue an award in favor of Century ordering the Liens be entirely expunged and that Direct's claims against the bonds be dismissed with prejudice. Direct's fraud upon this tribunal and refusal to comply with the Arbitrator's Orders precludes Direct from meeting that burden. As such, Century respectfully requests the following relief:

1. That the Arbitrator clarify and/or reconsider his interim ruling and order that the Liens be expunged and the Bonds released;
2. That the Arbitrator issue a final ruling on the discovery sanctions sought by Century;
3. To the extent the Arbitrator requires any additional evidence concerning the issue of discovery sanctions, the Arbitrator should hold a limited evidentiary hearing solely on the issue of discovery sanctions so that he can reach a final ruling on this issue; and
4. To the extent the Arbitrator is not willing to expunge the Liens and release the Bonds and issue a discovery sanction sufficient to rectify the discovery abuses perpetrated by Direct in this matter, the Arbitrator should issue his interim award

on these issues so that Century can seek relief with the District Court and potentially an appellate court.

Respectfully submitted,

SANTORO WHITMIRE

/s/ Oliver J. Pancheri

NICHOLAS J. SANTORO, ESQ.

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*Attorneys for Century Communities of
Nevada, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 7th day of June, 2019, a true and correct copy of **Century's Motion for Clarification and Reconsideration of Arbitrator's May 15, 2019 Order Regarding Century's Motion for Discovery Sanctions against Direct Regarding (1) Falsification of Evidence; (2) Spoliation of Evidence; and (3) Failure to Comply with the Arbitrator's Orders and Motion to Expunge Liens Recorded against Century's Properties Pursuant to NRS 108.2275 and 108.2421** was electronically transmitted and addressed to the following:

(Via Email and Hand-Delivery)

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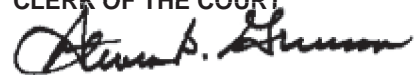


EXHIBIT 12

DIRECT000879

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SANTORO WHITMIRE

June 24, 2019

Via Email Transmission and Hand Delivery

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Las Vegas, Nevada 89101

Re: Direct Grading & Paving, LLC ("***Direct***") v. Century Communities of Nevada, LLC ("***Century***") –

Century's Motion for Additional Sanctions in light of Direct's Failure to Comply with the Amended Order

Dear Mr. Williams:

Introduction

The Arbitrator's Amended Order dated May 31, 2019 required Direct to pay Century a monetary discovery sanction of \$130,000 within 30 days. The 30 day deadline expired on July 1, 2019. Direct ignored the Amended Order and failed to pay the sanction. The Amended Order states that "[t]o the extent that said sanction is not timely paid, the Arbitrator will consider other appropriate sanctions." (Am. Order at p. 3). Accordingly, Century respectfully requests that the Arbitrator impose additional sanctions on Direct as a result of its failure to comply with the Amended Order.

This is not Direct's first time disobeying the Arbitrator's Orders. The failure to pay the discovery sanction comes on the heels of Direct proven alteration of evidence to conceal its fraudulent billing, Direct's spoliation of evidence, and Direct's repeated failure to comply with the Arbitrator's Orders. Enough is enough. Direct should not be permitted to continue to prosecute its claims given its repeated failure to comply with the Arbitrator's Orders.

Direct's Claims should be Stricken

Courts impose terminating sanctions where a party has failed to pay prior sanction orders and has violated orders. *Karim-Panahi v. L.A. Police Dep't*, No. 92-55131, 1994 U.S. App. LEXIS 351, at *7-8 (9th Cir. Jan. 6, 1994) (upholding a dismissal based upon a failure to pay a sanction); see *Stein v. Hassen* 34 Cal. App. 3d 294, 302-303 (1973); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 253-54, 235 P.3d 592, 599 (2010) (upholding the entry of default as a sanction where litigants engaged in discovery abuses). The Arbitrator is likewise empowered to enforce his orders in this matter. The Arbitrator has enforcement powers under the AAA's

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Construction Industry Arbitration Rules. *See, e.g.*, R-25(d) (“[I]n the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance[.]”). Further, “[t]he arbitrator may, upon a party’s request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator.” R-60(a). R-25(e) authorizes the Arbitration to issue any “enforcement orders which the arbitrator is empowered to issue under applicable law.” R-25(e). Moreover, R-25 generally states that “the arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-23 and R-24 (discovery) and to otherwise achieve a fair, efficient and economical resolution of the case.”¹

Direct’s discovery abuses in this matter have been continuous and have infected this entire proceedings. Direct has altered evidence, withheld documents, spoliated evidence, and refused to comply with the Arbitrator’s orders. The record is clear in this regard. There can be no question that severe sanctions and remedies are mandated for Direct’s failure to comply with the sanctions contained in the Amended Order.² The striking of Direct’s claims is warranted given its repeated and willful failure to comply with the Arbitrator’s Orders. *See Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike order where the defaulting party’s “constant failure to follow [the court’s] orders was unexplained and unwarranted”); *Valley Engineers Inc. v. Elec. Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) (“Dismissal is appropriate where a ‘pattern of deception and discovery abuse made it impossible’ for the district court to conduct a trial ‘with any reasonable assurance that the truth would be available.’”). Direct’s latest failure should be its last.

¹ An arbitrator may impose a sanction as deemed appropriate under the circumstances. *See Seagate Tech. v. W. Digital Corp.*, 834 N.W.2d 555, 564 (Minn. Ct. App. 2013) affirmed in *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750 (Minn. 2014) (“Accordingly, we reject the argument that the specific authorization of sanctions in other arbitration rules compels the conclusion that the AAA rules for employment disputes do not authorize sanctions.”). Arbitrators and judges regularly impose sanctions when parties violate orders. Those sanctions may include dismissing a case, striking a pleading, and prohibiting a party from asserting a claim. *See* FRCP 16; FRCP 37(b); AAA, 2012 WL 363639 (January 24, 2012) (dismissing case because claimant failed to follow arbitrator’s orders).

² *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (“Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute”); *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913 (1987); *see also TeleVideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987); *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike order where the defaulting party’s “constant failure to follow [the court’s] orders was unexplained and unwarranted”). “‘Courts need not tolerate flagrant abuses of the discovery process’ and have ‘inherent power’ to exclude evidence as a sanction for such abuses.” *Merrick v. Paul Revere Life Ins. Co.*, 500 F.3d 1007, 1014 (9th Cir. 2007) (quoting *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27 (9th Cir. 1980)). “A court has the inherent power to sanction a party for destroying relevant evidence which it knows or should know it has a duty to preserve even absent a preservation order.” *Koninklike Philips Elecs. N.V. v. KXD Tech., Inc.*, No. 2:05-CV1532RLHGWf, 2007 WL 3101248, at *16–17 (D. Nev. Oct. 16, 2007) (citing *Leon v. IDX Systems Corp.*, 464 F.3d 951, 958–59 (9th Cir. 2006)).

Alternatively, the Arbitrator Should Impose Additional Sanctions

If the Arbitrator is unwilling to strike Direct's Claims, he should impose additional monetary sanctions in the amount originally sought by Century, **\$270,447.20** (fees in the amount of \$186,270.20 and costs in the amount of \$84,177.02), and issue an award making express findings against Direct and precluding Direct from offering evidence to defend the counterclaims made by Century. Specifically, Century respectfully requests that the Arbitrator make the following adverse rulings against Direct:

1. Direct is precluded from making any recovery from Century due to its breach of the MSA caused by the conflict of interest created by employing Mr. Prokopchuk;
2. The conflict of interest was material in that Century relied upon the undivided loyalty of its Land Development Manager, Mr. Prokopchuk, in allowing him to oversee Direct's work and approve Direct's payments;
3. Despite the fact that the Arbitrator ordered Direct to produce all of its communications with Mr. Prokopchuk, Direct has failed and refused to do so. Direct's failure to comply with the Arbitrator's Order and the consequences associated therewith evidences that Direct has spoliated evidence;
4. Direct failed to comply with the Arbitrator's Orders concerning the inspection of data by Mr. Holpuch;
5. Director perpetrated billing fraud upon Century during the time that Mr. Prokopchuk was overseeing Direct's work and approving Direct's payments;
6. Much of the information regarding Direct's billing fraud is particularly within the control of Direct and is uniquely known to it, while concealing the same information from Century. In submitting their invoices to Century for payment, Direct represented, expressly or impliedly, that the charges contained therein were true, accurate and honest. In actuality, this was not remotely the case;
7. In the discovery phase of this arbitration, Century requested from Direct the backup to support its charges for the BLM material and hauling to Inspirada. Direct produced documents Bates-labeled DPG000991-DPG000994, all of which purport to be documents from the BLM. Century subsequently obtained the pertinent documents directly from the BLM. A comparison of the BLM documents produced by Direct and the actual documents obtained from the BLM shows that the BLM documents have been altered to show substantially larger quantities (93,120 cubic yards) than Direct actually purchased from the BLM (33,395 cubic yards);
8. The alterations are consistent with the invoices that Direct previously presented to Century, leading to the conclusion that Direct fraudulently overcharged Century approximately \$550,000 for the BLM materials it represented were hauled to Inspirada;

9. These fraudulent bills were approved by Mr. Prokopchuk;
10. The submission of the altered and false BLM documents as part of the evidentiary record in this case constitutes fraud upon Century and upon this tribunal; and
11. Direct, by its fraudulent billing and breaches, is not entitled to any recovery whatsoever against Century.

Conclusion

Direct continues to flout the Arbitrator's Orders and make a mockery of these proceedings. If Direct is not going to comply with the Orders entered in this matter, it should not be permitted to continue arbitrating and forcing Century to continue expending attorney's fees and costs. Accordingly, the Arbitrator should, as noted in the Amended Order, impose additional sanctions on Direct. The law dictates that the relief requested by Century be granted in full as to deprive Direct of the benefits of its failure to obey the Arbitrator's Orders.

Respectfully submitted,

SANTORO WHITMIRE

/s/ Oliver J. Pancheri

NICHOLAS J. SANTORO, ESQ.

Nevada Bar No. 0532

OLIVER J. PANCHERI, ESQ.

Nevada Bar No. 7476

10100 W. Charleston Blvd., Suite 250

Las Vegas, Nevada 89135

*Attorneys for Century Communities of
Nevada, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 24th day of July, 2019, a true and correct copy of **CENTURY'S MOTION FOR ADDITIONAL SANCTIONS IN LIGHT OF DIRECT'S FAILURE TO COMPLY WITH THE AMENDED ORDER** was electronically transmitted and addressed to the following:

(Via Email and Hand-Delivery)

Donald E William, Esq.
Williams & Associates
612 S. Tenth Street
Las Vegas, Nevada 89101
Email: dwilliams@dhwlawlv.com
Arbitrator

(Via Email Only)

Matthew L. Johnson, Esq.
Russell G. Gubler, Esq.
Ashveen S. Dhillon, Esq.
JOHNSON & GUBLER, P.C.
8831 W. Sahara Avenue
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Email: mjohnson@mjohnsonlaw.com
rgubler@mjohnsonlaw.com
Attorneys for Plaintiff Direct Grading & Paving, LLC

/s/ Rachel Jenkins

An employee of SANTORO WHITMIRE

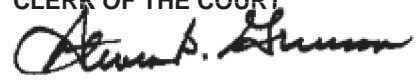


EXHIBIT 13

DIRECT000885

JOHNSON & GUBLER, P.C.

Attorneys

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Board Certified in Business Bankruptcy Law By The American Board of Certification
*admitted in Utah, Arizona, and Nevada

August 22, 2019

Donald Williams, Arbitrator
Williams and Associates
612 S. 10th Street
Las Vegas, NV 89101

**Re: *Direct Grading v. Century Communities*
 Opposition to Century's Motion for Additional Sanctions
 *Our File No. 1077-024***

Dear Mr. Williams:

INTRODUCTION

Century has a very dizzying intellect, and cannot seem to make up its mind what it wants. First, Century asks for sanctions, which the Arbitrator grants. Then, Century is unsatisfied with the Arbitrator's findings and decisions and moves for reconsideration. Now, Century wants to enforce the arbitrator's decision, stating, "Enough is enough."

The problem with Century is that "Enough" is "Never Enough", as this case has proven. Century will only stop when the Arbitrator forces Century to go to arbitration. Century's motion for clarification/reconsideration was submitted well before any payment was due by Direct under the ruling, and creates an interesting situation where we have a moving party that ultimately prevailed on a motion, but is still unsatisfied with the result. Now, because Century's actions are very confusing, and Direct has not paid, Century wants what it originally rejected. Direct submits that because Century was the initial moving party, that ultimately moved for reconsideration, the dissatisfied Century's motion for reconsideration had the effect of staying any ruling on the initial motion until a decision had been made, without any prejudice to Direct. Regardless, Direct Grading has tried to be compliant with all of the Arbitrator's orders and has acted in good faith. Even while Century was asking for reconsideration, Direct has been unable to pay the sanction imposed by the Arbitrator, despite many attempts to obtain the money by Direct from other parties. Direct has had repeated promises of payment, but has not received the funds to pay the sanctions. Nevertheless, Direct is ready and willing to pay, but is still seeking means to abide by the Arbitrator's order. For the reasons stated herein, Direct requests that the Motion be denied.

ARGUMENT

A. Direct's claims should not be stricken.

Century continually tries to paint this picture that Direct is constantly trying to disobey the Arbitrator's orders, but this simply is not true. Just because Century keeps saying it, does not make it true. Century cites a couple authorities, including the *Karim-Panahi* and *Bahena* cases, for the position that the failure to pay a sanction is grounds for upholding a dismissal or default. However, the Arbitrator never dismissed the action or entered a default, and Direct asks that the Arbitrator not enter such sanctions. The courts in the cases cited by Century upheld a lower court's ruling because the party had intentionally refused to do something ordered by that lower court. In both of those cases cited by Century, the moving party had not sought reconsideration of the sanctions order. Here, Century did. Direct has been trying to comply with the Arbitrator's orders:

(1) Direct has attempted to comply with the Arbitrator's Order to pay Century for the sanctions, and is ready and willing to perform. However, despite continuing attempts to pay Century, Direct is unable to perform. Nevertheless, Direct should not be sanctioned any further. Direct is not ignoring the Arbitrator's order to pay Century and just needs more time. First, Century sought reconsideration before the payment was even due. Further, despite this, Direct has attempted to collect the monies necessary to abide by the Arbitrator's order to pay Century. Unfortunately, Direct has debtors, like Century, that owe Direct money but failed to pay and try to get out of paying. The Arbitrator has said that the sanctions must be severe, which they are. Since the arbitrator's order to pay Century, Direct has been trying to collect monies owed to it on other jobs. On multiple occasions, debtors to Direct have promised Direct that they would pay, but have not done so. As a result, Direct ran up against the deadline to pay Century, and could not perform itself. Since that time, Direct has done everything possible to perform. Direct's principal, Mel Westwood, has attempted to sell equipment to contribute into Direct, to allow Direct to make the sanction payment. However, this takes time. Direct had believed multiple times that it would be paid by others to be able to pay the sanction. Thus, Direct is ready and willing to pay, but needs extra time to pay.

Direct is very confused as to what Century wants. As the Arbitrator is aware, Century was very unsatisfied with the Arbitrator's ruling on May 31, 2019. On or about June 7, 2019, Century submitted a motion for clarification, asking the Arbitrator to reconsider his findings and ultimate decision. This motion for clarification/reconsideration was submitted well before any payment was due by Direct under the ruling, and creates a difficult situation where Century, as a moving party, ultimately prevails on a motion, but is still unsatisfied with the result. Why? Because it is "never enough". Now, it appears that Century would like to enforce the ruling after all. Nevertheless, Direct submits that because Century was the initial moving party, that ultimately moved for reconsideration, Century's motion for reconsideration had the effect of staying any ruling on the initial motion until a decision had been made, without any prejudice to Direct. Further, Direct had been promised by others that it would receive payments, sufficient to pay the sanction. However, this never occurred. Thus, Direct is ready and willing to pay, but is unable to do so at this time. As a result, Direct requests that the Arbitrator allow Direct to pay the sanction at a later date and to move forward toward arbitration.

(2)¹ Direct did not authorize or even know that Ms. Middleton altered the BLM documents until after it was discovered by Century. Ms. Middleton stated: “[Mel Westwood] didn't direct me to change anything. He just tried to tell me to gather all the information up and make sure I got it to the lawyer's office.” Linda Middleton Deposition, P. 39. The reason that Ms. Middleton changed the BLM document was because she thought she “was missing a BLM document”. Linda Middleton Deposition, P. 39. Direct has not denied this and admitted that the employee's actions were wrong. Ultimately, the contract between the BLM and Direct Grading has no legal bearing on Century Communities. The approved grading plans show the quantity and material needed to bring the site to grade, which Century received. *See* Report of Mike Payne, Appendix B, p. 2. After a review of loader logs and truck tickets, plus site inspection, Mike Payne found that Direct Grading hauled in at least 94,820 cubic yards, which is in addition to the 40,000 cubic yards that Direct hauled from the KB home site provided by Century Communities, totaling 134,820 cubic yards of material. *Id.*

(3) Direct did not withhold documents. After the initial motion to compel, in which the Arbitrator substantially reduced the time by which Direct had to produce documentation, Direct was told to produce all emails from Scott Prokopchuk. Direct searched for emails related to Scott Prokopchuk and produced anything that came up. In addition, Direct attempted to produce the information on an old phone on multiple occasions, but was unable to do so until about March of 2018. *See* Bates Nos. DGP 1273-1361. Direct produced these communications. Nevertheless, before Direct was able to download these communications, counsel for Direct offered to produce the phone to Century that admittedly contained correspondence from Scott Prokopchuk, under certain conditions. Those conditions were that the parties would submit the phone to an IT professional and agree upon the terms that could be used to search the phone. Direct wanted to have someone from both parties present with the IT professional while making those searches. Direct attempted to allow Century to hire someone to attempt to get the communications off of the phone. However, Century did not want the phone and still brought a second motion to compel.

During the second motion to compel, Century mentioned an email address pd@directgrading.com. Mel Westwood had to inquire about this email address for Direct to be able to respond to the second motion to compel. In its response to the second motion to compel, Direct stated that this account was initially set up to allow foremen on a jobsite to communicate regarding payroll each week. In fact, Joe Morgan confirmed this in his deposition. “PD” was to represent “Pay Day”. However, the system did not work, and Direct stopped using the account. Thereafter, there was some talk about Mr. Prokopchuk using the account, if necessary. However, Direct had made a search and could not find where this account was used and did not remember this account being used by Mr. Prokopchuk. Further, Scott Prokopchuk confirmed that he did not remember using this email. After the second motion to compel, the Arbitrator ordered a search for pd@directgrading.com anyway. Discovery was stayed, and Direct produced the computers and phones that it was ordered to produce. Nothing else was produced because the searches were being performed. Direct was not required to produce anything else, and Direct cannot find an actual order that requires Direct to produce pd@directgrading.com. Thus, Direct did not intentionally fail to produce any emails in violation of the Arbitrator's orders. Now that a full

¹Direct does not wish to repeat things that it has already argued. However, Direct feels that it is necessary because Century continues to say the same things, most of which the Arbitrator has already decided

search has been made of the systems produced, which include more systems that were ordered by the Arbitrator, Century questions Direct's motives over 16 emails (out of tens of thousands of documents) that related to pd@directgrading.com, some of which are scheduling meetings (none of which are from Mel Westwood) and do not have *anything* to do with Scott Prokopchuk, and others which are unclear and don't even mention Prokopchuk. To be clear, out of the 16 emails found, only two actually have the word "Scott" in them, and none of them have anything to do with Century.

(4) Direct did not spoliage any evidence. The Arbitrator has not found this at this time. In January 2017, Direct collected documents related to the various Century projects, such as project files and Quickbook files. In fact, testimony was given that the only files kept related to the Century projects were hard files (in the thousands of pages), which Direct has produced. Further, Mel Westwood gave testimony that Direct's old server crashed in the middle of 2016. This was well before there were any problems with Century. Further, Joe Morgan testified that he attempted to retrieve any data from the old server. However, he was unable to retrieve anything from the old server. As a result, the server was trashed – again before any problems with Century arose. Further, when Direct converted to the new server (again before any problems arose with Century), changes to the settings were changed to keep any emails from being deleted.

Windows 10 was accidentally downloaded on Ms. Middleton's computer. Joe Morgan testified that when he set up these computers, Direct did not like the Windows 10 program. As a result, Direct had Joe Morgan program all of the computers to Windows 7. Thereafter, Joe Morgan stated that the computers would receive a pop-up screen, asking the users if they wanted to upgrade to Windows 10. Joe Morgan said that any upgrade to Windows 10 could have easily been done by mistake.

B. Additional sanctions should not issue.

Century wants the Arbitrator to issue greater sanctions, and to preclude Direct from defending Century's claims. This request is so absurd. Most of the issues raised by Century are only related to one project, the Inspirada project. Century fails to acknowledge that this whole case started when Century failed to pay its bill and breached the contract it had entered into with Direct.

Further, Century wants the Arbitrator to believe Direct untrustworthy. However, Century has already proven itself to be untrustworthy by asking for sanctions that were completely unrelated to the BLM documents. When Century initially provided their billing statements after sanctions were granted, Century redacted almost everything that would give any indication of what Century's counsel actually did.² The documents were so heavily redacted, Direct Grading's counsel could not determine the reasons for the billings. When Direct objected, Century still absolutely refused to provide any more information. Instead, Century agreed to submit documents to the Arbitrator, un-redacted. Ironically, after the redactions were removed and submitted to the Arbitrator, the Arbitrator commented that he still could not determine whether or not the billings were related to the BLM issues. As a result, the Arbitrator determined to use a different method to

²Further, Direct would still submit that at least half of the billings from HOLO alone included work that was more than BLM related and also includes work for Century's case in chief.

sanction Direct Grading for Ms. Middleton's alteration of the BLM documents. Now, Century asks for these sanctions that appeared to be inappropriate before, whether or not they were related to the BLM documents.

Further, Century requests that Direct be precluded from defending itself against Century and immediately granting judgment related to Scott Prokopchuk. This is a last ditch effort by Century, since Direct has submitted a Declaration by Scott Prokopchuk, informing the Arbitrator that Century's allegations are false. Century is playing fast and loose and not providing all of the information related to Scott Prokopchuk. As provided to the Arbitrator previously, Century cannot show that it was damaged related to Scott Prokopchuk. Scott Prokopchuk did not even work for Direct. Further, if change orders for a project were necessary, everything was discussed with upper management before it was even processed; Century Communities had many checks and balances in place for approval of any phase of its projects, including change orders; and ultimately, Don Boettcher or Rick Barron would need to approve any payment to a Subcontractor and the payment would be submitted to accounting for check processing.

Similarly, Century has tried to argue that Direct has not provided everything, including information regarding the dirt hauled in from the BLM. Yet, Direct provided truck tickets and loader log sheets to Century for every billing, almost each week. These loads were approved at every step of the process by Don or Rick with Century. Direct believes that these documents have not been fully provided by Century. Moreover, Direct believes that with the help of its expert, Mike Payne, whose report has already been provided to the parties and Arbitrator, Direct will be able to show that Century received all of the dirt at the Inspirada project that it required under the parties agreement.

CONCLUSION

For the reasons stated above, Direct requests that Century's motion for additional sanctions be denied. Direct has tried to comply with each and every order and is still trying. Further, discovery while the matter has been stayed was very limited, and Direct was not given the opportunity to conduct discovery. Accordingly, Direct requests that the relief sought by Century be denied in full and that this matter proceed through discovery.

Very truly yours,

JOHNSON & GUBLER, P.C.

/s/ Russell G. Gubler

Russell G. Gubler
For the Firm

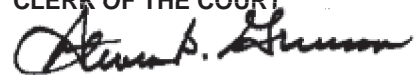


EXHIBIT 14

DIRECT000891

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(702) 320-7760 (Facsimile)
Arbitrator

DISTRICT COURT

CLARK COUNTY, NEVADA

DIRECT GRADING & PAVING, LLC,)
a Nevada limited liability company;)

Plaintiff,)

vs.)

CENTURY COMMUNITIES OF)
NEVADA, LLC, a Delaware limited)
liability company; DOES I through X;)
and ROE CORPORATIONS I through)
X, inclusive,)

Defendants.)

CENTURY COMMUNITIES OF)
NEVADA, LLC;)

Defendant/ Counterclaimant,)

vs.)

DIRECT GRADING & PAVING,)
LLC,)

Plaintiff/ Counterdefendant,)

ORDER REGARDING CENTURY'S MOTION FOR CLARIFICATION AND
RECONSIDERATION OF ARBITRATOR'S MAY 15, 2019 ORDER REGARDING

1 **CENTURY'S MOTION FOR DISCOVERY SANCTIONS AGAINST DIRECT**
2 **REGARDING (1) FALSIFICATION OF EVIDENCE; (2) SPOILIATION OF**
3 **EVIDENCE; AND (3) FAILURE TO COMPLY WITH THE ARBITRATOR'S**
4 **ORDERS AND MOTION TO EXPUNGE LIENS RECORDED AGAINST**
5 **CENTURY'S PROPERTIES PURSUANT TO NRS 108.2275 AND 108.2421;**
6 **ARBITRATOR'S PROPOSED REVISED DISCOVERY ORDER AND ORDER FOR**
7 **ARBITRATION HEARING**

8 **TO: RUSSEL G. GUBLER, ESQ. and MATT JOHNSON, ESQ., JOHNSON**
9 **& GUBLER, P.C., attorneys for Plaintiff/Counterdefendant Direct Grading &**
10 **Paving, LLC.**

11 **TO: NICHOLAS J. SANTORO, ESQ. and OLIVER J. PANCHERI, ESQ.,**
12 **SANTORO WHITMIRE, attorneys for Defendant/ Counterclaimant Century**
13 **Communities of Nevada.**

14 The Arbitrator having considered Century's Motion for Clarification with regard to
15 the Arbitrator's Decision dated May 15, 2019, the Opposition filed by Direct, and the Reply
16 filed by Century, rules as follows:

- 17 1) The Arbitrator's previous ruling was clear and unambiguous regarding the
18 sanction against Direct, based upon the conduct of Ms. Middleton; the Arbitrator
19 appropriately sanctioned Direct the sum of \$130,000.00 and ordered said
20 sanctions to be paid within 30 days of that Order, and if not paid the arbitrator
21 would consider other appropriate sanctions.
- 22 2) Expunging the entire lien, based upon what has been presented to date would be
23 inappropriate at this juncture. But, to the extent that the abovementioned sanction
24 is not paid within 30 days of the date of this Order, Direct's mechanic's lien will
25 be reduced in the amount of \$130,000.00, which, of course will reduce the bond
26 claim in the same amount. To the extent that such lien is reduced, the Arbitrator at
27 that time will reconsider its previous ruling regarding the request of Century for
28 attorneys fees and costs.

1 3) The parties have done an appropriate job in adequately briefing the issues, to date;
2 the demand for an evidentiary hearing on the renewed Motion is therefore
3 respectfully denied.

4 4) The parties are to prepare a Joint Recommendation for consideration by the
5 Arbitrator with regard to proposed additional discovery. The Arbitrator Orders
6 that the parties finish all additional discovery by May 15, 2020. The Arbitrator
7 further Orders that the parties be prepared to Arbitrate this case by July 1, 2020.

8 IT SO ORDERED this 27 day of September, 2019.

9 WILLIAMS ❖ STARBUCK

10
11 DONALD H. WILLIAMS, ESQ.
12 Nevada Bar No. 5548
13 612 South Tenth Street
14 Las Vegas, Nevada 89101
15 *Arbitrator*
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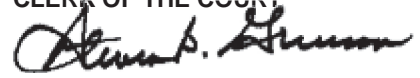


EXHIBIT 3

DIRECT000895

Linda Middleton - 11/14/2018
Direct Grading & Paving, LLC vs. Century Communities of Nevada, LLC, et al.

1 A P P E A R A N C E S:

2 For Plaintiff Direct Grading & Paving, LLC

3 RUSSELL GUBLER, ESQ.
4 Johnson Gubler, P.C.
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6 Las Vegas, Nevada 89117
7 Email: rgubler@mjohnsonlaw.com

8 For Century Communities of Nevada, LLC

9 OLIVER J. PANCHERI, ESQ.
10 Santoro Whitmire
11 10100 West Charleston Boulevard, Suite 250
12 Las Vegas, Nevada 89135
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14

15

16

17 ALSO PRESENT: CHRISTOPHER BAUGH - VIDEOGRAPHER

18

19 MEL WESTWOOD

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22

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. Today is
3 November 14th, 2018. The time is approximately
4 10:04 a.m. This begins the video deposition of Linda
5 Middleton. We are located at Santoro Whitmire, 10100
6 West Charleston Boulevard, Suite 250, Las Vegas, Nevada
7 89135.

8 My name is Christopher Baugh, court videographer
9 with Las Vegas Legal Video. This is the private
10 arbitration before Donald Williams, Esquire, in the
11 matter of Direct Grading & Paving, LLC, versus Century
12 Communities of Nevada, LLC, et al. and all related
13 matters. This video deposition has been requested by
14 attorneys for the respondent/counterclaimant.

15 Will counsel and all present please state your
16 appearances for the record.

17 MR. PANCHERI: Oliver Pancheri for Century
18 Communities.

19 MR. GUBLER: Russ Gubler for Direct Grading &
20 Paving.

21 MR. WESTWOOD: Mel Westwood, Direct Grading &
22 Paving.

23 THE VIDEOGRAPHER: The deponent may now be sworn
24 in by Lori Landers with Depo International.

25 (Witness sworn.)

1 counsel for Direct in this case?

2 **A. I have no knowledge of what was provided. I'm**
3 **not sure, no.**

4 Q. Do you know when -- there was an IT provider,
5 Holo, that came out and did some imaging of some
6 computers at Direct. Do you know if they also imaged
7 your telephone?

8 **A. They did, I believe, yes.**

9 Q. Okay. Now, is it your testimony that during the
10 last couple of years the only computer you've utilized in
11 connection with your work at Direct is your own personal
12 computer?

13 MR. GUBLER: Objection. Misstates testimony.

14 **A. Well, it's the work computer.**

15 Q. Yeah. So let me ask it this way: So is it your
16 testimony that the only computer you've utilized during
17 the last couple years at Direct has been that particular
18 desktop that you mentioned earlier?

19 **A. Yes.**

20 Q. Okay. Do you know, does Direct have a server
21 on-site?

22 **A. They did when I first showed -- when I first**
23 **came, yes.**

24 Q. And it was a physical server that was actually
25 on-site?

1 my -- all the information, and I thought, perhaps, at
2 first that I was missing a BLM document because they
3 didn't tie, but I went ahead and sent them out and
4 changed the document to make them tie because I know that
5 the truck tickets were the accurate documents.

6 Q. Okay. Did you understand that that's what
7 Mr. Westwood was directing you to do?

8 A. He didn't direct me to change anything. He just
9 tried to tell me to gather all the information up and
10 make sure I got it to the lawyer's office.

11 Q. Okay. But he also told you to make sure that
12 the numbers would match?

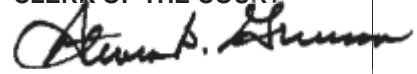
13 A. To make sure they -- just make sure they tied
14 out.

15 Q. And is this accurate, though, that he told
16 you -- this is looking at paragraph 3 of the declaration,
17 that he asked you to make sure that the numbers matched
18 before sending them to Direct's counsel?

19 A. I just tried to make them balanced. That's what
20 I did.

21 Q. So my question, though, is is this accurate,
22 that Mr. Westwood told you to make sure the numbers
23 matched before sending them to Direct's counsel?

24 A. Well, he did tell me to make sure they balanced.
25 That's what he told me.



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DISTRICT COURT**CLARK COUNTY, NEVADA**

DIRECT GRADING & PAVING, LLC, a
Nevada limited liability company;

Plaintiff,

v.

CENTURY COMMUNITIES OF NEVADA,
LLC, a Delaware limited liability company,
ARGONAUT INSURANCE COMPANY,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive

Defendant.

AND ALL RELATED MATTERS.

Case No.: A-18-773139-C
Dept. No.: XXXII

**REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR PROVISIONAL RELIEF
UNDER NRS 38.222 IN ORDER TO
EXPUNGE LIENS AND RELEASE
BONDS IN ACCORDANCE WITH NRS
108.2275 AND NRS 108.2421 AND TO
DISMISS DIRECT'S CLAIMS OR, IN
THE ALTERNATIVE, MOTION FOR
THE APPOINTMENT OF A NEW
ARBITRATOR UNDER NRS 38.226**

**Hearing Date: January 9, 2020
Hearing Time: 10:30 a.m.**

Defendants CENTURY COMMUNITIES OF NEVADA, LLC (“*Century*”) and
ARGONAUT INSURANCE COMPANY (“*Argonaut*”) (collectively, as the “*Defendants*”), by
and through their undersigned counsel, submit the following Reply in Support of Defendants’
Motion for Provisional Relief under NRS 38.222 in order to Expunge Liens and Release Bonds
in Accordance with NRS 108.2275 and NRS 108.2421 and to dismiss the claims or, in the
Alternative, Motion for the Appointment of a New Arbitrator under NRS 38.226 (the “*Motion*”).

DIRECT000900

Case Number: A-18-773139-C

This Reply is made and based upon the pleadings and papers on file herein, the below Memorandum of Points and Authorities, the exhibits included with the Motion, as well as any argument of counsel the Court may allow at any hearing on the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Direct Grading & Paving, LLC's ("***Direct***") Opposition is limited to unsupported denials and the brazen declaration "*so what?*" *So what* that Direct altered evidence in this matter in order to conceal its fraudulent billing? *So what* that Direct presented the Arbitrator with a false Declaration from its controller? *So what* that Direct failed to comply with the Arbitrator's Orders to produce documents and cooperate with the ordered forensic computer examination? *So what* that Direct failed to pay the sanction imposed by the Arbitrator. *So what* if Direct sought to foreclose on the fraudulent and improper liens with this Court – knowing they were fraudulent. Direct acts as if adherence to the discovery rules is discretionary and that its discovery abuses – no matter how severe – simply do not matter. Unfortunately, the Arbitrator's failure to act and to enforce his own orders has only emboldened Direct to believe there will be no meaningful consequences for falsifying evidence, spoliating evidence, and ignoring the Arbitrator's orders. The Arbitrator's failure to meaningfully address Direct's misconduct and to enforce his own orders has left Century severely prejudiced. Century cannot have a fair hearing and adequately defend itself against Direct's claim given Direct's misconduct, alteration of evidence, and discovery abuses. There have to be meaningful consequences for altering evidence to hide fraudulent billing and refusing to comply with the Arbitrator's orders.

Century comes before this Court at this juncture because the Arbitrator has been unable or unwilling to act in order to rectify Direct's extensive and pervasive misconduct. The unfortunate and unfair consequence of the Arbitrator's failure to act is that Century will be deprived of its right to a fair hearing based upon all of the evidence. Direct's discovery abuses are not inconsequential. Rather, the discovery abuses were Direct's calculated efforts to avoid Century (and the Arbitrator) from discovering that Direct engaged in fraudulent billing and had secretly employed Scott Prokopchuk, Century's Land Development Manager, in violation of the

parties' agreement. These two issues are entirely dispositive of Direct's claims. Direct's bad faith conduct in this matter has contaminated this *entire* proceeding. Century cannot have a fair hearing and fully defend itself unless and until Direct's misconduct and discovery abuses are adequately addressed.

II. DIRECT'S FRAUDULENT CONDUCT IS NOT LIMITED TO THE ARBITRATION PROCEEDINGS

Direct's repeated and pervasive discovery abuses have infected every aspect of the claims at issue in both the arbitration and the case pending before this Court. The abuses are directly connected to Direct's efforts to conceal its fraudulent conduct and breaches of obligations owed to Century. Direct entirely ignores the fact that it altered the documents in order to conceal its fraudulent overbilling for the BLM dirt. Direct overcharged Century to the tune of approximately \$550,000 just with respect to the BLM dirt for the Inspirada project.¹ This overbilling far exceeds the amount Direct claims is owed for the Inspirada project. Thus, Direct's lien, which it seeks to foreclose in this action, is directly the product of fraudulent billing that Direct hoped to conceal by altering evidence. Direct's misconduct clearly infects both proceedings.

Given the fraud upon the tribunals, including in this action, the Court has the inherent power to dismiss Direct's claims. *See, e.g., Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983) (stating that when a party has perpetrated a fraud upon the court, the court possesses inherent authority to dismiss the party's action). Direct fails to address this Court's inherent authority to address fraud upon the Court. It would be manifestly unjust to allow Direct to proceed to a hearing on the merits given the discovery abuses and fraudulent evidence uncovered to date. An award procured by fraud—which would necessarily be the case if there is any award in favor of Direct—would ultimately be vacated under NRS 38.241(1)(a).

In fact, even after Century brought the altered evidence to the attention of Direct and the Arbitrator, Direct continued with its fraud upon this Court. Century outlined the altered evidence in a Motion to Compel submitted to the Arbitrator on March 6, 2018. Yet, Direct, on April 19,

¹ See Rosten Report, Ex. I to the Mot. at p. 5.

1 **2018—knowing** that the lien was based on fraudulent evidence, filed its Statement of Facts
2 Constituting a Lien ***with this Court*** alleging that the full amount of the lien was due and owing—
3 despite the fact that one of the liens was based upon fraudulent invoices, which Direct attempted
4 to conceal by altering the BLM documents.² It is entirely appropriate and necessary for this
5 Court to address the fraud and misconduct perpetrated by Direct as Direct has brought that same
6 conduct to this Court by seeking to foreclose on the fraudulent and improper liens in this Court.

7 **III. DIRECT’S ARGUMENT THAT CENTURY “GOT THE DIRT” FAILS**

8 Direct argues that the Court should overlook its fraudulent billing and alteration of
9 evidence in this matter because Century “received [its] dirt.” (Opp’n. at p. 5). In other words, it
10 does not matter that Direct overbilled Century because Century was ultimately able to build the
11 homes at the Inspirada project. Direct’s argument misses the point – namely that **Direct**
12 **fraudulently overbilled Century for the dirt.**

13 The dirt procured from the BLM was expensive and was essentially an option of last
14 resort for Century. Direct charged Century \$1.57 per cubic yard for the BLM dirt, which was
15 supposed to be a pass-through charge reflecting the amount the BLM charged Direct for that
16 same dirt.³ Direct further charged Century \$1.25 to load each cubic yard of the BLM dirt and
17 hundreds of thousands of dollars to transport the BLM dirt to the Inspirada project site. Given
18 this premium, Direct took advantage of Century by charging as if 93,200 cubic yards of soil had
19 been purchased from the BLM and transported from the BLM site. However, Direct was only
20 contracted to remove up to 50,000 cubic yards from the BLM site. (See Ex. K to the Mot). More
21 importantly, Direct reported to the BLM that only 33,395 cubic yards were removed from the
22 BLM site.⁴ Thus, Direct overcharged Century to the tune of approximately \$550,000 just with
23
24

25 ² See Compl., dated Apr. 19, 2018, on file herein.

26 ³ See Direct invoices to Century for BLM dirt costs, loading and transportation, which are attached to the
27 Mot. as Ex. U and Direct’s Contract for the Sale of Mineral Materials with the BLM, which was included
as Ex. K to the Mot.

28 ⁴ See Ex. K to the Mot. at p. BLM000006 and Direct’s monthly reports to the BLM, true and correct
copies of which are attached hereto as **Exhibit “X.”**

1 respect to the BLM dirt.⁵ Direct then altered the BLM documents it produced to conceal the
2 overbilling.

3 Direct charged Century as if dirt was being purchased from the BLM and hauled across
4 the valley when it was, in actuality, coming from sites where Direct obtained the dirt at no cost.
5 In fact, one of those sites was another Century project. Direct obtained dirt from the Rhodes
6 Ranch project and the Southpoint Hotel & Casino, from which Direct imported dirt to the
7 Inspirada job site.⁶ The Rhodes Ranch site was another Century project. **Direct was apparently**
8 **hauling dirt from one Century job site to another Century job site and charging Century as**
9 **if the dirt had been purchased from the BLM.** Even more troubling is the fact that Direct also
10 charged Century for removing the dirt from the Rhodes Ranch site. The invoices demonstrate
11 that Direct charged Century approximately \$47,800 to haul dirt from Rhodes Ranch to
12 Inspirada.⁷ This is in addition to the \$550,000 BLM overcharge. Thus, Direct was overcharging
13 Century on multiple fronts – (1) Direct was invoicing Century as if dirt was being procured from
14 the BLM site, when it was in fact from other locations including another Century job site –
15 Rhodes Ranch; and (2) Direct was charging Century for removing the excess dirt from Rhodes
16 Ranch.⁸ It is no wonder that Direct wanted to conceal its overbilling scheme, which was
17 perpetrated under the nose of Century’s conflicted Land Development Manager, Mr.
18 Prokopchuk. While Century did eventually obtain the dirt necessary to build the homes at the
19
20
21

22 ⁵ See Rosten Report, Ex. I to Mot. at p. 5.

23 ⁶ See a true and correct copy of excerpts from the deposition transcript of Mel Westwood, dated
November 19, 2018 (the “*Westwood Dep. Tr.*”) at p. 155-156, attached hereto as **Exhibit “Y.”**

24 ⁷ See invoices and payment information for Rhodes Ranch import of materials to Inspirada attached as
25 Ex. U to the Mot. These charges were made in a lump sum fashion. Century, while aware that Direct
26 was removing dirt from Rhodes Ranch for the Inspirada project, does not know how much dirt was
actually taken from Rhodes Ranch to the Inspirada project.

27 ⁸ Mr. Westwood further testified that he was able to procure dirt from the Southpoint Hotel & Casino
because there was a project at this location that had excess dirt. See Ex. Y, Westwood Dep. Tr. at p. 156.
28 Century also procured a significant amount of dirt from the job site of another home builder, KB Homes,
which was adjacent to Century’s Inspirada project.

Inspirada project, the notion that Century was not damaged by Direct's overbilling scheme is manifestly false. Century overpaid Direct approximately \$550,000 for that dirt, alone⁹

IV. DIRECT IS BOUND BY THE MIDDLETON AGENCY

Despite the obvious fact that the evidence was altered to hide Direct's fraudulent billing, Direct attempted to blame the alteration of evidence on Direct's controller, Linda Middleton. However, Direct's efforts to blame Ms. Middleton were unavailing as the Arbitrator expressly (and correctly) found that Direct was responsible for the actions of Ms. Middleton under the doctrine of respondeat superior. (Ex. B. at p. 2). Moreover, Ms. Middleton testified that Mr. Westwood asked Ms. Middleton to make sure the documents relating to the BLM documents "balanced" before producing them.¹⁰ (See Ex. Z). Ms. Middleton did just that and altered the BLM documents in order to make the documents "balance" and to conceal Direct's fraudulent billing.

Further, Ms. Middleton testified that she showed Mr. Westwood the alterations shortly after they were made. (See Ex. Z, Middleton Dep. Tr. at p. 78-79). His failure to correct the alteration serves as a ratification of the alteration. While Mr. Westwood disputes Ms. Middleton's testimony in this regard, he does not deny that **Ms. Middleton is still employed with Direct**. If Ms. Middleton was truly acting on her own to alter the evidence in this matter, Direct certainly would not retain her as controller. The fact that she still works for Direct evidences further ratification of Ms. Middleton's conduct. See *C.R. v. Tenet Healthcare Corp.*, 169 Cal. App. 4th 1094, 1111, 87 Cal. Rptr. 3d 424, 437 (2009), as modified on denial of reh'g (Feb. 3, 2009) ("[R]atification may occur when an employer learns of misconduct and fails to

⁹ Direct alleges that it was paid a total of \$2,118,575 in connection with the Inspirada project and that the balance allegedly owed is \$290,018.55. (Am. Statement of Lien at p. 2). The vast majority of the charges and the amounts paid in connection with the Inspirada Project consisted of change orders. See *id.* As set forth in Century's Motion, the Master Subcontract Agreement (the "*MSA*") required that the parties execute a change order **prior** to the work being performed and that the change order should include an itemized itemization for all actual costs of materials and labor. However, this rarely occurred under Mr. Prokopchuk's supervision. It appears that Mr. Prokopchuk procured no signed change orders in connection with the Inspirada project. Instead, Mr. Prokopchuk and Mr. Westwood created draw schedules without any prior documentation that included pricing on a time and materials basis. See Ex. U to Mot.

¹⁰ See excerpts from the true and correct copy of the deposition transcript of Linda Middleton, dated Nov. 14, 2018 (the "*Middleton Dep. Tr.*"), at p. 37-39, attached hereto as **Exhibit "Z."**

1 discharge an agent or employee.”); *Allied Mut. Ins. Co. v. Webb*, 91 Cal. App. 4th 1190, 1194–
2 95, 111 Cal. Rptr. 2d 426, 429 (2001) (“[A]n employer’s failure to discharge an employee after
3 learning of the employee’s misconduct may be evidence of ratification.”); *Smith v. Printup*, 254
4 Kan. 315, 340, 866 P.2d 985, 1002–03 (1993) (noting that other jurisdictions “have held that
5 knowledge of an employee’s wrongful conduct, coupled with failure to discipline the employee,
6 amounts to implied ratification or authorization”). Finally, it is extremely important to
7 remember the context for Ms. Middleton’s alteration of the evidence. Ms. Middleton altered the
8 evidence in order to cover up Direct’s fraudulent overbilling. Ms. Middleton did not stand to
9 benefit from the fraudulent billing or the alteration of the evidence. Mr. Westwood signed the
10 draw schedules for the BLM invoices to Century. (*See* Ex. U). The notion that Ms. Middleton
11 would act on her own to alter evidence in order to conceal overbilling perpetrated by Direct is
12 simply not credible.

13 **V. DIRECT OFFERED A FALSE DECLARATION OF LINDA MIDDLETON**

14 Direct was involved in the preparation and submittal the false Middleton Declaration.
15 Direct again left it to Century to discover the false statements contained in the Declaration.
16 Direct claims that one of those false statements is a “simple mistake.” (Opp’n. at p. 6).
17 However, Century contends that the “mistake” was yet another attempt by Direct to avoid
18 admitting the fact that Ms. Middleton altered the BLM documents in order to conceal Direct’s
19 fraudulent billing. The Middleton Declaration indicates that Mr. Westwood asked Ms.
20 Middleton to compile the BLM documents and that he asked her to “**make sure that all of the**
21 **numbers matched before sending them to Direct’s counsel.**” (*See* Ex. S). Because Direct had
22 reported taking out approximately 33,395 cubic yards of material to the BLM and had billed
23 Century as if it had taken out nearly 94,000 cubic yards, the numbers did not “match.”
24 Accordingly, Ms. Middleton ensured the numbers would match – per the instruction from Mr.
25 Westwood – by altering the BLM documents in order to conceal the overbilling. However,
26 rather than conceding that the alteration was done to conceal overbilling, Ms. Middleton
27 originally claimed in her Declaration that she altered the BLM documents because they did not
28 match with the payments made by Direct to the BLM. *See* Ex. S. This statement was false as

1 Direct actually paid the BLM in full for the dirt it reported was removed from the BLM site. It
2 was only after Century deposited Ms. Middleton and Mr. Westwood and showed them documents
3 evidencing the falsity of this statement that they both conceded that the Middleton Declaration
4 was incorrect. (*See* Ex. T to Mot., Middleton Dep. Tr. at p. 42-43; Ex. Q to Mot., Westwood
5 Dep. Tr. at p. 107-108).¹¹

6 **VI. MS. MIDDLETON'S COMPUTER AND DIRECT'S FURTHER EFFORTS TO**
7 **CONCEAL EVIDENCE**

8 Direct boasts that after a year of discovery on the issue of Direct's alteration of evidence
9 and discovery abuses, the parties are no closer to knowing precisely what took place with regard
10 to the altered BLM documents. (Opp'n. at p. 5). If the parties are no closer to knowing exactly
11 how the BLM documents were altered by Ms. Middleton and who else may have been involved
12 in the alteration, it is only because Direct has made every effort to hide its trail. Once the
13 alteration of the BLM was discovered, Direct not only attempted to blame Ms. Middleton for the
14 alteration, but it also sought to conceal the forensic computer evidence demonstrating how the
15 evidence was altered and exactly who was involved in the alteration. In fact, once the Arbitrator
16 ordered the inspection of Ms. Middleton's computer, it was uncovered that the computer Direct
17 claimed Ms. Middleton utilized to alter the BLM documents had just been upgraded to Windows
18 10 – *one day after the issuance of the Arbitrator's March Order calling for the inspection of*
19 *her computer.* (*See* Ex. O to Mot.). The installation of the new operating system on the
20 computer – the day after the Arbitrator ordered it be examined – was no accident. Rather, the
21 installation of the new operating system resulted in the loss of data on that computer, which
22 significantly impacted Mr. Holpuch's ability to uncover exactly how and when Direct altered the
23 evidence and who else may have been involved. However, this was just the tip of the iceberg
24 with regard to Direct's efforts to conceal its misconduct from the appointed forensic expert, Mr.
25 Holpuch.

26 _____
27 ¹¹ In her deposition, Ms. Middleton testified that she had, contrary to the final draft of her Declaration,
28 compared the BLM documents to the truck tickets, which is what prompted the alteration. *See* Ex Z,
Middleton Dep. Tr. at p. 38. However, this explanation also does not make sense as Direct has not
produced truck tickets substantiating the amount billed to Century.

1 Mr. Holpuch, the computer forensic expert hired as part of the Arbitrator's Order,
2 provided an initial report expressly stating that: (1) **Direct failed to comply with the**
3 **Arbitrator's Order regarding a forensic inspection of the altered BLM documents;** (2) **The**
4 **data Direct provided did *not* include the altered BLM documents;** (3) **Mr. Holpuch was**
5 **unable to analyze how the documents were altered and by whom;** (4) **Mr. Holpuch was**
6 **unable to determine who accessed the altered BLM documents;** (5) **Direct did not provide**
7 **him the computer (or hard drive) utilized by Ms. Middleton in February 2018 (despite the**
8 **Arbitrator's Orders to do so);**¹² (6) **Direct changed Ms. Middleton's computer to Windows**
9 **10 one day after the Arbitrator ordered it be imaged – Direct claimed this was an**
10 **automatic update, but that is not consistent with Windows 10 upgrades offered at that**
11 **time; and (7) That there is evidence of another server utilized by Direct that Mr. Holpuch**
12 **was not allowed to access (also in violation of the Arbitrator's Orders).** *See* Ex. B to Mot.
13 The forensic examination was an expensive process that was made even more expensive and
14 time-consuming by Direct's failure to comply with the Arbitrator's Orders.¹³ For Direct to now
15 claim that *nothing* was found demonstrating that Direct was hiding evidence flies in the face of
16 what was actually uncovered. Mr. Holpuch did not find more because Direct took action to
17 ensure that nothing more could be found. Mr. Holpuch's reports make that much clear. *See* Exs.
18 C and W to Mot. Direct had successfully spoliated the evidence. Direct should not be rewarded
19 for its bad faith discovery tactics and non-compliance with the Arbitrator's Orders.

20
21 ¹² Direct argues that Mr. Holpuch is incorrect in his conclusion that Direct failed to produce the computer
22 utilized to alter the BLM documents. (Opp'n. at p. 9). Direct then, without any evidentiary citation,
23 claims that Ms. Middleton, Mr. Westwood and Mr. Morgan all testified that Direct provided Mr. Holpuch
24 Ms. Middleton's computer. However, there is nothing in Ms. Middleton's deposition testimony
25 supporting Direct's assertion that Ms. Middleton testified that Mr. Holpuch copied the computer she
26 utilized to alter the BLM documents. Mr. Morgan likewise did not testify that Mr. Holpuch copied the
27 computer Ms. Middleton used to alter the BLM documents – in fact, he testified that he did not know
28 what computer belonged to Linda. *See* a true and correct copy of excerpts of the deposition transcript of
Joe Morgan, dated Nov. 20, 2018 ("**Morgan Dep. Tr.**") at p. 53-54, attached hereto as **Exhibit "AA."**
Mr. Holpuch's conclusions regarding Direct's failure to comply with the Arbitrator's orders remain
uncontradicted.

¹³ The charges from Mr. Holpuch's company from April 16, 2018 (the approximate date Century
discovered the altered evidence) to April 5, 2019 were approximately \$36,105.79 and the expert fees for
the forensic fraud examiner were \$21,572.50.

1 Direct further contends that Adobe Acrobat Pro DC (“*Adobe Pro*”) was never installed
2 on Ms. Middleton’s computer because the alterations she made using Adobe Pro DC were all
3 done “online.” (Opp’n. at p. 7). Direct makes this argument in response to Mr. Holpuch’s
4 finding that there is no evidence of Adobe Pro DC ever being downloaded on the computer
5 represented to be Ms. Middleton’s computer. Direct’s argument in this regard is demonstrably
6 false on a number of fronts. First, it is contradicted by Ms. Middleton’s own testimony where
7 she testified that Adobe Acrobat was a program on her computer that she could utilize to modify
8 pdf documents –

9 Q. So your understanding is that Adobe Acrobat is a program that
10 can be used to modify a PDF document.

11 A. It can be, yes.

12 Q. Okay. So is that a program that you already had on your
13 computer?

14 A. Yes.

15 Q. Okay. And how long have you had that program on our
16 computer?

17 A. I’m not sure when it was in there, but it’s been there.

18 Q. Okay. Had you used that program to modify PDFs in the past?

19 A. Internal contracts that we had for ourself.

20 Q. Okay.

21 A. That needed to be changed.

22 Q. So in terms of what happened here, you took exhibit 5, scanned
23 it in with the scanner that’s hooked up to your computer, and then
24 you opened it up in Adobe Acrobat to where you could then
25 modify that PDF?

26 A. That’s correct.¹⁴

27 Ms. Middleton further testified that she purchased Adobe Pro on February 8, 2018 using
28 a Direct credit card in order to alter the BLM documents. (Ex. Z, Middleton Dep. Tr. at p. 96-
97). She said she purchased it as an “update” because the version she had was not working. *See*

¹⁴ *See* Ex. Z, Middleton Dep. Tr. at p. 52-53.

1 *id.* Thus, Ms. Middleton’s testimony was that she had Adobe Pro on her computer. **Direct’s**
2 **statement in the Opposition that “Adobe was not on Ms. Middleton’s computer” is false.**
3 Further, Adobe Acrobat Pro DC must be downloaded to a computer.¹⁵ It is not run from a web-
4 based browser online. This can be verified with Adobe or with any person who has ever used
5 Adobe Pro, which is a common program. Direct’s argument that Ms. Middleton altered the
6 documents through the “cloud” leaving no trace on her computer **is demonstrably false.**

7 Further, Direct unsuccessfully attempts to rebut Mr. Holpuch’s conclusion that there was
8 a second server utilized by Direct that Direct failed to provide. (Opp’n. at p. 7-8). Mr. Holpuch
9 makes it clear in his report that there was forensic evidence that Direct utilized an additional
10 server during the relevant time period, which was not provided. *See* Ex. W at 3.3. The relevant
11 timeframe is after Direct claims to have disposed of its prior server. Mr. Holpuch provided
12 un rebutted forensic evidence that Direct failed to provide access – in violation of the Arbitrator’s
13 orders – to a server it utilized during the timeframe that Ms. Middleton altered the BLM
14 documents. *See* Ex. C and W to Mot.

15 Mr. Holpuch’s expert conclusions are correct and un rebutted – Direct failed to provide
16 Mr. Holpuch with Ms. Middleton’s computer and failed to comply with the Arbitrator’s orders.
17 Direct attempted to hide this obfuscation by upgrading the phony computer with Windows 10
18 immediately before Mr. Holpuch conducted his review. Again, Direct has demonstrated that it
19 has no regard for compliance with its discovery obligations or the Arbitrator’s orders and will do
20 or say anything to cover up its misconduct.

21 **VII. MR. PROKOPCHUK’S CONFLICT OF INTEREST AND HIS MISSING EMAILS**

22 Mr. Prokopchuk volunteered to sign an Affidavit adverse to his former employer –
23 Century. (Ex. 6 to the Opp’n.). Mr. Prokochuk’s Affidavit is clearly an attempt to advocate for
24 Direct in this matter. At this point, Mr. Prokochuk’s loyalty is no longer divided – he is squarely
25 within Direct’s camp. He nevertheless admits that he was paid by Direct while he was working
26 for Century, he used office space at Direct, he did not always obtain competitive bids from
27 projects, and he attended internal scheduling meetings at Direct for Century projects.

28 ¹⁵ *See* Supplemental Report of Michael Holpuch at 3.2, Ex. W to Mot.

1 (Prokopchuk Aff. at ¶¶ 5, 13-14). For Direct and Mr. Prokopchuk to claim that no conflict
2 existed defies basic logic and is simply not credible.

3 It is obvious that Direct plans to call Mr. Prokopchuk as its star witness. However, due to
4 Direct's spoliation of evidence and failure to comply with the Arbitrator's orders, Century will
5 not have the e-mails needed to properly cross-examine witnesses in this matter and to refute the
6 anticipated testimony from Mr. Westwood and Prokopchuk. Two years ago, Direct was ordered
7 to produce all communications it had with Mr. Prokopchuk no matter what e-mail address Mr.
8 Prokopchuk utilized.¹⁶ Direct never produce any emails from the account
9 pd@directgrading.com, even though Direct eventually admitted in March 2018 that "Mr.
10 Prokopchuk believed that he could use this account if necessary."¹⁷ Direct claimed that it
11 searched for any pd@directgrading.com emails, but could not find any. *See id.* This is not
12 surprising given Direct's failure to preserve evidence in this matter. However, despite Direct's
13 admitted failure to preserve evidence, the forensic computer experts were able to recover several
14 pd@directgrading.com emails, which demonstrate that Direct's representations concerning Mr.
15 Prokopchuk's role at Direct were inaccurate. These emails should have been produced by Direct
16 two years ago instead of forcing the Arbitrator to order a forensic review of Direct's computers
17 and servers. That forensic review demonstrated that Direct had willfully failed to comply with
18 the Arbitrator's Order.

19 Once again caught contravening the Arbitrator's discovery orders, Direct argues that the
20 pd@directgrading.com emails located by the forensic computer examination do not clearly
21 establish that Mr. Prokopchuk utilized this email address.¹⁸ (Opp'n at p. 24-25). However, even
22 a cursory review of these emails demonstrates that Direct's argument in this regard is not
23 credible. On September 22, 2015, Scott Prokopchuk sent an email to Tim Wyatt from the
24 pd@directgrading.com email and identified himself as "Scott" when Tim Wyatt did not
25

26 ¹⁶ See Ex. F to Mot.

27 ¹⁷ See March 9, 2018 letter from Direct to the Arbitrator, a true and correct copy of which is attached
hereto as **Exhibit "BB"** at p. 3.

28 ¹⁸ True and correct copies of the emails referenced in this paragraph are attached hereto as **Exhibit "CC."**

1 recognize the e-mail address. Mr. Prokopchuk signed the e-mail with the initials “PD.” Tim
2 Wyatt’s declaration states that Mr. Prokopchuk utilized the pd@directgrading.com email address
3 and that he had an office at Direct. On October 2, 2015, “PD” sent an email to Tim Wyatt and
4 Mel Westwood containing a project schedule for what appears to be a Century homebuilding
5 project and asked Mr. Wyatt and Mr. Westwood to mark it up and leave it on his (PD’s) desk.
6 On October 10, 2015, “PD” followed up with Mr. Wyatt and Mr. Westwood regarding the
7 schedule. On December 11, 2015, PD sent an email to Mr. Westwood referring to a notice of
8 violation for air quality at Horse and Jones along with a timeline of “Century projects,” which
9 “PD” says he is leaving at his desk at Mr. Westwood’s office. On that same date PD sent
10 another email referencing a broken water meter at the Rhodes Ranch project, which was a
11 Century project. There are also several emails where PD was invited to operational meetings and
12 one where PD is actually the party setting up the meeting.

13 These emails demonstrate that Direct’s representations that no one utilized the
14 pd@directgrading.com emails are simply false. Direct contends that there are not many
15 pd@directgrading.com emails, but offers no explanation to account for the usage of the
16 pd@directgrading.com email by “Scott.” Again, Direct should not be rewarded for its successful
17 efforts to conceal evidence in this matter. Direct cannot be heard to argue that Mr. Prokopchuk
18 did not perform work for Direct when it failed to produce documents that would likely show
19 otherwise. If Direct had actually preserved documents in this matter – as it was obligated to do –
20 there would likely be many more such emails. The Arbitrator has failed to rectify Direct’s
21 discovery misconduct.¹⁹ The unfortunate and unfair consequence of the Arbitrator’s failure to
22 act is that Century will be deprived of its right to a fair hearing based upon all of the evidence.

23 *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118-19 (1st Cir. 1989) is particularly
24 instructive to these proceedings. In *Aoude*, a plaintiff initiated a lawsuit seeking to enforce a

25 ¹⁹ See, e.g., *Stonecreek-AAA, LLC v. Wells Fargo Bank N.A.*, No. 1:12-CV-23850, 2014 WL 12514900, at
26 *3 (S.D. Fla. May 13, 2014) (“It would send a dangerous message to attorneys and parties if I were to
27 allow a party to use fabricated evidence as the basis of its complaint, strike the fabricated evidence and
28 then allow the case to proceed. Such an abuse of the judicial process, and defilement of the judicial
temple that is the court, will not be tolerated. Therefore, the appropriate and only sanction – one that will
deter similar conduct in the future – is outright dismissal with prejudice of this case.”).

1 knowingly fraudulent purchase agreement. The court outlined the fraudulent scheme perpetrated
2 by the plaintiff, which strongly resembles the instant action -

3 Because corrupt intent knows no stylistic boundaries, fraud on the
4 court can take many forms. In our estimation, however, the present
5 case is a near-classic example of the genre. Appellant's bad faith is
6 manifest. By Aoude's own admission, he fabricated the purchase
7 agreement; gave it to his lawyer; read the complaint before it was
8 filed; realized that counsel, acting on his behalf, proposed to annex
9 the bogus agreement to the complaint (thus representing it to be
10 authentic); and nevertheless authorized the filing. Thereafter, Aoude
11 and his counsel continued to act out the charade until, in the course of
12 pretrial discovery undertaken by Mobil, Monahan revealed a glimmer
13 of the truth. Even then, Aoude hedged his bets, forcing Mobil to
14 piece together the sordid story bit by bit. Following Monahan's
15 deposition testimony, more than three months elapsed before plaintiff
16 asked to amend his complaint to substitute the real agreement for the
17 invented one. The only conceivable reason for Aoude's elaborate
18 duplicity was to gain unfair advantage, first in the dispute, thereafter
19 in the litigation. **The tactic plainly hindered defendant's ability to
20 prepare and present its case, while simultaneously throwing a
21 large monkey wrench into the judicial machinery. In our view,
22 this gross misbehavior constituted fraud on the court.** See
23 *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986
24 (4th Cir. 1987) (fraud on court may exist where witness and attorney
25 conspire to present perjured testimony); *Rozier v. Ford Motor Co.*,
26 573 F.2d 1332, 1338 (5th Cir. 1978) (same, where party, with
27 counsel's collusion, fabricates evidence).

18 See *id.* (emphasis added). Having determined that a fraud had been committed on the court, the
19 court was left to determine its options under its inherent authority -

20 The next question, of course, requires that we examine the options
21 of a federal district judge confronted by such odious machinations. It
22 is apodictic that federal courts possess plenary authority "to manage
23 their own affairs so as to achieve the orderly and expeditious
24 disposition of cases." *Link*, 370 U.S. at 630-31 (footnote omitted).
25 The Civil Rules neither completely describe, nor purport to delimit,
26 the district courts' powers. See *HMG Property*, 847 F.2d at 915;
27 *Brockton Savings Bank v. Peat, Marwick, Mitchell & Co.*, 771 F.2d
28 5, 11 (1st Cir. 1985), *cert. denied*, 475 U.S. 1018, 89 L. Ed. 2d 317,
106 S. Ct. 1204 (1986). Rather, the district courts retain the inherent
power to do what is necessary and proper to conduct judicial
business in a satisfactory manner. As we have said, that inherent
power is "rooted in the chancellor's equity powers, 'to process
litigation to a just and equitable conclusion.'" *HMG Property*, 847
F.2d at 915 (quoting *ITT Community Development Corp. v. Barton*,

1 569 F.2d 1351, 1359 (5th Cir. 1978)). The courts' inherent power
2 includes "the ability to do whatever is reasonably necessary to deter
3 abuse of the judicial process." *Eash v. Riggins Trucking Inc.*, 757
4 F.2d 557, 567 (3d Cir. 1985) (en banc); *see also Brockton Savings*
5 *Bank*, 771 F.2d at 11.

6 There is an irrefragable linkage between the courts' inherent
7 powers and the rarely-encountered problem of fraud on the court.
8 **Courts cannot lack the power to defend their integrity against**
9 **unscrupulous marauders; if that were so, it would place at risk**
10 **the very fundament of the judicial system.**

11 *Id.* at 119 (emphasis added). The *Aoude* court quoted Justice Black, who addressed a similar
12 fraud upon the court in another not-dissimilar matter:

13 Tampering with the administration of justice in the manner
14 indisputably shown here involves far more than an injury to a single
15 litigant. It is a wrong against the institutions set up to protect and
16 safeguard the public, institutions in which fraud cannot complacently
17 be tolerated consistently with the good order of society. . . . The
18 public welfare demands that the agencies of public justice be not so
19 impotent that they must always be mute and helpless victims of
20 deception and fraud. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*,
21 322 U.S. 238, 246, 88 L. Ed. 1250, 64 S. Ct. 997 (1944).

22 *Id.* The court in *Aoude* affirmed the dismissal of the case. The court explained that **it would be**
23 **"difficult to conceive of a more appropriate use of a court's inherent power than to protect**
24 **the sanctity of the judicial process – to combat those who would dare to practice**
25 **unmitigated fraud upon the court itself. To deny the existence of such power would, we**
26 **think, foster the very impotency against which the *Hazel-Atlas* Court specifically warned."**

27 *Id.* (emphasis added). The same considerations are even more applicable to this matter given
28 Direct's brazen and repeated misconduct. The Court should exercise its inherent authority to
dismiss Direct's claims.

24 **VIII. THE ALTERATION OF THE BLM DOCUMENTS IS DISPOSITIVE OF THE** 25 **INSPIRADA LIEN**

26 The Arbitrator has already found that Direct is responsible for the altering of evidence by
27 Ms. Middleton. The BLM documents were altered to conceal Direct's fraudulent billing on the
28 Inspirada project. Direct offers no actual evidence establishing that it did not overcharge

Century. Rather, Direct repeats the same argument that it should not matter if Century was overcharged because Century “got the dirt” at the end of the day. This argument is ridiculous. Would an attorney be permitted to overcharge with fabricated billing entries because – at the end of the day – the legal services were performed? Equally ridiculous is Direct’s argument that it is not seeking to recover money relating to the import of soil for the Inspirada project, but that it is seeking to recover money (\$290,018.55) for paving work allegedly performed at the Inspirada project. (Opp’n. at p. 6). Direct does not provide any support for this argument. Direct fails to provide any reconciliation or accounting for the charges relating to the Inspirada project. Even if Direct had provided this evidence, it would not matter. Direct should not be permitted to recover another penny on the Inspirada Project when it is clear it overbilled Century by more than \$500,000 for the BLM soil alone.

The work done in connection with the import of soil for Inspirada was done on a time and materials basis. Direct utilized this time and materials billing structure to fraudulently bill Century for soil imported to the Inspirada project. Thus, any suggestion that Century was not harmed because it eventually got the dirt is a complete fabrication. Century was overcharged for the dirt provided. Direct offers no evidence to rebut this allegation of overcharging. Instead, Direct altered evidence in order to conceal the overcharging. Direct attempts to minimize the alteration of the BLM documents by falsely contending the Ms. Middleton altered a single BLM document. (Opp’n. at p. 3). This is false as Ms. Middleton altered at least three separate documents in multiple locations in order to conceal the fraudulent billing.

IX. THE REMAINING LIENS SHOULD BE EXPUNGED DUE TO THE BREACH OF THE MSA

Direct has attempted from the outset of this litigation to distance itself from the obligations set forth in the MSA as it knew it violated the MSA by putting Mr. Prokopchuk on Direct’s payroll. The MSA clearly states that Direct was to “exercise reasonable care and diligence prevent any actions or conditions that could result in conflict with Contractor’s best interests.” See MSA at ¶ 8.1, Ex. D to Mot. Direct clearly breached this provision by secretly paying Mr. Prokopchuk – Century’s Land Development Manager.

1 Mr. Prokopchuk came to work for Century as part of Century's acquisition of Dunhill
2 Homes. Mr. Prokopchuk was employed by Century as its Land Development Manager from
3 April 2014 through September 2016. On or about March 28, 2014, Mr. Prokopchuk executed an
4 acknowledgment and receipt of the Century employee manual (the "*Employee Manual*"). The
5 Employee Manual expressly states that Century employees must have undivided loyalty to
6 Century, should avoid conflicts of interest and must not engage in any activity that could create
7 an actual or potential conflict of interest or create the appearance of a conflict of interest.²⁰
8 Further, employees were not to accept gifts or favors from subcontractors because they may
9 "create the impression of an obligation on the part of [Century] or any [Century] employee..."
10 Mr. Prokopchuk blatantly breached his obligations and duty of loyalty to Century.

11 Mr. Prokopchuk was responsible for (among other things) the following: (1) obtaining
12 job costs estimates and bids from contractors; (2) participating in awarding jobs to contractors;
13 (3) overseeing the work performed by the contractors; (4) approving any change orders and
14 purchase orders for the contractors; and (5) authorizing payment to the contractors. Because of
15 Mr. Prokopchuk's position with Century and as a result of his prior employment with Dunhill,
16 Century relied extensively on Mr. Prokopchuk to discharge his duties with the utmost care,
17 loyalty and fidelity. However, that trust was clearly abused by Mr. Prokopchuk. Direct fails to
18 address the various ways Mr. Prokopchuk's compromised loyalty damaged Century. *See* expert
19 report of William Striegel attached to the Mot as Ex. V.

20 The best Direct could come up with in response is that Mr. Prokopchuk provided verbal
21 communications and updates to his supervisors at Century. (Opp'n. at p. 19-20; Ex. 6, the
22 Prokopchuk Aff.). However, the Court will note that conspicuously absent from the Opposition
23 and the Prokopchuk Affidavit is any statement that Direct ever disclosed to Century that Mr.
24 Prokopchuk was on Direct's payroll. **In all of Mr. Prokopchuk's alleged updates and verbal**
25 **communication with "upper management," he failed to include the most important**
26 **disclosure – that he was secretly on Direct's payroll.** This did not occur because both Direct
27 and Mr. Prokopchuk knew if they had made such a disclosure, Century would likely have

28 ²⁰ A true and correct copy of the Employee Manual is attached hereto as **Exhibit "DD."**

1 terminated them or at least not permitted Mr. Prokopchuk to oversee any projects involving
2 Direct. Rather, Direct and Mr. Prokopchuk acted in concert to keep Direct's payments to Mr.
3 Prokopchuk hidden.

4 Century is a large company and it is logical that there is "upper management" personnel
5 to whom Mr. Prokopchuk reported. However, these upper management personnel could only
6 rely upon the information Mr. Prokopchuk actually provided. Mr. Prokopchuk was clearly in a
7 position to run interference for Direct and to ensure that Direct remained on the Projects despite
8 being – on average – 252 days behind schedule on the various projects. *See* Ex. V at p. 27.
9 While certain contracts were countersigned by Mr. Prokopchuk's supervisors, his signature is the
10 one constant on the contracts, draw schedules, communications and certifications. Mr.
11 Prokopchuk, as he states in his Affidavit, oversaw the projects. (Prokopchuk Aff. at ¶ 3, Ex. 6 to
12 Opp'n.). Thus, Direct and Mr. Prokopchuk cannot blame Mr. Prokopchuk's supervisors for not
13 discovering his divided loyalties and misdeeds much sooner.

14 **X. DIRECT HAD THE BURDEN TO ESTABLISH THE VALIDITY OF ITS LIENS**

15 Direct failed to meet its burden to establish the validity of the lien and that it is not
16 excessive. *See J.D. Construction, Inc. v. IBEX International Group, LLC*, 126 Nev. Adv. Op.
17 36, 240 P.3d 1033 (2010) ("the standard for evaluating whether a lien is excessive, pursuant
18 to NRS 108.2275, requires the lienholder [Direct] to prove its validity by a preponderance
19 of the evidence."). Direct attempts to shift this burden in its Opposition by claiming that
20 Century failed to meet its burden to establish that the Liens should be expunged. (Opp'n. at p.
21 16-17). This was never Century's burden. *See id.* Moreover, Century submitted sworn
22 declarations, deposition transcripts, the Arbitrator's Orders, and supporting evidence in support
23 of its Motion for Discovery Sanctions and to Expunge the Liens. In fact, Century established in
24 its Motion for Discovery Sanctions and to Expunge the Liens and at the hearing that: (1) Direct
25 altered evidence in order to conceal its overbilling with respect to the Inspirada Mechanic's Lien;
26 (2) Direct had no basis to recover in connection with the other Liens due to its breach of the
27 MSA by employing Scott Prokopchuk; and (3) Direct violated the Arbitrator's Orders and
28 spoliated evidence in order to conceal Mr. Prokopchuk's blatant conflict of interest.

1 In response, Direct failed to offer evidence of the validity of its Liens nor did it provide
2 any valid excuse for its discovery abuses. As such, the law required the Arbitrator to expunge
3 the Liens and release the Bonds. *See J.D. Constr.*, 126 Nev. at 381, 240 P.3d at 1043 (finding
4 that contractor's claims failed due to its failure to present evidence to rebut evidence submitted
5 by owner); *Hart v. Office Depot, Inc.*, 2019 Nev. App. Unpub. LEXIS 552, *5, 2019 WL
6 2461741 (upholding dismissal of liens where contractor failed to present any evidence
7 supporting the amount of the liens).²¹

8 Further, the removal of the Liens flows directly from the discovery sanctions sought by
9 Century. Thus, there is no reason to delay a final ruling on the discovery sanctions sought by
10 Century as the discovery sanctions go to two primary issues in this case – Direct's overbilling
11 and Direct's material breach of the MSA by employing Scott Prokopchuk.²² Century has had to
12 expend significant time and funds to uncover Direct's fraudulent conduct, which has interfered
13 with Century's business. This requires the Court's intervention as Century will be deprived from
14 its due process right to a fair hearing if Direct is permitted to proceed in the face of its alteration
15 of evidence and blatant misconduct.

18 ²¹ A discovery sanction is typically not a tool to punish an offender but a means to rectify a discovery
19 abuse to avoid prejudice to the other party. *See Parker v. Wolters Kluwer United States, Inc.*, 149
20 Cal.App.4th 285, 301, 57 Cal. Rptr. 3d 18, 30 (2007). "The trial court should consider both the conduct
21 being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should
22 'attempt[] to tailor the sanction to the harm caused by the withheld discovery.'" *Padron v. Watchtower*
23 *Bible & Tract Soc'y of New York, Inc.*, 16 Cal. App. 5th 1246, 1259, 225 Cal. Rptr. 3d 81, 94 (2017).

24 ²² *See Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court's
25 strike order where the defaulting party's "constant failure to follow [the court's] orders was unexplained
26 and unwarranted"); *Hutchinson v. Hensley Flying Serv., Inc.*, 210 F.3d 383, 2000 WL 11432, at *1 (9th
27 Cir. 2000) ("Given the district judge's finding, supported by the evidence, that appellants had knowledge
28 that the attorney was submitting a falsified document, this court cannot say that the trial judge abused his
discretion in ordering the dismissal sanction."); *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488 (9th
Cir. 1991) ("Dismissal is an appropriate sanction for falsifying a deposition."); *N. Am. Watch Corp. v.*
Princess Ermine Jewels, 786 F.2d 1447, 1451 (9th Cir. 1986) (affirming dismissal of defendant's
counterclaim under court's inherent power for concealing documents and violating court's discovery
order); *Prof'l Seminar Consultants, Inc. v. Sino Am. Tech. Exch. Council, Inc.*, 727 F.2d 1470, 1474 (9th
Cir. 1984) ("The entry of a default judgment was appropriate in view of the order to produce documents
or risk having facts established, and in view of SATEC's production of falsified documents. . . . The
magistrate found that the defendants willfully, deliberately, and intentionally submitted false documents
to support apparently untenable claims and defenses. Dismissal was not an abuse of discretion.").

XI. CONCLUSION

It is well within this Court's inherent authority to prevent Direct's fraud upon the Court and misconduct from going any further. There can be no fair hearing for Century in this matter given Direct's misconduct, alteration of evidence, and discovery abuses. The Court should exercise its authority to provide both provisional relief by releasing the liens and the bonds but also to dismiss Direct's claims as part of the Court's inherent authority. Alternatively, the Court should appoint a new arbitrator under NRS 38.226 as the current Arbitrator has failed to act to enforce his own orders and to impose adequate remedies to address Direct's misconduct. To the extent the Court would benefit from an evidentiary hearing prior to making any determination on the relief requested in the Motion, Century respectfully requests that an evidentiary hearing be set with the Court.

DATED this 3rd day of January 2020.

SANTORO WHITMIRE

/s/ Oliver J. Pancheri

NICHOLAS J. SANTORO, ESQ.

Nevada Bar No. 532

OLIVER J. PANCHERI, ESQ.

Nevada Bar No. 7476

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Email: nsantoro@santoronevada.com

opancheri@santoronevada.com

*Attorneys for Century Communities of Nevada and
Argonaut Insurance Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 3rd day of January, 2020, a true and correct copy of
**REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR PROVISIONAL RELIEF
UNDER NRS 38.222 IN ORDER TO EXPUNGE LIENS AND RELEASE BONDS IN
ACCORDANCE WITH NRS 108.2275 AND NRS 108.2421 AND TO DISMISS DIRECT'S
CLAIMS OR, IN THE ALTERNATIVE, MOTION FOR THE APPOINTMENT OF A
NEW ARBITRATOR UNDER NRS 38.226** was served electronically using the Eighth Judicial
District Court's eFileNV system to the following:

Matthew L. Johnson, Esq.
Russell G. Gubler, Esq.
Ashveen S. Dhillon, Esq.
JOHNSON & GUBLER, P.C.
8831 W. Sahara Avenue
Las Vegas, Nevada 89117
Email: mjohnson@mjohnsonlaw.com
rgubler@mjohnsonlaw.com
adhillon@mjohnsonlaw.com

Attorneys for Direct Grading & Paving, LLC

/s/ Rachel Jenkins

An employee of SANTORO WHITMIRE

Exhibit X

MONTHLY REPORT OF MATERIAL REMOVED UNDER CONTRACT

NAME: DIRECT GRADING

ADDRESS: 2222 W. CHEYENNE N. LAS VEGAS

CONTRACT NO. N-93876 VOLUME: 50,000 DATE: 1-14-16

REPORTING PERIOD STARTING: 4-1-16 ENDING: 4-14-16

RECEIVED BLM
SOUTHERN NEVADA
DISTRICT OFFICE

2016 APR 15 A 10:37

MONTH	DAY OF MONTH	TRUCK SIZE	TOTAL TRUCK NUMBER	TOTAL VOLUME
APRIL	1	15	7/35	525
	2	15	2/15	225
	3			
	4	15	8/40	600
	5	15	9/48	720
	6	15	9/48	720
	7	15	9/48	720
	8	15	9/48	720
	9			
	10			
	11	15	8/40	600
	12	15	9/48	720
	13	15	9/48	720
	14	15	9/48	720
	15			
	16			
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	26			
	27			
	28			
	29			
	30			
	31			

REMOVED DURING THIS REPORTING PERIOD: 6990

REMOVED TO DATE UNDER THIS CONTRACT: 33,395

I certify that this record is correct:

[Signature]
Signature

Date: 4-14-16

This report to be submitted to: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130-2301.
NV3600-3B (March 7, 1990)

See Accompanying Litigation Services Report Exhibit D; Page 7 of 11

DIRECT000922

PBTK000039 002



MONTHLY REPORT OF MATERIAL REMOVED UNDER CONTRACT

NAME: DIRECT GRADING

ADDRESS: 2222 W. CHEYENNE AVE. LAS VEGAS

CONTRACT NO. N-93876 VOLUME: 50,000 DATE: 1-14-16

REPORTING PERIOD STARTING: 3-14-16 ENDING: 3-31-16

RECEIVED BLM
SOUTHERN NEVADA
DISTRICT OFFICE

2016 APR 15 A 10:37

MONTH	DAY OF MONTH	TRUCK SIZE	TOTAL TRUCK NUMBER	TOTAL VOLUME
	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
<u>MARCH</u>	14	<u>15</u>	<u>9/48</u>	<u>720</u>
	15	<u>15</u>	<u>8/40</u>	<u>600</u>
	16	<u>15</u>	<u>9/48</u>	<u>720</u>
	17	<u>15</u>	<u>7/35</u>	<u>525</u>
	18	<u>15</u>	<u>9/48</u>	<u>720</u>
	19			
	20			
	21	<u>15</u>	<u>8/40</u>	<u>600</u>
	22	<u>15</u>	<u>7/35</u>	<u>525</u>
	23	<u>15</u>	<u>7/35</u>	<u>525</u>
	24	<u>15</u>	<u>6/30</u>	<u>450</u>
	25	<u>15</u>	<u>5/25</u>	<u>375</u>
	26			
	27			
	28	<u>15</u>	<u>8/40</u>	<u>600</u>
	29	<u>15</u>	<u>7/35</u>	<u>525</u>
	30	<u>15</u>	<u>7/35</u>	<u>525</u>
	31	<u>15</u>	<u>8/40</u>	<u>600</u>

REMOVED DURING THIS REPORTING PERIOD: 8010

REMOVED TO DATE UNDER THIS CONTRACT: 26405

I certify that this record is correct:

[Signature]
Signature

Date: 3-31-16

This report to be submitted to: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130-2301.
NV3600-3B (March 7, 1990)

See Accompanying Litigation Services Report Exhibit D; Page 8 of 11

DIRECT000923

PBTK000040

003

MONTHLY REPORT OF MATERIAL REMOVED UNDER CONTRACT

NAME: DIRECT GRADING

ADDRESS: 2222 W. CHEYENNE N. LAS VEGAS NV 89032

CONTRACT NO. N-93876 VOLUME: 50,000 DATE: 1-14-16

REPORTING PERIOD STARTING: 3-1-16 ENDING: 3-12-16

MONTH	DAY OF MONTH	TRUCK SIZE CY	TOTAL TRUCK NUMBER	TOTAL VOLUME CY
MARCH	1	15	5/40	720
	2	15	5/26	390
	3	15	3/11	165
	4	15	2/10	150
	5			
	6			
	7	15	5/26	390
	8	15	5/25	375
	9	15	9/48	720
	10	15	3/19	285
	11	15/25	6/18	360
	12	15/25	9/48	950
	13			
	14			
	15			
	16			
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	28			
	29			
	30			
	31			

REMOVED DURING THIS REPORTING PERIOD: 4,505

REMOVED TO DATE UNDER THIS CONTRACT: 18,395

I certify that this record is correct:

[Signature]
Signature

Date: 3-13-16

This report to be submitted to: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130-2301.
NV3600-3B (March 7, 1990)

See Accompanying Litigation Services Report Exhibit D; Page 9 of 11

DIRECT000924

PBTK000041

004

MONTHLY REPORT OF MATERIAL REMOVED UNDER CONTRACT

NAME: DIRECT GRADING
 ADDRESS: 2222 W. CHEYENNE N. LAS VEGAS NV. 89032
 CONTRACT NO. N-93876 VOLUME: 50,000 DATE: 1-14-16
 REPORTING PERIOD STARTING: 2-3-16 ENDING: 2-29-16

MONTH	DAY OF MONTH	TRUCK SIZE CY	TOTAL TRUCK NUMBER	TOTAL VOLUME CY
	1			
	2			
FEB	3	15	5 / 33	495
	4	15	2 / 16	240
	5	15	4 / 25	375
	6	15	5 / 24	360
	7			
	8	15	6 / 34	510
	9	15	5 / 38	570
	10	15	5 / 40	600
	11	15	5 / 43	645
	12	15	3 / 23	345
	13			
	14			
	15	15	2 / 9	135
	16			
	17			
	18	15	5 / 23	345
	19	15	5 / 27	405
	20	15	5 / 30	450
	21			
	22	75	5 / 30	450
	23	15	6 / 58	870
	24	15	5 / 25	375
	25	15	5 / 20	300
	26	15	5 / 26	390
	27	15	5 / 38	570
	28			
	29	15	4 / 30	450
	30			
	31			

REMOVED DURING THIS REPORTING PERIOD: 8,880

REMOVED TO DATE UNDER THIS CONTRACT: 13,890

I certify that this record is correct: *[Signature]* Date: 3-1-16
 Signature

This report to be submitted to: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130-2301.
 NV3600-3B (March 7, 1990)

See Accompanying Litigation Services Report Exhibit D; Page 10 of 11

DIRECT000925

PBTK000042 005

MONTHLY REPORT OF MATERIAL REMOVED UNDER CONTRACT

NAME: DIRECT GRADING

ADDRESS: 2222 W. CHEYENNE N. LAS VEGAS NV. 89032

CONTRACT NO. N-93876 VOLUME: 50,000 DATE: 1-14-16

REPORTING PERIOD STARTING: 1-18-16 ENDING: 1-29-16

MONTH	DAY OF MONTH	TRUCK SIZE cy	TOTAL TRUCK NUMBER	TOTAL VOLUME cy
	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			
	11			
	12			
	13			
	14			
	15			
	16			
	17			
JAN	18	15	3 / 27	405
	19	15	2 / 14	210
	20	15	1 / 9	135
	21	15	5 / 32	480
	22	15	5 / 24	360
	23	15	5 / 23	360
	24			
	25	15	5 / 44	660
	26	15	4 / 36	540
	27	15	5 / 34	510
	28	15	6 / 51	765
	29	15	6 / 39	585
	30			
	31			

REMOVED DURING THIS REPORTING PERIOD: 5010 cy

REMOVED TO DATE UNDER THIS CONTRACT: 1 5,010 cy

I certify that this record is correct:

[Signature]
Signature

Date: 2-1-16

This report to be submitted to: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130-2301.
NV3600-3B (March 7, 1990)

See Accompanying Litigation Services Report Exhibit D; Page 11 of 11

DIRECT000926

PBTK000043

006

Exhibit Y

1 PRIVATE ARBITRATION BEFORE
2 DONALD WILLIAMS, ESQ., ARBITRATOR

3 DIRECT GRADING &)
4 PAVING, LLC, a Nevada)
5 limited liability)
6 company,)

7 Claimant,)

8 vs.)

9 CENTURY COMMUNITIES OF)
10 NEVADA, LLC, a Delaware)
11 limited liability)
12 company; DOES I through)
13 X; and ROE CORPORATIONS)
14 I through X, inclusive,)

15 Respondent.)

16 CENTURY COMMUNITIES OF)
17 NEVADA, LLC, a Delaware)
18 limited liability)
19 company,)

20 Counter-Claimant,)

21 vs.)

22 DIRECT GRADING &)
23 PAVING, LLC, a Nevada)
24 limited liability)
25 company; DOES I through)
X; and ROE CORPORATIONS)
I through X, inclusive,)

Counter-Respondent.)

22 VIDEO DEPOSITION of MEL WESTWOOD
23 Taken on Monday, November 19, 2018
24 At 10:05 a.m.
25 At 10100 West Charleston Boulevard, Suite 250
Las Vegas, Nevada

Reported by: Lori-Ann Landers, CCR 792, RPR

1 A P P E A R A N C E S:

2 For Plaintiff Direct Grading & Paving, LLC

3 RUSSELL G. GUBLER, ESQ.
4 Johnson & Gubler, P.C.
5 8831 West Sahara Avenue
6 Las Vegas, Nevada 89117
7 Email: rgubler@mjohnsonlaw.com

8
9 For Century Communities of Nevada, LLC

10 OLIVER J. PANCHERI, ESQ.
11 Santoro Whitmire
12 10100 West Charleston Boulevard, Suite 250
13 Las Vegas, Nevada 89135
14 Email: opancheri@santoronevada.com

15
16 ALSO PRESENT: CHRISTOPHER BAUGH - VIDEOGRAPHER
17
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1	I N D E X		
2	WITNESS		PAGE
3	MEL WESTWOOD		
4	Examination By Mr. Pancheri		6
5			
6	EXHIBIT INDEX		
7	DEFENDANT'S EXHIBIT	DESCRIPTION	PAGE
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10	17	Emails between Tim Wyatt and PD@directgrading.com	54
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Mel Westwood - 11/19/2018
Direct Grading & Paving, LLC vs. Century Communities of Nevada, LLC, et al.

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1 P R O C E E D I N G S

2 (Defendant's Exhibit 16, Amended Notice of Taking
3 Deposition of Person Most Knowledgeable at Direct Grading
4 & Paving, LLC, was marked for identification as of this
5 date.)

6 THE VIDEOGRAPHER: Good morning. Today is
7 November 19th, 2018. The time is approximately 10:05
8 a.m. This begins the video deposition of Mel Westwood.
9 We are located at Santoro Whitmire, 10100 West Charleston
10 Boulevard, Suite 250, Las Vegas, Nevada 89135.

11 My name is Christopher Baugh, court videographer
12 with Las Vegas Legal Video. This is the private
13 arbitration before Donald Williams, Esquire, in the
14 matter of Direct Grading & Paving versus Century
15 Communities of Nevada, et al. This video deposition is
16 requested by attorneys for the
17 respondent/counterclaimant.

18 Will counsel please state your appearances for
19 the record.

20 MR. PANCHERI: Oliver Pancheri for Century
21 Communities.

22 MR. GUBLER: Russ Gubler on behalf of Direct
23 Grading & Paving, Mel Westwood.

24 THE VIDEOGRAPHER: The deponent may now be sworn
25 in by Lori Landers with Depo International.

1 (Witness sworn.)

2 MEL WESTWOOD,

3 having been first duly sworn, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MR. PANCHERI:

7 Q. All right. Mr. Westwood, we've met before. My
8 name is Oliver Pancheri. I am an attorney for Century
9 Communities. I, along with Nick Santoro, represent
10 Century in this action as well as in the action that's
11 filed in -- in state court.

12 Do you understand that?

13 A. Yes.

14 Q. And you're represented by counsel today?

15 A. Yes.

16 Q. And that's Mr. Gubler?

17 A. Yes.

18 Q. And you just took an oath. It's the same oath
19 that you'd take -- you'd take in a court of law. The
20 penalty of perjury attaches. So the number one
21 instruction to you here today is to tell the truth.

22 Does that make sense?

23 A. Yes.

24 Q. Now, just a few admonitions before we get into
25 the deposition.

1 **will -- we will address the BLM.**

2 Q. Do you recall at some point -- I think it was in
3 one of the papers submitted in this action -- that there
4 was an argument made that the Inspirado -- Inspirada --
5 I'll ask the question this way: You agree with me the
6 Inspirada job was a pretty big import job?

7 **A. Yes.**

8 Q. And is it your understanding that it was going
9 to require about 122 thousand cubic yards of fill?

10 **A. I think we contracted for 140-some thousand**
11 **cubic yards of fill placement.**

12 Q. Okay. And so if approximately 93- to 94,000
13 came from the BLM, where did the rest of the dirt come
14 from?

15 **A. We -- we brought some from Rhodes Ranch. I want**
16 **to say that number was about 15,000. We brought some**
17 **from the South Point, I want to say that number was about**
18 **4- or 5,000 yards from the South Point.**

19 Q. Now -- go ahead. Is that your complete answer?

20 **A. No.**

21 Q. Okay.

22 **A. Century Communities purchased material from KB**
23 **Homes in the quantity of 40,000 cubic yards, which was**
24 **across the street from the site which we -- we loaded out**
25 **and hauled to the Century job.**

1 And that's pretty much about it. There were
2 some miscellaneous piles that came in from pool spoils or
3 something like that. But we didn't have any control over
4 it.

5 Q. Okay. So Rhodes Ranch, was that another Century
6 project?

7 A. That is correct.

8 Q. Was South Point another Century project?

9 A. No.

10 Q. Okay. So South Point, is that the actual
11 casino?

12 A. Yes.

13 Q. Okay. How did you arrange to take dirt from
14 that -- that location?

15 A. There was a -- there was a job site there that
16 we were associated with that had excess dirt, and so
17 we -- they had the dirt there, and so we basically hauled
18 off at our trucking expense.

19 Q. Okay. And then about -- you said 40,000 cubic
20 yards came from the KB Home site?

21 A. Yes.

22 Q. Okay. And would there be records to reflect how
23 much dirt was brought in from each of these locations?

24 A. Yes.

25 Q. Okay. And had that -- has that been produced in

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Lori-Ann Landers, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify:

That I reported the taking of the deposition
of the witness, MEL WESTWOOD, at the time and place
aforesaid;

That prior to being examined, the witness
was by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand
notes into typewriting and that the typewritten
transcript of said deposition is a complete, true and
accurate transcription of my said shorthand notes taken
down at said time to the best of my ability.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action; and that transcript review was
requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 19th
day of November 2018.

LORI-ANN LANDERS, CCR 792, RPR



Exhibit Z

1 PRIVATE ARBITRATION BEFORE
2 DONALD WILLIAMS, ESQ., ARBITRATOR
3
4 DIRECT GRADING &)
5 PAVING, LLC, a Nevada)
6 limited liability)
7 company,)
8)
9 Claimant,)
10)
11 v.)
12)
13 CENTURY COMMUNITIES OF)
14 NEVADA, LLC, a Delaware)
15 limited liability)
16 company; DOES I through)
17 X; and ROE CORPORATIONS)
18 I through X, inclusive,)
19)
20 Respondent.)
21)
22 CENTURY COMMUNITIES OF)
23 NEVADA, LLC, a Delaware)
24 limited liability)
25 company,)
26)
27 Counter-Claimant,)
28)
29 v.)
30)
31 DIRECT GRADING &)
32 PAVING, LLC, a Nevada)
33 limited liability)
34 company; DOES I through)
35 X; and ROE CORPORATIONS)
36 I through X, inclusive,)
37)
38 Counter-Respondent.)
39)
40
41 VIDEO DEPOSITION of LINDA MIDDLETON
42 Taken on Wednesday, November 14, 2018
43 At 10:04 a.m.
44 At 10100 West Charleston Boulevard, Suite 250
45 Las Vegas, Nevada
46
47 Reported by: Lori-Ann Landers, CCR 792, RPR

1 A P P E A R A N C E S:

2 For Plaintiff Direct Grading & Paving, LLC

3 RUSSELL GUBLER, ESQ.
4 Johsnon Gubler, P.C.
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7 Email: rgubler@mjohnsonlaw.com

8 For Century Communities of Nevada, LLC

9 OLIVER J. PANCHERI, ESQ.
10 Santoro Whitmire
11 10100 West Charleston Boulevard, Suite 250
12 Las Vegas, Nevada 89135
13 Email: opancheri@santoronevada.com

14 ALSO PRESENT: CHRISTOPHER BAUGH - VIDEOGRAPHER
15 MEL WESTWOOD

1	I N D E X			
2	WITNESS		PAGE	
3	LINDA MIDDLETON			
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. Today is
3 November 14th, 2018. The time is approximately
4 10:04 a.m. This begins the video deposition of Linda
5 Middleton. We are located at Santoro Whitmire, 10100
6 West Charleston Boulevard, Suite 250, Las Vegas, Nevada
7 89135.

8 My name is Christopher Baugh, court videographer
9 with Las Vegas Legal Video. This is the private
10 arbitration before Donald Williams, Esquire, in the
11 matter of Direct Grading & Paving, LLC, versus Century
12 Communities of Nevada, LLC, et al. and all related
13 matters. This video deposition has been requested by
14 attorneys for the respondent/counterclaimant.

15 Will counsel and all present please state your
16 appearances for the record.

17 MR. PANCHERI: Oliver Pancheri for Century
18 Communities.

19 MR. GUBLER: Russ Gubler for Direct Grading &
20 Paving.

21 MR. WESTWOOD: Mel Westwood, Direct Grading &
22 Paving.

23 THE VIDEOGRAPHER: The deponent may now be sworn
24 in by Lori Landers with Depo International.

25 (Witness sworn.)

1 Q. Okay.

2 A. The truckers have to keep track.

3 Q. Okay. And what would those tickets show?

4 A. It would show the load counts and the times they
5 started, times they stopped.

6 Q. Okay. And did you utilize those truck tickets
7 to -- or were you involved in the process of utilizing
8 those truck tickets to generate bills to be sent to
9 Century?

10 A. Yeah. We billed for the import on the billing,
11 yes.

12 Q. Okay. And that was part of your job?

13 A. Yes.

14 Q. Okay. Now, going back to this request for
15 Mr. Westwood, do you recall exactly what he asked you to
16 do, with reference to paragraph 2?

17 A. Basically, he just asked me to gather the
18 documents, the truck tickets, the BLM documents, and to
19 just double-check and make sure they balanced.

20 Q. Okay. So that's the paragraph 3. If you can
21 take a minute, I'll just read that paragraph. Said
22 "Mr. Westwood directed me to compile the documents and
23 told me to just make sure that all of the numbers matched
24 before sending them to Direct's counsel. Mr. Westwood
25 never told me to modify documents, and I misunderstood

1 Mr. Westwood."

2 **A. That's correct.**

3 Q. And then paragraph 4 says "I gathered the
4 documents relating to the BLM contract and compared them
5 with payments that Direct had made to the BLM. The
6 numbers did not match; it was after-hours, and
7 Mr. Westwood was not available to ask any questions."

8 So just that first sentence of paragraph 4, is
9 that what you understood, in terms of making sure that
10 the numbers would match, that -- comparing the payments
11 made by Direct to the BLM?

12 **A. That's correct.**

13 Q. Okay. Now, was anyone else present when
14 Mr. Westwood asked you to do this?

15 **A. No.**

16 Q. Okay. Anything else that he -- did he ask you
17 to do anything else in connection with these BLM
18 documents?

19 **A. No.**

20 Q. Did anyone assist you in this process?

21 **A. No.**

22 Q. Okay. Now, when he asked you to make sure that
23 all of the numbers matched before sending them to -- to
24 Direct's counsel, what did you understand that to mean?

25 **A. Well, he just wants to make sure that I had all**

1 my -- all the information, and I thought, perhaps, at
2 first that I was missing a BLM document because they
3 didn't tie, but I went ahead and sent them out and
4 changed the document to make them tie because I know that
5 the truck tickets were the accurate documents.

6 Q. Okay. Did you understand that that's what
7 Mr. Westwood was directing you to do?

8 A. He didn't direct me to change anything. He just
9 tried to tell me to gather all the information up and
10 make sure I got it to the lawyer's office.

11 Q. Okay. But he also told you to make sure that
12 the numbers would match?

13 A. To make sure they -- just make sure they tied
14 out.

15 Q. And is this accurate, though, that he told
16 you -- this is looking at paragraph 3 of the declaration,
17 that he asked you to make sure that the numbers matched
18 before sending them to Direct's counsel?

19 A. I just tried to make them balanced. That's what
20 I did.

21 Q. So my question, though, is is this accurate,
22 that Mr. Westwood told you to make sure the numbers
23 matched before sending them to Direct's counsel?

24 A. Well, he did tell me to make sure they balanced.
25 That's what he told me.

1 **modify things if you need to or -- it's a PDF -- a PDF**
2 **program, I guess you call it. I don't know.**

3 Q. So you can take a PDF and you can modify the PDF
4 with it?

5 A. **You can -- yes.**

6 Q. So, again, if -- this is a kind of thing that's
7 tricky because it's a conversational thing. So if you
8 wait till I finish asking the question before you answer
9 it so we have a clear record here, so --

10 A. **Sure.**

11 Q. So your understanding is that Adobe Acrobat is a
12 program that can be used to modify a PDF document.

13 A. **It can be, yes.**

14 Q. Okay. So is that a program that you already had
15 on your computer?

16 A. **Yes.**

17 Q. Okay. And how long have you had that program on
18 your computer?

19 A. **I'm not sure when it was in there, but it's been**
20 **there.**

21 Q. Okay. Had you used that program to modify PDFs
22 in the past?

23 A. **Internal contracts that we had for ourself.**

24 Q. Okay.

25 A. **That needed to be changed.**

1 Q. So in terms of what happened here, you took
2 Exhibit 5, scanned it in with the scanner that's hooked
3 up to your computer, and then you opened it up in Adobe
4 Acrobat to where you could then modify that PDF?

5 **A. That's correct.**

6 Q. Okay. And so then in terms of the
7 modifications, if you take a look at Exhibit 5 and
8 Exhibit 6 side by side -- let's just go over the things
9 that were altered. It looks like the first thing that
10 was altered was the 50,000 cubic yards on Exhibit 5 were
11 altered to 100,000 cubic yards.

12 Do you see that?

13 **A. Excuse me (phone ringing).**

14 Q. No problem.

15 **A. Sorry.**

16 Q. No problem.

17 **A. Could you repeat that, please.**

18 Q. Yeah, I'd be happy to. So the first alteration,
19 it looks like, was altering the 50,000 cubic yards on
20 Exhibit 5 to 100,000 cubic yards on Exhibit 6.

21 Do you see that?

22 **A. Yes, I do.**

23 Q. Okay. And then the second alteration was the
24 reference to 33,395 cubic yards on Exhibit 5 to 94,395
25 cubic yards on Exhibit 6?

1 Q. Correct.

2 A. No.

3 Q. Okay. At any time, did you -- did you tell
4 Mr. Westwood or Mr. Mayhall that, "Hey, wait a second.
5 You know, when you asked me to" -- and I'm paraphrasing.
6 "When you asked me to make sure they match, they didn't
7 match"?

8 A. Right.

9 Q. Did you ever tell him that?

10 A. I believe I did a few days later.

11 Q. Okay. At that time did you tell them that you
12 had altered the documents to make them match?

13 A. I believe I showed it to him.

14 Q. Okay.

15 A. Because that's what was accurate.

16 Q. Okay. So then you showed him, so that would
17 have been -- February 8th is when you did this, the
18 alterations. A few days later would be sometime in the
19 next week or so?

20 A. Yes.

21 Q. Okay. February 10th, 11th, somewhere in that
22 range?

23 A. Yeah, somewhere in there.

24 Q. Okay. Who exactly did you tell?

25 A. I believe I told Mel Westwood.

1 Q. Did you tell anyone else?

2 A. I think I might have mentioned it to Don, but
3 I'm not positive.

4 Q. Okay. And what did they tell you?

5 A. I don't recall because it was accurate, I mean,
6 from my standpoint, from an accounting standpoint.

7 Q. And when you say, "it was accurate," what are
8 you referring to?

9 A. It's the -- it's the amount of dirt that we
10 pulled out of the BLM and hauled to the Century job,
11 imported it in, where they then built their houses and
12 did their stuff they do, so, yes, it was imported in from
13 there.

14 Q. Okay.

15 A. I mean, that's all I know, is what's on those
16 things, so...

17 Q. And you're saying the truck tickets that would
18 support that have been produced, that you actually sent
19 those?

20 A. I believe they have been, yes.

21 Q. Okay. Now, if that amount of dirt was actually
22 taken from the BLM and the BLM's only been paid
23 \$49,282.30, is it your testimony that there's an
24 outstanding balance owed to the BLM, that more dirt was
25 taken than what was paid for?

1 **A. No, it was unavailable.**

2 Q. So what exactly was unavailable?

3 **A. I don't know. Just a number of things, a number**
4 **of things.**

5 Q. Okay. Anything that you can point to
6 specifically right now?

7 **A. No, not right now.**

8 Q. All right.

9 MR. PANCHERI: Are we on 13?

10 THE REPORTER: 14.

11 MR. PANCHERI: 14, okay. Let's mark this as
12 Exhibit 14.

13 (Defendant's Exhibit 14, Acrobat Pro DC purchase
14 confirmation, was marked for identification as of this
15 date.)

16 BY MR. PANCHERI:

17 Q. So we've just marked as Exhibit 14 what appears
18 to be a purchase confirmation of Adobe or Acrobat Pro DC
19 subscription for one year, and it's dated February 8th,
20 2018, at 3:29 p.m.

21 Do you see that?

22 **A. Yes.**

23 Q. And is that your email address at the top?

24 **A. Yes.**

25 Q. Okay. And is this something that you did on

1 February 8th, 2018, you purchased a copy of Acrobat Pro?

2 **A. Yes. I updated it.**

3 Q. Okay. And this is something you say you had
4 previously, but you updated it?

5 **A. Yeah. I went -- yes, different version because**
6 **it wasn't working.**

7 Q. To alter the documents --

8 **A. Yes.**

9 Q. -- it wasn't working --

10 **A. Yes.**

11 Q. -- so you updated it?

12 **A. Yes.**

13 Q. Okay. Let me finish asking the question before
14 you answer.

15 **A. Sorry.**

16 Q. So you updated it to facilitate the alteration
17 of the documents?

18 **A. I did.**

19 Q. Okay. And it says here it's a one-year
20 subscription for \$179.88. How did you pay for it?

21 **A. My company card.**

22 Q. So it was a Direct card?

23 **A. Yes.**

24 Q. Did you ask -- have to ask for permission before
25 you did that?

REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss
3 COUNTY OF CLARK)

I, Lori-Ann Landers, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify:

That I reported the taking of the deposition of the witness, LINDA MIDDLETON, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time to the best of my ability.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action; and that transcript review was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 14th
day of November 2018.

LORI-ANN LANDERS, CCR 792, RPR

RA Rander

Exhibit AA

1 PRIVATE ARBITRATION BEFORE
 2 DONALD WILLIAMS, ESQ., ARBITRATOR

3 DIRECT GRADING & PAVING, LLC,)
 4 a Nevada limited liability)
 5 company,)
 6 Claimant,)
 7 vs.)
 8 CENTURY COMMUNITIES OF)
 9 NEVADA, LLC, a Delaware)
 10 limited liability company;)
 11 DOES I through X; and ROE)
 12 CORPORATIONS I through X,)
 13 inclusive,)
 14 Respondent.)
 15)
 16 CENTURY COMMUNITIES OF)
 17 NEVADA, LLC, a Delaware)
 18 limited liability company,)
 19 Counter-Claimant,)
 20 vs.)
 21 DIRECT GRADING & PAVING, LLC,)
 22 a Nevada limited liability)
 23 company; DOES I through X;)
 24 and ROE CORPORATIONS I)
 25 through X, inclusive,)
 Counter-Respondent.)
)

17 Deposition of: Joseph Morgan
 18 Date: Tuesday, November 20, 2018
 19 Time: 2:03 p.m.
 20 Place: Mohave County Superior
 21 Courthouse
 22 2225 Trane Road
 23 Bullhead City, Arizona

23 Reported by: Diane S. Fayette, RPR, CRR
 24 Arizona Certified Court Reporter No.
 25 50037 and California Certified Court
 Reporter No. 6390

1 A P P E A R A N C E S

2

3

For Claimant/Counter-Respondent Direct Grading &
Paving, LLC:

4

5

Russell G. Gubler, Esq.

6

(Appearing via telephone)

7

JOHNSON & GUBLER, P.C

8

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9

Las Vegas, Nevada 89117

10

(702) 471-0065

11

rgubler@mjohnsonlaw.com

12

13

For Respondent/Counter-Claimant Century Communities
of Nevada, LLC:

14

15

Oliver J. Pancheri, Esq.

16

(Appearing via telephone)

17

SANTORO WHITMIRE

18

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19

Las Vegas, Nevada 89135

20

(702) 948-8771

21

opancheri@santoronevada.com

22

23

24

25

1 Pursuant to Notice the deposition of Joseph
2 Morgan, called by Respondent/Counter-Claimant Century
3 Communities of Nevada, LLC, was taken on Tuesday,
4 November 20, 2018, at 2:03 p.m., at Mohave County
5 Superior Courthouse, 2225 Trane Road, Bullhead City,
6 Arizona, before Diane S. Fayette, a Registered
7 Professional Reporter, Certified Realtime Reporter,
8 Certified Court Reporter in Arizona, and Certified Court
9 Reporter in California.

10

11

12

I N D E X

13

14

Witness:

Page

15

JOSEPH MORGAN

16

Examination by Mr. Pancheri

4

17

18

19

20

E X H I B I T S

21

Exhibit 56

Email chain with attachments 4/48

22

Exhibit 57

Emails 4/50

23

Exhibit 58

Emails 4/51

24

25

1 BULLHEAD CITY, ARIZONA

2 NOVEMBER 20, 2018

3 2:03 P.M.

4 * * * *

5 (Exhibits Number 56, 57, and 58 were premarked
6 for identification.)

7
8 JOSPEH MORGAN,
9 called as a witness on behalf of Respondent/
10 Counter-Claimant Century Communities of Nevada, LLC,
11 being first duly sworn by the Court Reporter, was
12 examined and testified as follows:

13 THE WITNESS: Yes.

14

15 EXAMINATION

16 BY MR. PANCHERI:

17 Q. All right. So, Mr. Morgan, why don't you
18 state and spell your name for the record, please.

19 A. Joseph Bryan Morgan, J-o-s-e-p-h, B-r-y-a-n,
20 M-o-r-g-a-n.

21 Q. Mr. Morgan, my name is Oliver Pancheri. I
22 represent Century Communities in a dispute that's
23 pending with Direct Grading and Mr. Mel Westwood.
24 Ms. Linda Middleton is a party as well. And this is the
25 time for your deposition.

1 whether the server -- server exists or not. So the only
2 thing I could think is that maybe they tried to click on
3 it or something. I don't -- I don't -- I'm kind of
4 confused.

5 Q. If someone did try and click on it, what would
6 happen?

7 A. It would just -- it would say unavailable or
8 something.

9 Q. Okay. And then under paragraph 9, that's a
10 couple pages further, on page 6, you see it states, "The
11 analysis shows that Linda's computer may not have been
12 in use by Linda's username prior to March 15th, 2018,
13 for a large period of time and then was upgraded to
14 Windows 10 on March 15th, 2018"? Do you see that?

15 A. Yeah.

16 Q. Do you know what computer was -- was Linda's
17 computer? Would you be able to describe it for me in
18 terms of what type it was, anything that would kind of
19 be identifying?

20 A. No, I wouldn't. They were all the same. I
21 mean, I think they were all Dells or something like
22 that.

23 Q. Okay. Do you have any explanation as to why
24 it appears or it appeared to -- and this is all written
25 by HOLO as part of their analysis, but do you have any

1 idea as to why their analysis would show that it didn't
2 appear that Linda's computer had been used prior to
3 March 15th, 2018?

4 MR. GUBLER: Objection; speculation.

5 THE WITNESS: I don't.

6 Q. (BY MR. PANCHERI) And then if you could turn
7 to page 7, under letter E.

8 A. Uh-huh.

9 Q. It says, "The browser history on Linda's
10 computer can be used to estimate username activity on
11 the computer," and then it goes through a range of dates
12 and identifies, I guess, usernames that were
13 periodically utilizing the internet browsers.

14 Do you see that?

15 A. Yeah.

16 Q. And do you see that there's -- I guess the
17 last -- so there's, I guess, somebody named Ben utilized
18 the computer from February 2017 through June of 2017.

19 Do you know who Ben is?

20 A. Yeah.

21 Q. Is that Ben Mifflin?

22 A. Yeah.

23 Q. Do you know when he stopped working at
24 Direct?

25 A. I don't.

1 CERTIFICATE OF REPORTER

2 State of Arizona)
3 County of Mohave) SS.

4 I, Diane S. Fayette, a Certified Court Reporter in
5 the State of Arizona, do hereby certify:

6 That prior to being examined, the witness named in
7 the foregoing deposition was duly sworn by me to testify
8 to the truth, the whole truth, and nothing but the
9 truth.

10 That the said deposition was reported by me at the
11 time and place herein named and was thereafter reduced
12 to this transcript under my direction.

13 That the foregoing is a true and correct transcript
14 of all proceedings had upon the taking of said
15 deposition, all done to the best of my skill and
16 ability.

17 I further certify that I am not interested in the
18 events of this action.

19 Dated this 30th day of November, 2018.

20 Deposition review and signature was waived.

21

22

23

24

25



Diane S. Fayette, RPR, CRR, AZ
Certified Court Reporter # 50037,
CA Certified Court Reporter # 6390

Exhibit BB

JOHNSON & GUBLER, P.C.

Attorneys

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Board Certified in Business Bankruptcy Law By The American Board of Certification
*admitted in Utah and Nevada

March 9, 2018

Donald Williams, Arbitrator
Williams and Associates
612 S. 10th Street
Las Vegas, NV 89101

***Re: Direct Grading v. Century Communities
Motion to Compel, [Third] Renewed Motion to Set new Arbitration Schedule,
Motion for Leave to File an Amended Counterclaim against Direct and Direct's
owner, Mel Westwood, and Request for Immediate Hearing before the
Arbitrator.
Our File No. 1077-024***

Dear Mr. Williams:

This correspondence is Direct Grading & Paving, LLC's ("Direct") response to Century Communities of Nevada, LLC's ("Century") Motion to Compel, [Third] Renewed Motion to Set new Arbitration Schedule, Motion for Leave to File an Amended Counterclaim against Direct and Direct's owner, Mel Westwood, and Request for Immediate Hearing before the Arbitrator ("Motion"). Direct will discuss each of the points raised by Century in turn.

Further, in return, Direct requests that the Arbitrator further compel Century to produce documents to Direct. Moreover, Direct requests that the Arbitrator make an early ruling related to the "Master Subcontract Agreement" (MSA) which Century repeatedly mentions. Although Direct agreed to arbitration to settle this matter, the MSA is not clear and unequivocal, as required by law to be binding herein.

BLM Documents

During the course of this litigation, Direct has produced well over 10,000 pages of documents. During one of the requests for production, Century requested information showing trucking tickets and contracts with the BLM. Mel Westwood, managing member of Direct, regularly works on the job sites, but instructed his office staff to pull the files that Direct had for production and to just verify that all of the numbers corresponded. Although Mr. Westwood did not intend for Direct's office staff to modify documents, one person did just that. The actual contract with the BLM was changed from 50,000 cubic yards to 100,000 cubic yards, with corresponding dollar amounts, without Mr. Westwood's knowledge or without Direct's

knowledge. Counsel for Century discovered the change and was gracious enough to call a meeting with counsel for Direct and explained that the documents with the BLM show that the contract quantity was for 50,000 cubic yards, instead of 100,000 cubic yards like the contract Direct produced. Upon close examination, the numbers in the contract and letter received from Direct looked modified. As a result, after the meeting, Matthew Johnson went to the BLM office and made copies of the record at the BLM office. Thereafter, counsel for Direct spoke with Mel Westwood, who made an inquiry with Direct's office employees about the BLM documents. In his conversations with one of his office staff, Linda Middleton, Mr. Westwood learned for the first time that someone at Direct had modified the BLM contract and letter. Upon learning of the modification, counsel for Direct called another meeting with counsel for Century and informed Century that, in fact, the BLM contract and letter had been changed, providing the same information now provided to the arbitrator. Counsel for Direct suggested on multiple occasions that the parties inform the Arbitrator of such modification, but Century preferred to place everything in a letter, which Century has now done.

Century does not believe Direct's story of what happened, and states that this evidence now calls into question all of the documents produced by Direct. However, Mel Westwood, the managing member of Direct, never told or intended for anyone at Direct to modify documents. Similarly, he never knew about the changes with the BLM documents. Century attempts to say that Direct only provided 33,395 cubic yards of material for the subject project,¹ and as a result, Century, through its expert, says that Direct overcharged Century. However, this cannot be true either, which Century knows. Century's own plans for the Inspirada project, which the expert says that he reviewed, calls for at least 122,744 cubic yards of fill.² See Exhibit "1", p. 2. Further, Century's expert does not account for compacted material versus embankment materials. All of the required materials, as provided in Century's own plans, were provided to the Inspirada project, plus more.

Nevertheless, in light of the foregoing, and as mentioned in the Motion, Direct's counsel agrees that a new schedule is needed, to allow Century to ask questions related to this document change. As a result, Direct believes that 30-60 days of additional discovery should be allowed.

Order to Compel

Century says that Direct has refused to comply with the order to compel related to communications with Scott Prokopchuk. This isn't true. As the Arbitrator will remember, Direct was to certify that it had produced communications with various parties to Century, including with Scott Prokopchuk. Direct made the certifications, as required, with the exception of Scott Prokopchuk. With respect to Scott Prokopchuk, it could not make such a certification, and it didn't. Such an assertion would not be true. Instead, Direct stated:

DGP searched and found an old phone that had correspondence from Scott Prokopchuk. Unfortunately, because the server has changed, DGP is unable to produce the information from Scott Prokopchuk for this disclosure, but is seeking to

¹The materials from the BLM project were only used for the Inspirada project.

²Before filing its motion, counsel for Direct, showed Century's counsel Century's own plans, which require at least 122,744 cubic yards of fill. However, Century has failed to mention this.

produce the communications. DGP will produce the communications when they become available.

Supplemental Responses, Exhibit "2".

Direct attempted to produce the information on the phone on multiple occasions, but had been unable to do so. Recently, Direct has made another attempt to link to the phone, with help, and has been able to download the communications from the phone from Mr. Prokopchuk. These documents are forthcoming. Nevertheless, before Direct was able to download these communications, what Century seems to avoid and place in a small footnote is that counsel for the parties spoke, wherein counsel for Direct offered to produce the phone to Century that admittedly contained correspondence from Scott Prokopchuk, under certain conditions. *See* correspondence, attached as Exhibit "3", wherein Century's counsel acknowledges the conversation about the phone. Those conditions were that the parties would submit the phone to an IT professional and agree upon the terms that could search the phone. Direct wanted to have someone from both parties present with the IT professional while making those searches. Direct did not refuse to give the communications. On the contrary, Direct attempted to allow Century to hire someone to attempt to get the communications off of the phone, but Century refused and now seeks a motion to compel, stating that "*Direct has failed to produce a single piece of paper involving any communications with Mr. Prokopchuk while he was employed with Direct.*" Century's assertions are misleading as to what actually happened.

Century also argues that Direct has failed to provide anything to substantiate what Scott Prokopchuk was doing for DGP Holdings. However, this makes sense. Mr. Prokopchuk performed some consulting work, including an industrial property in Apex, for DGP Holdings, LLC. DGP Holdings is an asset holding company, which held an interest in industrial land that was prospectively going to be used for an element industrial park. Mr. Prokopchuk helped in the design and layout of the element industrial park held by DGP Holdings. To avoid tax liabilities, Mr. Prokopchuk wanted to be paid through a payroll, where taxes were withheld. However, because DGP Holdings did not have a payroll service, Direct invoiced DGP Holdings for Mr. Prokopchuk's time, and then paid Mr. Prokopchuk. No business relationship exists between Direct and DGP Holdings, other than they have the same owner, and DGP Holdings does sublease to Direct. Thus, Direct does not have the communications and work product of Mr. Prokopchuk for DGP Holdings. That has to come from DGP Holdings. In fact, yesterday, March 8, 2018, DGP Holdings produced the requested documentation related to the project.³

Century mentions an email address pd@directgrading.com. This account was initially set up to allow foremen on a jobsite to communicate regarding payroll each week. "PD" was to represent "Pay Day". However, the system did not work, and Direct stopped using the account. Thereafter, Mr. Prokopchuk believed that he could use the account, if necessary. However, Direct had made a search of everyone's emails at Direct and cannot find where this account was used and do not remember this account being used by Mr. Prokopchuk. Another account was set up for Mr. Prokopchuk, but this account was not used either. Joe Morgan assisted in this process and could not find any emails past or current for Mr. Prokopchuk. Thus, the only emails found related to Mr. Prokopchuk or Century were located on the above-referenced phone. Again, these will be produced.

³The documents from DGP Holdings were due on March 6, 2018. However, Oliver Pancheri gave an extension to March 8, 2018.

In June of 2016, Direct's server started having problems, and Direct was required to replace its server. The old server was thrown away, and Direct ultimately went to an online server in November of 2016. The only items backed up were Direct's quickbooks, which were backed up every week. At the time, Direct did not have any issues with Century, and had recently signed several contracts with Century. Thus, there is no intent at wrongdoing, and Direct is not flouting its discovery obligations. Again, Direct has produced well over 10,000 pages of documents.

Deposition of Scott Prokopchuk

Century again attempts to argue that Direct was trying to hide Scott Prokopchuk's involvement with Direct, using the words "buried" or "secretly". As Century continues to assert, this was a complete "revelation" to Century. However, if Direct was truly trying to be dishonest in its discovery, or hide the fact that Mr. Prokopchuk was on the payroll for Direct, it would not have disclosed it. But Direct did – and it did so months ago.

Century attempts to argue that a great, impermissible conflict exists between Century, Direct, and Mr. Prokopchuk. Century cites the MSA which states that "Subcontractor shall exercise all reasonable care and diligence to prevent any actions or conditions that could result in conflict with Contractor's best interests." However, Direct disputes that the MSA applies in this case. Direct presents its argument below, and requests that the Arbitrator make an early ruling on this. Nevertheless, either way, Century cannot and will not be able to show that this is an action or condition that could result in conflict with Century's best interest. No conflict exists. Century develops residential home communities, while DGP Holdings held an interest in industrial land which was going to be used for an element industrial park. Further, the consultation work was done for DGP Holdings. No work was ever done for Direct. Direct already gave Century information about Mr. Prokopchuk and his relationship to DGP Holdings without requiring it to go through formal discovery. Century already long promulgated the written discovery regarding these issues on Direct.

Century tries to argue that Mr. Prokopchuk was responsible for great, unilateral approvals to Direct Grading. However, this is not true. Most of the contracts recently signed by Mr. Prokopchuk were also signed by another person at Century. Four of the contracts alone were signed by Rick Barron in 2016 – the guy that ultimately wrote the letter of default – during the very time that Century (and Rick Barron) claim that they had well given up on Direct because of its tardiness and did not trust Direct anymore. *See Exhibit "4"*. This is nothing but a hoax. This is nothing more than Century trying to stall out the proceedings.

Similarly, the same Rick Barron signed a draw schedule in November of 2016, less than a month before he sent a notice of default to Direct, to release funds to Direct, even though Century (and Rick Barron) now claim that they had well given up on Direct because of its tardiness and did not trust Direct anymore.⁴ *See Exhibit "5"*.

Direct agrees that the parties need to take Mr. Prokopchuk's deposition and that it has been difficult to serve Mr. Prokopchuk, as he has been working out of town. Also, as stated above, the

⁴On information and belief, Rick Barron held this same check well into December of 2016. Then, when Direct refused to incur more costs and pave on other job site until it had been paid on previous work, Rick Barron delivered the check, with the famous notice of default. Direct paved the very next day.

communications with Century or Mr. Prokopchuk, as found on the phone are forthcoming. Thus, 30-60 days is plenty of time to conduct discovery.

Responses to Century's Discovery

Century again unbelievably comes crying foul to the Arbitrator without giving the full facts. Century's and Direct's counsel discussed each of the items that Century is seeking. Direct will discuss each one:

Production No. 2. In response to this request, Direct produced a lease, a quickbooks printout for the time requested, check stubs, and other invoices. Century demands the cancelled checks between Direct and DGP Holdings, along with the cancelled checks between Direct and Mr. Prokopchuk. However, as explained to Century's counsel, there are no checks between Direct and DGP Holdings. Although accounts and books are kept separate, there are generally credits or transfers between the companies, memorialized by invoices, because these companies are related. As for Mr. Prokopchuk, Direct does not have the cancelled checks in its immediate possession, and Direct is only allowed to retrieve cancelled checks up to 6 months old online. All checks to Mr. Prokopchuk are older than 6 months.

Production No. 4. Again, Direct does not have these checks in its possession. These checks are over 6 months old and are not available to Direct online. Further, Century has the documents from the BLM, stating what the BLM has been paid.

Production No. 14. As explained above, Mr. Prokopchuk performed some consulting work, including an industrial property in Apex, for DGP Holdings, LLC. Mr. Prokopchuk helped in the design and layout of the element industrial park held by DGP Holdings. To avoid tax liabilities, Mr. Prokopchuk wanted to be paid through a payroll, where taxes were withheld. However, because DGP Holdings did not have a payroll service, Direct invoiced DGP Holdings for Mr. Prokopchuk's time, and then paid Mr. Prokopchuk. Direct, on the other hand, does not have the communications and work product of Mr. Prokopchuk for DGP Holdings. That has to come from DGP Holdings. In fact, yesterday, March 8, 2018, DGP Holdings produced the requested documentation.

Production No. 15. Century again requests documents after a meet and confer, where the undersigned stated that this is all that Direct has. In response to this request, Direct disclosed 3 banker's boxes of truck tickets. Included in these boxes were over 9,400 pages of documents, most of which were truck tickets. This is all that Direct has left after about 2 years. In fact, during this time frame, Direct turned over its original truck tickets and loader sheets to Rick Baron at Century, as proof of the work. Century is again crying foul, when it does not have clean hands and has not produced the documentation that it received from Direct.

Amended Counterclaim

Century wants to sue Mel Westwood personally under the agreement to arbitrate. However, Century's citations do not support this proposition. *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629 (2008) teaches us that "Nevada courts resolve all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration." However, "[i]f the court finds that there is no enforceable agreement, it may not . . . order the parties to arbitrate." Similar to the finding by the Supreme Court in *Truck Ins. Exch.*, there is no agreement to arbitrate

between Mel Westwood and Century in this case. Thus, this is the improper forum for Mr. Westwood to be sued.

As Century points out, *Truck Ins. Exch.* does mention exceptions, including an agency relationship, where an agent may be found to be subject to the arbitration agreement. However, the Court in *Truck Ins. Exch.* does not entertain or discuss that exception. Thus, there is no guidance in *Truck Ins. Exch.* related to agency relationships.

Consequently, the California court in *Westra*, cited by Century, does discuss this agency exception. However, this case does not help Century. The court in *Westra* held, “Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. ‘The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration.’” *Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.*, 129 Cal. App. 4th 759, 763 (Cal.App. 2005).

Further, the court in *Westra* discusses its own facts, as well as the facts of another case, *Berman v. Dean Witter & Co., Inc.* 44 Cal. App. 3d 999 (1975), concerning agency relationships, which does not help Century either. In the actual *Westra* case, a broker was acting as an agent for both parties to a purchase agreement and its arbitration agreement, in a preexisting agency relationship. The language of the purchase agreement, as well as the arbitration provision itself, clearly stated that the buyer, seller, and broker agent agreed to arbitrate disputes involving the subject matter of the purchase agreement. Although the agent did not sign the document, it clearly was a third-party beneficiary under the agreement. That is not the case here. Mel Westwood is not a third-party beneficiary and was not a broker agent.

Further, in *Berman*, a husband purchased future contracts under his wife’s account through a broker. After the contracts did not do well, the husband and wife sued the broker agency and its employee. The husband and employee were not signatories under the account contract. Nevertheless, the court in *Berman* held that the employee could claim a right to arbitrate under the contract which the husband was already suing. The court also held that the husband’s rights were no greater than the contract under which he was suing (i.e., that his wife had signed). Thus, in *Berman*, after A & B sued C & D, the court bound A to the arbitration agreement under the contract he had sued, and also allowed D to benefit from the arbitration agreement in the contract. However, in the case at hand, Mel Westwood is not a broker agent. Further, Mel Westwood is not suing anyone, and yet Century is trying to sue Mel Westwood. In other words, in this case, A is suing B, yet B wants to sue C and claim a benefit under the arbitration agreement. The cases cited by Century are too distinguishable to allow Mr. Westwood to be sued under the arbitration agreement and leave should not be granted to sue Mel Westwood.

MSA

Upon the filing of this matter, Direct agreed to arbitration, the parties set discovery dates, and the initial arbitration in this matter was supposed to be heard in early December of 2017. However, Century argued that because Direct argued that it was unsure whether or not the MSA applied in this matter, that Century needed additional time for discovery, through the middle part of March 2018 – asking for a 4-month continuance. Despite the objection by Direct, the time was granted. For the Arbitrator’s knowledge, nothing was ever requested by Century concerning this subject despite their request for an additional 4 months of discovery. Thus, the determination concerning the MSA is now ripe.

Just so that we are clear, the MSA repeatedly referenced by Century is the MSA between *Dunhill Homes* and Direct. It is “effective” June 29, 2010, but was actually dated in July of 2010.

Century claims that it is the assignee of this agreement. However, it is unclear whether the MSA is actually transferred to Century. It is never specifically listed. Further, under the agreement provided by Century, Dunhill Homes did not transfer its name. See excerpts from asset purchase agreement, attached as Exhibit "6".

Nevertheless, assuming *arguendo*, that the MSA was transferred, the MSA still does not apply to the applicable PWA's. The MSA would apply to previous contracts that would have also been transferred, and PWA's that reference the MSA. The only PWA's produced by Century in this matter are those PWA's already attached hereto as Exhibit "4". Each one of these PWA's is dated and entered into after the alleged assignment took place. Thus, there are no preexisting contracts of concern. Further, each one of these PWA's states, as follows:

This Project Work Authorization ("PWA") is effective this [DATE], by and between CENTURY COMMUNITIES OF NEVADA, LLC, a Delaware limited liability company (**Contractor**) and Direct Grading and Paving (Subcontractor). All Work shall be performed in accordance with the terms and conditions set forth in the Master Subcontractor Agreement (MSA) between **Contractor** and Subcontractor dated 6/29/10, **which is incorporated herein by reference.**

Exhibit "4" (emphasis added). Thus, any MSA referenced in a PWA is not the MSA that Century repeatedly quotes in this matter. The MSA repeatedly cited by Century is the MSA between Direct and Dunhill Homes. See Exhibit "7". On the other hand, there is no MSA signed by Century and Direct on 6/29/10. Further, on information and belief, there was never an MSA signed between Century and Direct.

An essential element of any contract is consent. The consent must be mutual. Every contract requires mutual assent or consent. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. The existence of mutual consent is determined by *objective* rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe. Outward manifestations thus govern the finding of mutual consent. *Weddington Productions, Inc. v. Flick*, 60 Cal. App. 4th 793, 810-11 (1998).

Further, and specifically with contracts that incorporate by reference other documents, courts have held that parties may incorporate by reference into their contract the terms of some other document. Each case must turn on its facts. But for the terms of another document to be incorporated into the document executed by the parties the reference ***must be clear and unequivocal***, the reference must be called to the attention of the other party and he must consent thereto, and the ***terms of the incorporated document must be known*** or easily available ***to the contracting parties***. *Id.* at 814; *Avery v. Integrated Healthcare Holdings, Inc.*, 218 Cal. App. 4th 50, 66 (2013); *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 801, 225 P.3d 213 (2009); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2017 U.S. Dist. LEXIS 18322 *34 (D.Ore Feb. 9, 2017).

"Unequivocal" is a strong word. "Unequivocal" means "[u]nambiguous; clear; ***free from uncertainty***." BLACKS LAW DICTIONARY (2nd pocket ed.), West Group, 2001, 733 (emphasis added). In this case, the PWA's cannot be "unequivocal"⁵ as to the reference of the MSA because

⁵Further, in the case of an ambiguity, the language is construed against the drafter. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481 (2005). Because the language cannot

the PWA's reference a contract that does not exist. Similarly, because the MSA referenced does not exist, the terms cannot be known to the contracting parties. As a result, the MSA does not apply to this matter.

Direct's Motion to Compel

Since the beginning of this matter, Century has maintained that Direct has untimely fulfilled its obligations under the contracts. In its first set of discovery requests, Direct requested the following: "For each of the Properties, please produce a copy of any document showing the deadlines, dates, or schedules by which DGP was to perform work at the Properties, but failed to perform. Please also produce any communication of these deadlines, dates, or schedules to DGP." Although Century has produced references to meeting calendars, letters involving purported issues at the properties, survey sheets and the infamous letter of default, it has never produced any contract showing a schedule. Direct believes that this is important to the case, and requests that the Arbitrator compel these productions. Counsel for Direct has requested these documents on several occasions, but Century has not been forthcoming.

Conclusion

For the reasons provided herein, Direct requests that the Arbitrator deny the Motion, except to grant an additional 30-60 days. However, in doing so, Direct requests that the Arbitrator condition this extension on Century cooperating with the filing of a complaint and staying the matter, to preserve Direct's liens and bonds.

Further, Direct requests that the Arbitrator make an early ruling concerning the MSA, and find that the MSA does not apply herein.

Very truly yours,

JOHNSON & GUBLER, P.C.

/s/ Russell G. Gubler

Russell G. Gubler
For the Firm

be found unequivocal, the same language would also inherently be ambiguous. Because Century is the drafter of this language, this language is construed against Century, in favor of Direct.

Exhibit CC

Subject: Scott P. - DGP
Job Title: Director
Company: DGP
File As: P., Scott
Email: /o=KC Fields and Associates/ou=First Administrative Group/cn=Recipients/cn=dp
Display As (Email): Scott P. (dp@directgrading.com)
Mobile Telephone: (702) 533-9344
First: Scott
Last: P.



DIRECT000970

From: Projects Calendar
Attendees: Ben Mifflin; Diane Raney; Don Mayhall; Mel Westwood; P D; Terry Conk; Tracy Pollinger; Victor Westwood
Location: Main Conference Room
Importance: Normal
Subject: Weekly General Operations Meeting
Start Time: Mon 6/2/2014 11:00:00 PM
End Time: Tue 6/3/2014 12:30:00 AM
Required Attendees: Ben Mifflin; Diane Raney; Don Mayhall; Mel Westwood; P D; Terry Conk; Tracy Pollinger; Victor Westwood; Projects Calendar
Optional Attendees: Ben Mifflin; Diane Raney; Don Mayhall; Mel Westwood; P D; Terry Conk; Tracy Pollinger; Victor Westwood



To: Mel Westwood (mel@directgrading.com)[mel@directgrading.com]; Diane Raney (diane@directgrading.com)[diane@directgrading.com]; PD (pd@directgrading.com)[pd@directgrading.com]; Ben Mifflin[ben@directgrading.com]
Cc: Don Mayhall (don@directgrading.com)[don@directgrading.com]; Terry Conk (terry@directgrading.com)[terry@directgrading.com]; Victor Westwood (victor@directgrading.com)[victor@directgrading.com]
From: Tracy Pollinger
Sent: Mon 10/13/2014 7:57:40 PM
Subject: Tonight's meeting has been Cancelled

Hello Everyone,

We will resume next Monday.

Thanks,

Tracy



To: Mel Westwood[mel@directgrading.com]; Tracy Pollinger[tracy@directgrading.com]; Don Mayhall[don@directgrading.com]
From: P D
Sent: Mon 12/1/2014 5:32:37 PM
Subject: Operations Meeting

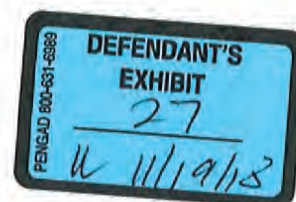
DIRECT000973



From: Projects Calendar
Location: RSL Construction
Importance: Normal
Subject: Las Vegas Wine Warehouse
Start Time: Fri 12/12/2014 5:00:00 PM
End Time: Fri 12/12/2014 5:30:00 PM
Required Attendees: Mel Westwood (mel@directgrading.com); PD (pd@directgrading.com)

Plans were picked up on December 3rd. Bid date is December 15th.

DIRECT000974



054

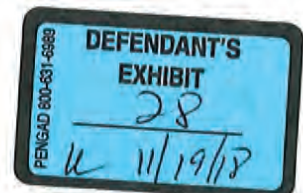
To: Mel Westwood (mel@directgrading.com)[mel@directgrading.com]; Diane Raney (diane@directgrading.com)[diane@directgrading.com]; PD (pd@directgrading.com)[pd@directgrading.com]
Cc: Don Mayhall (don@directgrading.com)[don@directgrading.com]; Terry Conk (terry@directgrading.com)[terry@directgrading.com]; Ben Mifflin[ben@directgrading.com]; Victor Westwood (victor@directgrading.com)[victor@directgrading.com]
From: Tracy Pollinger
Sent: Wed 12/10/2014 8:14:47 PM
Subject: Tonight's Meeting

Hello to All,

Tonight's meeting has been cancelled. We hope to see everyone on Friday at 2:00 for our Christmas Party...

Have a great day,

Tracy



DIRECT000975

055

From: Projects Calendar
Attendees: Mel Westwood (mel@directgrading.com); Diane Raney (diane@directgrading.com); Don Mayhall (don@directgrading.com); Tim Wyatt; PD (pd@directgrading.com)
Location: Office Conference Room
Importance: Normal
Subject: General Operation Meeting
Start Time: Wed 4/22/2015 11:00:00 PM
End Time: Wed 4/22/2015 11:30:00 PM
Required Attendees: mel@directgrading.com; diane@directgrading.com; don@directgrading.com; Tim Wyatt; pd@directgrading.com
Optional Attendees: Mel Westwood (mel@directgrading.com); Diane Raney (diane@directgrading.com); Don Mayhall (don@directgrading.com); Tim Wyatt; PD (pd@directgrading.com)

FYI.... All FIELD EMPLOYEES will start their meeting at 3:00 pm. Lunch will be served beginning at 3:00 pm.



To: tim@directgrading.com[tim@directgrading.com]
From: pd@directgrading.com
Sent: Wed 9/23/2015 2:46:01 AM
Subject: RE: Desk

Thanks Tim.

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

Office (702) 636-5377
Fax (702) 636-5378

From: tim@directgrading.com
Sent: Tuesday, September 22, 2015 7:43 PM
To: pd@directgrading.com
Subject: Re: Desk

Sorry Scott I did not recognize The email. We will get other stuff cleaned up tomorrow .

On Sep 22, 2015, at 10:38 PM, pd@directgrading.com wrote:

Scott

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

Office (702) 636-5377
Fax (702) 636-5378

From: tim@directgrading.com
Sent: Tuesday, September 22, 2015 7:38 PM
To: pd@directgrading.com
Subject: Re: Desk

Who is this ?

On Sep 22, 2015, at 10:30 PM, pd@directgrading.com wrote:

Tim, if there is anything you want out of the desk you moved from, and or the boards on the walls, please take them. If not I'll just toss it all. Thanks

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

DIRECT000977



057

Office (702) 636-5377

Fax (702) 636-5378

To: tim@directgrading.com[tim@directgrading.com]; mel@directgrading.com[mel@directgrading.com]
From: pd@directgrading.com
Sent: Fri 10/2/2015 3:46:37 PM
Subject: Master Schedule
Master Project Schedule.mpp

You guys go ahead and print this schedule out and mark up anything you want to add or change and leave it on my desk and I'll revise it. Thanks

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

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ID	Task Name	Baseline Duration	Baseline Start	Baseline Finish	Duration
1	Job Checklist	171 days	Tue 7/7/15	Tue 3/1/16	109 days
2	Plans	171 days	Tue 7/7/15	Tue 3/1/16	109 days
3	Specifications	1 day	Thu 10/1/15	Thu 10/1/15	1 day
4	Soils Reports	1 day	Thu 10/1/15	Thu 10/1/15	1 day
5	Job # Assigned	1 day	Tue 10/6/15	Tue 10/6/15	1 day
6	Job Binder Made	1 day	Fri 10/2/15	Fri 10/2/15	1 day
7	Assessor Parcel Received	1 day	Fri 10/2/15	Fri 10/2/15	1 day
8	Take off Files	2 days	Fri 10/2/15	Mon 10/5/15	2 days
9	Volume Report	2 days	Fri 10/2/15	Mon 10/5/15	2 days
10	3D Maps	1 day	Fri 10/2/15	Fri 10/2/15	1 day
11	Exhibit A - Scope of Work	1 day	Mon 10/5/15	Mon 10/5/15	1 day
12	Pre- Job Walk	1 day	Tue 10/6/15	Tue 10/6/15	1 day
13	Proposal	1 day	Wed 10/7/15	Wed 10/7/15	1 day
14	Proposal Submitted	1 day	Wed 10/7/15	Wed 10/7/15	1 day
15	Contract -Executed by DGP	5 days	Tue 10/6/15	Mon 10/12/15	5 days
16	Contract - Executed by GC	5 days	Tue 10/13/15	Mon 10/19/15	5 days
17	Estimate Input into Quickbooks	1 day	Tue 10/20/15	Tue 10/20/15	1 day
18	ALA Created	1 day	Tue 10/20/15	Tue 10/20/15	1 day
19	Insurance Certs Received	1 day	Tue 10/20/15	Tue 10/20/15	1 day
20	Job Information Sheet	1 day	Tue 10/20/15	Tue 10/20/15	1 day
21	Master PO Made	1 day	Tue 10/20/15	Tue 10/20/15	1 day
22	Master Daily Report Prepared	1 day	Tue 10/20/15	Tue 10/20/15	1 day
23	Weekly Safety Meeting sheets created	1 day	Tue 10/20/15	Tue 10/20/15	1 day
24	Weely Labor Affidavit Created	1 day	Tue 10/20/15	Tue 10/20/15	1 day
25	Grading Permit	2 days	Tue 10/20/15	Wed 10/21/15	2 days
26	Dust Permit	1 day	Tue 10/20/15	Tue 10/20/15	1 day
27	HTE #	1 day	Tue 10/20/15	Tue 10/20/15	1 day
28	Job Map created	1 day	Tue 10/20/15	Tue 10/20/15	1 day
29	Dig Ticket Called in	1 day	Wed 10/21/15	Wed 10/21/15	1 day
30	Dig Ticket Follow up	1 day	Thu 10/22/15	Thu 10/22/15	1 day
31	Equipment Mobilized	1 day	Thu 10/22/15	Thu 10/22/15	1 day
32	Post-Job Walk	1 day	Mon 12/14/15	Mon 12/14/15	1 day
33	Inspections (list)	1 day	Tue 12/15/15	Tue 12/15/15	1 day

ID	Task Name	Baseline Duration	Baseline Start	Baseline Finish	Duration
34	Sign Off Sheet	1 day	Tue 7/7/15	Tue 7/7/15	1 day
35	Pictures	108 days	Fri 10/2/15	Tue 3/1/16	108 days
36	Direct Grading Development Schedule	285 days	Thu 5/14/15	Wed 6/15/16	285 days
37	Rough Grading	37 days	Thu 5/14/15	Fri 7/3/15	37 days
38	Import	1 day	Thu 10/22/15	Thu 10/22/15	1 day
39	Mobilize	2 days	Fri 10/23/15	Mon 10/26/15	2 days
40	Track Out Pads	1 day	Tue 10/27/15	Tue 10/27/15	1 day
41	Hard Rock Ripping	20 days	Wed 10/28/15	Tue 11/24/15	20 days
42	Overexcavation	5 days	Wed 11/25/15	Tue 12/1/15	5 days
43	Normal Excavation	5 days	Wed 11/25/15	Tue 12/1/15	5 days
44	Pad Finish	5 days	Wed 12/2/15	Tue 12/8/15	5 days
45	Subgrade Prep Street and Parking Areas	3 days	Wed 12/9/15	Fri 12/11/15	3 days
46	Finish Grading	13 days	Mon 5/30/16	Wed 6/15/16	13 days
47	Subgrade Reprep Curb	2 days	Mon 5/30/16	Tue 5/31/16	2 days
48	Curb Grade Type 2	2 days	Wed 6/1/16	Thu 6/2/16	2 days
49	Subgrade Reprep Onsite	3 days	Fri 6/3/16	Tue 6/7/16	3 days
50	4" Type II Onsite	3 days	Wed 6/8/16	Fri 6/10/16	3 days
51	2" Onsite Paving	3 days	Mon 6/13/16	Wed 6/15/16	3 days
52	Inspections	0 days?	NA	NA	139 days
53	Rough Grading	0 days?	NA	NA	1 day
54	Overexcavation Bottoms	0 days?	NA	NA	1 day
55	Finish Grading	0 days?	NA	NA	7 days
56	Curb Grade Compaction	0 days?	NA	NA	1 day
57	Subgrade and Compaction	0 days?	NA	NA	1 day
58	Type II and Compaction	0 days?	NA	NA	1 day

Start	Finish	Predecessors	Resource Names	Notes
Thu 10/1/15	Tue 3/1/16			
Thu 10/1/15	Tue 3/1/16			
Thu 10/1/15	Thu 10/1/15			
Thu 10/1/15	Thu 10/1/15			
Tue 10/6/15	Tue 10/6/15	4		
Fri 10/2/15	Fri 10/2/15	4		
Fri 10/2/15	Fri 10/2/15	4		
Fri 10/2/15	Mon 10/5/15	4		
Fri 10/2/15	Mon 10/5/15	4		
Fri 10/2/15	Fri 10/2/15	4		
Mon 10/5/15	Mon 10/5/15	10		
Tue 10/6/15	Tue 10/6/15	11		
Wed 10/7/15	Wed 10/7/15	12		
Wed 10/7/15	Wed 10/7/15	12		
Tue 10/6/15	Mon 10/12/15	14		
Tue 10/13/15	Mon 10/19/15	15		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Wed 10/21/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Tue 10/20/15	Tue 10/20/15	16		
Wed 10/21/15	Wed 10/21/15	27		
Thu 10/22/15	Thu 10/22/15	29		
Fri 10/23/15	Fri 10/23/15	30,25		
Mon 12/14/15	Mon 12/14/15	45		
Tue 12/15/15	Tue 12/15/15	32		

Start	Finish	Predecessors	Resource Names	Notes
Tue 12/15/15	Tue 12/15/15	32		
Fri 10/2/15	Tue 3/1/16	31		
Thu 5/14/15	Wed 6/15/16			
Thu 5/14/15	Fri 7/3/15			
Thu 10/22/15	Thu 10/22/15	25		
Fri 10/23/15	Mon 10/26/15	38		
Tue 10/27/15	Tue 10/27/15	39		
Wed 10/28/15	Tue 11/24/15	40		
Wed 11/25/15	Tue 12/1/15	41		
Wed 11/25/15	Tue 12/1/15	41		
Wed 12/2/15	Tue 12/8/15	42,43		
Wed 12/9/15	Fri 12/11/15	44		
Mon 5/30/16	Wed 6/15/16			
Mon 5/30/16	Tue 5/31/16	45FS+120 days		
Wed 6/1/16	Thu 6/2/16	47		
Fri 6/3/16	Tue 6/7/16	48		
Wed 6/8/16	Fri 6/10/16	49		
Mon 6/13/16	Wed 6/15/16	50		
Wed 12/2/15	Mon 6/13/16			
Wed 12/2/15	Wed 12/2/15			
Wed 12/2/15	Wed 12/2/15	42		
Fri 6/3/16	Mon 6/13/16			
Fri 6/3/16	Fri 6/3/16	48		
Wed 6/8/16	Wed 6/8/16	49		
Mon 6/13/16	Mon 6/13/16	50		

To: tim@directgrading.com[tim@directgrading.com]; mel@directgrading.com[mel@directgrading.com]
From: pd@directgrading.com
Sent: Sat 10/10/2015 2:30:54 AM
Subject: FW: Master Schedule
Master Project Schedule.mpp

Have you guys looked at this schedule yet and do you have comments?

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

Office (702) 636-5377
Fax (702) 636-5378

From: pd@directgrading.com
Sent: Friday, October 02, 2015 8:42 AM
To: tim@directgrading.com; mel@directgrading.com
Subject: Master Schedule

You guys go ahead and print this schedule out and mark up anything you want to add or change and leave it on my desk and I'll revise it. Thanks

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

Office (702) 636-5377
Fax (702) 636-5378



To: mel@directgrading.com[mel@directgrading.com]
From: pd@directgrading.com
Sent: Fri 12/11/2015 4:37:17 AM
Subject: NOV, Schedule, Fire Hydrant Meter

I put the current Timelines 12/9/15 for Century's projects, and the Notice of Violation for Air Quality for Horse and Jones, on my desk at your office.

Also, the broken fire hydrant meter needs to be taken to Marcia at the Las Vegas Valley Water Distr



To: mel@directgrading.com[mel@directgrading.com]
From: pd@directgrading.com
Sent: Fri 12/11/2015 3:37:16 AM
Subject: NOV, Schedule, Fire Hydrant Meter

I put the current Timelines 12/9/15 for Century's projects, and the Notice of Violation for Air Quality for Horse and Jones, on my desk at your office.

Also, the broken fire hydrant meter needs to be taken to Marcia at the Las Vegas Valley Water District office on Valley View and Charleston. Tell her it is the missing meter from the Cullerton address at Rhodes Ranch.

I guess pay day is on Friday!

PD

2222 West Cheyenne Avenue
North Las Vegas, Nevada
89032

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DIRECT000986



066

Exhibit DD



EMPLOYEE MANUAL

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I. EQUAL OPPORTUNITY EMPLOYMENT

The Company is an Equal Opportunity Employer. Hiring, promotion, discharge, or any other decision regarding an employee with respect to his or her compensation terms, conditions, or privileges of employment is based entirely upon qualifications and performance. Race, color, religion, sex, age, natural origin, or any other consideration made unlawful by applicable discrimination laws is not a consideration in our hiring or promotion policies.

The Company also provides equal employment opportunities to qualified individuals with disabilities and will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability, unless undue hardship to the Company would result. Any employee who requires an accommodation in order to perform the essential functions of the job should contact the Human Resource Coordinator and request such an accommodation. The individual with the disability should specify what accommodations he or she needs to perform the job. The Company will make reasonable accommodations as required by applicable laws.

The Company abides by the applicable state and federal Equal Opportunity statutes.

II. AT WILL EMPLOYMENT

A. Term of Employment. The employment relationship is based on the mutual consent of the employee and the Company. Accordingly, either the employee or the Company can terminate the employment relationship at any time, with or without cause or advance notice.

B. Hiring. Hiring of employees shall be performed by the applicable Company manager, supervisor or Company officer. As described more fully below, a six (6) month introductory period applies to all employees. Completion of the introductory period does not change your status as an "at will" employee, does not entitle you to remain employed by the Company nor create any other contractual obligations.

No single employee or representative of the Company has any authority to enter into any agreement for employment for any specified period of time or to make any agreement that is contrary to the employment-at-will policy. The at-will nature of the employment relationship cannot be altered unless it is done in a written agreement signed by the Company Manager, and either the president or CEO of the parent company, and also by the employee. The written agreement must specifically revoke the at-will relationship.

C. Severance Pay. The Company does not generally provide severance pay to employees who separate from its employ. Severance pay should therefore not be expected. However, the Company reserves the right to make exceptions to this policy in its sole and absolute discretion.

III. EMPLOYEE STATUS

Classification of Employees:

In order to determine eligibility for various benefits, the following employment categories have been established:

A. Introductory Employees. All new employees are hired by the Company for an introductory period of six months to allow both the Company and the employee to become

acquainted, to assess the employee's ability to perform assigned tasks, and determine whether continuation of the employment relationship is in the best interests of both parties. Such employment is at the mutual consent of both the Company and the employee and may be terminated, with or without cause, at any time during or after the introductory period. The Company, in its sole discretion may extend the introductory period, if it determines that such an extension is desirable or appropriate for any reason. Completion of the introductory period does not entitle you to remain employed by the Company or create any other contractual obligations, and it does not change your status as an "at-will" employee.

B. Regular Full-Time Employees. An employee who regularly works a minimum of thirty-eight (38) hours a week on a continuing basis, and who has completed the introductory period, is considered a regular full-time employee.

C. Regular Part-Time Employees. An employee who regularly works less than 38 hours a week is considered a regular part-time employee once the employee successfully completes the introductory period. Regular Part-Time Employees who are regularly scheduled to work at least 30 hours per week are eligible for certain Company benefits, in accordance with the terms, conditions and limitations set forth in benefit plan documents.

D. "Other" Part-Time Employees. For purposes of this Handbook, part-time employees who are regularly scheduled to work less than 30 hours per week are considered "Other Part-time Employees" and are not eligible for Company benefits, except as required by law or by the terms of any benefit plan adopted by the Company.

E. Commissioned Employees. An employee who is compensated on a commission basis is considered a commissioned employee. A commissioned employee's benefits are defined by their employment agreement and applicable law.

F. Exempt Full-Time Employees. All employees who are hired on a full-time basis and who qualify as exempt executive, administrative, professional, or supervisory employees pursuant to the terms of the Federal Fair Labor Standard Act and any applicable state laws, will be exempt from the overtime provisions of those laws ("exempt employees").

G. Seasonal Employees. The Company may hire seasonal employees for positions of specified, limited periods. Seasonal employees may be hired on a full or part-time basis for a period expected to last 6 months or less. Seasonal employees are not eligible for Company benefits, except as required by law or by the terms of any benefit plan adopted by the Company.

On occasion, the Company may employ a seasonal employee for a period greater than 6 months. The Company will reclassify a seasonal employee to a Regular Full or Part-Time Employee by written notice to the seasonal employee that specifically notifies the seasonal employee that he or she has been reclassified. If the seasonal employee does not receive written notice from the Company, the employee will remain a seasonal employee.

The decision to use part-time or seasonal employees rests solely with the Company.

Since all employees are hired for an unspecified duration, these classifications do not guarantee employment of any specific length of time. Employment is at the mutual consent of the employee and the Company. Accordingly, as to all of the categories referenced above, either the employee or the Company can terminate the employment relationship at any time, with or without cause or advance notice.

IV. JOB EVALUATIONS; BONUSES

A. Job Evaluations. Your supervisor may review your job performance with you at such times as the Company, in its sole discretion, deems it appropriate to do so. The purposes of these evaluations are:

1. To evaluate the strengths and weaknesses of your work;
2. To communicate these evaluations to you; and
3. To set future performance goals.

Your supervisor may prepare a written assessment of your job performance, which may be reviewed by a higher level of management. After that, you may meet with your supervisor to discuss the evaluation. If and when you meet with your supervisor, you are encouraged to ask specific questions and to comment about your evaluation. A good performance evaluation does not guarantee a pay raise or a bonus, because pay increases and bonuses may not occur every year. Furthermore, a good performance evaluation in no way guarantees continued employment.

B. Bonuses. The Company reserves the right to recognize and compensate employees by issuing bonuses. Bonuses are given at the sole discretion of management both as to (1) the date and amount of the bonus and (2) whether a bonus, if any, will be paid. Bonuses may be paid to an individual employee or to employees as a group, at the sole discretion of management. Commendable performance does not guarantee that a bonus will be paid.

Bonuses are not part of your base compensation. By paying bonuses, the Company does not alter your salary arrangement. The fact that the Company paid you a bonus for particular job performance or for any other reason does not mean that the Company will pay you a bonus under similar circumstances in the future.

V. WORK WEEK

The Company's workweek shall be 12:01 am. Sunday through 12:00 midnight the following Saturday.

VI. HOURS OF WORK, OVERTIME AND PROJECT ASSIGNMENT

A. Hours of Work and Overtime Pay. In general, the work hours of all hourly employees are determined by the operational and scheduling needs of your department in accordance with all applicable State and Federal Fair Labor Standards, and overtime will be paid in accordance with those provisions.

1. Exempt Employees. Exempt employees, generally classified as executive, administrative, professional, or outside sales personnel, are not entitled to overtime pay. As required by federal and state law, exempt employees are paid on a salaried and/or commissioned basis; and their compensation is not subject to reduction for absences of less than a full work day.

Exempt full-time employees are expected to work during the regular business hours of the Company and as much of each workday as is necessary for the full accomplishment of their job responsibilities. For an exempt employee, any salary reduction for absences of a day or more will be made as provided in the Department of Labor regulations.

2. Non-exempt Employees. Non-exempt employees are those employees paid on a per hour basis and are entitled to overtime pay, calculated in accordance with federal, state, and local regulations, for all hours which qualify for overtime pay as defined by federal, state, and local law.

Vacation, sick leave, other leaves of absence, holidays (unless actually worked), and other time away from work are not counted as time worked for purposes of determining overtime compensation.

Overtime for non-exempt employees must be APPROVED IN WRITING by the employee's supervisor prior to the work being performed. *Employees who work unauthorized overtime are subject to disciplinary action, up to and including termination.*

Although it is the Company's intention that regular full-time employees receive a full workweek, it is not intended to be a guarantee. Employees may be expected to work less hours than a full schedule, based upon the business conditions and staffing needs of the Company.

The Company provides meal periods and breaks in accordance with or in excess of applicable state and local requirements. Meal periods are unpaid and are not included in your regular or overtime work hours.

Employees should immediately contact their supervisor with any questions concerning their compensation so that inadvertent errors can be corrected.

B. Compensatory ("Comp") Time. Federal law allows private employers the discretion to use comp time to compensate non-exempt employees who work overtime as an alternative to the payment of a wage. However, the laws governing the use of comp time make granting it difficult for the Company to administer and impractical for the employee to use. Because of these difficulties, the Company does not offer comp time as a method of compensation for overtime hours worked by non-exempt employees.

C. Flex Time. Flex time is a benefit offered at the sole discretion of the Company to those non-exempt employees who, on a non-recurring basis, need some time away from work during a particular work week and do not wish to use vacation time or who wish to make up time missed due to tardiness or absences not covered by sick time. Because this benefit is offered at the discretion of the Company, any use of flex time must be pre-approved by the employee's supervisor and must not require the Company to pay overtime. In other words, if you are tardy or absent from work, and you wish to make up some or all of that time, the Company may allow you to make up that time, but only in the same work week in which you were tardy or absent.

D. Project Assignment. The Company reserves the right to change the location of an employee's assignment.

VII. TIME RECORDS, PAY PERIODS, AND DIRECT DEPOSIT

A. Time Records. All non-exempt employees are required to maintain a time record. See your supervisor for time cards and instructions on completing the card. Time records must show the exact time worked. Falsification of information on your or another employee's time record is prohibited and may result in immediate termination. You may not fill out a time card for

another employee. Time cards must be submitted no later than the morning of the next business day after the end of the pay period in order to be included in the next payroll cycle (i.e., for a pay period ending on the 31st of the month, your time cards for that pay period must be submitted by the morning of the next business day after the 31st).

You are responsible to ensure the accuracy of your time records. Always confirm the amount and distribution of hours shown on your paycheck stub with that which was entered on your time record to ensure there was no error in payment. The Company will promptly adjust any errors made on your paycheck.

B. Pay Periods. The Company's employees are paid twice monthly for work performed through the previous pay period. Paydays are currently the 7th (for the period of the 16th through the 31st of the prior month) and the 22nd (for the period of the 1st through the 15th of the same month) of each month.

C. Direct Deposit. The Company provides direct-deposit services for your paycheck if you so elect. An employee may have a maximum of three (3) direct deposit instructions for a Company paycheck.

VIII. PUNCTUALITY AND ATTENDANCE

Employees are expected to report to work on time. Non-exempt employees should not report to work more than 10 minutes before they are scheduled to begin work and should not remain in the working areas of the Company more than 10 minutes after the work schedule for the day is completed.

If you are unable to report for work on any particular day, you must call and speak to your supervisor no later than thirty minutes after the time you are scheduled to begin working for that day. If your supervisor is not available, you must report to another manager in the office. It is not acceptable to notify a non-supervisory employee that you are late or absent. If you call in more than thirty minutes after your scheduled time to begin work, you will be considered tardy for that day. In some circumstances, you may be required to provide documentation of the absence or basis for being tardy to your supervisor, such as a doctor's note.

More than three instances of tardiness by a non-exempt employee during any 12-month period is considered excessive. Any unexcused absence is considered excessive. If you are absent two consecutive working days without notice you will be considered to have resigned. Nothing in this policy is intended to interfere with the Company's accommodation of individuals with disabilities as required by law.

IX. REFERENCES AND FORMER EMPLOYEES

Absent federal, state or local law requiring greater disclosure, the Company's policy, as to references for employees, is to disclose only the dates of employment with the Company and the title of the last position held. If you authorize disclosure in writing, the Company will also provide a prospective employer with information concerning the amount of the salary or wage you last earned while employed at the Company. The Company normally does not provide verbal or written recommendations of any kind.

The company will not rehire any former employee who was previously either terminated, or resigned in lieu of termination, due to a violation of any Company policy.

X. BACKGROUND CHECKS AND INVESTIGATIONS

The Company recognizes the importance of maintaining a safe and productive workplace with honest, trustworthy, qualified, reliable and non-violent employees who do not present a risk of harm to their co-employees or others. For the benefit of all employees and the Company in furthering these interests and enforcing the Company's policies, the Company will perform, or request that third parties perform, "background checks" or other types of investigations. These background checks and investigations may be performed by the Company at any time prior to or during employment.

Background checks and investigations performed by or on behalf of the Company may include the use of consumer reporting agencies, which may gather and report information to the Company in the form of consumer or investigative consumer reports. Such reports, if obtained, may contain information concerning your credit standing, character, general reputation, personal characteristics, or mode of living. The types of reports that may be requested from consumer reporting agencies under this policy include, but are not limited to, credit reports, criminal records checks, public court records checks, driving records, summaries and verification of educational and employment records and histories, and/or licensing or certification histories. The information contained in these reports may be obtained by a consumer reporting agency from private or public records sources including sources that you identify before or during your employment, or through interviews with your co-workers, neighbors, friends, associates, current or former employers, or other personal acquaintances.

Pursuant to this policy, the Company may request consumer reports, including records checks and investigative reports based on interviews, or investigative consumer reports, in connection with your application for employment. The Company may also request such reports from time to time throughout the course of your employment in order to assist the Company in evaluating your suitability for employment, promotion, reassignment or retention. The Company may also obtain such reports, during and after your employment with the Company, for purposes of evaluating, investigating, or enforcing compliance with Company policies or in connection with or in response to grievances or complaints.

Employees are expected to cooperate fully with this background check and investigation policy. Such cooperation includes, among other things, providing truthful and complete information in response to inquiries made by the Company or third party investigators during the course of investigations. Failure to cooperate in these respects, or any attempt to interfere with the Company's implementation of this policy, or the Company's efforts to obtain relevant information, will result in discipline, up to and including termination from employment.

XI. BENEFITS

Holidays, Vacation and Sick Leave, Insurance, Etc.

All regular full-time and exempt full-time employees may participate in certain benefit programs. The benefits of commissioned employees, such as salespeople, differ in some respects from the benefits described in this Handbook; commissioned employees should look to their employment agreement and other relevant Company policies that apply specifically to them to more fully understand their benefits.

This Handbook does not list all of the benefit programs nor does it restate all of the features of these benefit programs. Rather, it provides brief summaries to acquaint employees with some of the key features of some of the programs. It is important that employees remember that

additional terms, conditions, and limitations regarding program eligibility and benefit entitlement often exist, and that these terms may change from time to time. Official plan documents or relevant state or federal laws should be consulted for further information regarding each benefit program. In the case of an actual or apparent conflict between the benefit summaries set forth in this Handbook and the terms of the official plan documents, the provisions of the official plan documents, as interpreted in the sole and absolute discretion of the plan administrator, shall control.

In addition, it is the Company's present intention to continue its current level of benefits. However, the Company reserves the right, whether in an individual case or more generally, to modify, reduce or eliminate any benefit, in whole or in part, either with or without notice. Finally, neither the benefit programs nor their descriptions are intended to create any guarantees regarding employment or continued employment. As noted elsewhere in the Handbook, employment relationships are for an indefinite term and are terminable at will, either at the option of the employee or the Company.

A. Holidays. The Company authorizes eight (8) paid holidays per calendar year. The actual holidays observed will be determined by the Company Manager. The following holidays are commonly observed by the Company: New Year's Day, Memorial Day, Independence Day, "State" day, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day.

If an hourly employee is asked to work on a holiday he or she shall either: (1) receive normal pay for the time worked and also holiday pay, or (2) take time off on an alternate day. If the second alternative is chosen, actual time off must be taken within the same pay period as the holiday. Conversely, however, if an employee's normally scheduled day off falls on a holiday then no further compensation or time off is due.

Recognized religious holidays may be taken as vacation days, if vacation time is available or, if vacation time is not available, religious holidays may be taken without compensation. In all cases, however, standard advance notice for vacation time must be given before a religious holiday is taken.

B. Vacations. Exempt full-time employees are eligible to accrue vacation/sick time. Non-exempt employees must work a minimum of 60 hours per pay period in order to be eligible to accrue vacation/sick time. Commencing in the second full pay period after an employee's date of hire, and thereafter for the first five years of employment, employees will accumulate 3.33 hours per pay period (i.e., 80 hours/24 pay period year). **No vacation time may be taken during the first 3 months of full-time employment.**

In the first full pay period after the fifth anniversary of employment, employees will accumulate 5.00 hours per pay period (i.e., 120 hours/24 pay period year).

In the first full pay period after the fifteenth anniversary of employment, employees will accumulate 6.67 hours per pay period (i.e., 160 hours/24 pay period year).

The maximum balance of vacation hours you may accrue is one and one-half (1.5) times your annual accrual amount (i.e., if your annual accrual amount is 80 hours, then the maximum total number of hours you may accrue is 120) (the "Maximum Balance"). No vacation will be accrued in any pay period, which will take you over your Maximum Balance. In other words, if you don't use your vacation time and you accrue your Maximum Balance of hours, you will not accrue any

more time during the pay periods that you remain at the Maximum Balance. Therefore, in order to begin accruing vacation time again, you must use at least a portion of your current accrual.

Additionally, you may not actually take more vacation time than your Maximum Balance amount in any 12-month period.

Except during the first 3 months of full-time employment, vacation may be taken before it is earned, but only if you obtain prior written permission from management. If an advance of vacation time is permitted, employees are expected to take only such time in advance as will allow them to not have a negative accrual balance by the end of the calendar year. If permission is granted for you to take vacation time in advance of when it is earned, the vacation will be considered a salary advance and, should you leave the Company before it is earned, the advance will be deducted from your pay.

If extenuating circumstances exist, an hourly employee may be asked to work during their scheduled vacation time. In that case, you will be paid straight time for the hours that were worked with the written approval of management, and your vacation time will not be used for the time worked.

Vacation time must generally be requested 30 days in advance and you must state on the request how many hours of vacation you will be using. Hourly employees may take partial days of vacation, which will be accounted for on an hourly basis. For accrued vacation time, approval of your vacation request is based solely on the Company's operational needs and approval is at the discretion of Company management. We reserve the right to deny your request, even after it has been approved, should Company operational needs so require. Employees are advised that the Company's operational needs are quite significant near the end of the calendar year and may preclude the granting of vacation time during that period beyond the determined Company holidays.

If you become ill during your vacation, you will not be able to count those vacation days as sick days. However, in the unusual case of a major illness, your Company manager may, at his/her sole discretion, choose to reschedule your vacation for a later time.

If a Company paid holiday occurs during your scheduled vacation, that day will not count as a day of vacation.

All employees must report vacation hours taken. Non-exempt employees will write "VACATION" and the number of vacation hours on their time report, salaried employees will otherwise report the hours in writing. If you request vacation and do not take it, when the decision is made to not take the vacation time, have the request marked "VOID" to ensure that it is not deducted from your accrual. Absent conclusive evidence to the contrary, the Company will assume that any approved vacation requested by you was actually taken.

The employee will be paid vacation time at their hourly or salaried rate. While non-exempt employees may be permitted to take partial days as vacation, exempt employees must take a full day. Commissions and bonuses will be excluded from vacation and sick time pay calculations.

The Company may display computed unused vacation accruals on your paycheck stub. Any amounts shown on the pay stub may require correction and may not reflect your actual unused vacation time. The Company reserves the right to correct the amounts shown on your pay stub.

Your actual accruals are determined by the policy above, and by Company determination of time actually taken, not by the amount shown on your pay stub.

C. Sick Leave. Sick leave is defined as that necessary time off for employees due to their personal bona fide illness or the illness of a parent, child or spouse, or for bereavement. It is not for "personal" absences or to extend vacation time or holidays. Following the successful completion of 3 months of employment, all regular full-time or salaried full-time employees are entitled to five days of paid sick leave per calendar year.

For the calendar year in which an employee completes the introductory period, the amount of available paid sick time is calculated by prorating the five days by the portion of the calendar year remaining after the employee's introductory period. For example, if the employee's introductory period ends October 15, then the employee would have one paid sick day for the remainder of the calendar year. On January 1 of the next year, the employee would have five days for the new calendar year.

The following guidelines apply to the sick leave benefit:

1. Sick leave benefits are available only to regular full-time or exempt full-time employees after the first 3 months of full-time employment. Introductory, regular and other part-time, and seasonal employees are not entitled to receive sick leave benefits.
2. Employees are entitled to sick leave pay only when they, their parent, child or spouse are unavoidably sick, or for bereavement. Abuse or improper use of sick leave will be grounds for discipline up to and including termination.
3. Employees must call their supervisor each day of absence as soon as possible but in no case later than 30 minutes after the employee's scheduled start time in order to be entitled to sick leave compensation. Two consecutive absences that are taken without notifying the employee's department manager may be deemed to be a voluntary resignation.
4. Sick leave will normally not be approved the day before or the day after a paid holiday unless a note is provided from a physician.
5. For exempt employees, payment for sick leave is equal to full salary based on an eight-hour day, and for non-exempt employees, at the employee's hourly rate.
6. Five days of sick leave per year will be granted. Unused days may not be carried over from year to year. Because sick leave is a granted benefit given to each eligible employee solely to cover illness, injury or bereavement, under no circumstances will any unused portion be paid to an employee upon termination of employment for any reason.
7. At the discretion of Company, an employee may be requested to provide a doctor's verification of illness. Upon return from sick leave an employee may also be requested to provide a doctor's release to prove his or her fitness to return to work at that time. If there is reason to believe that sick pay has been misused, sick pay may not be awarded.
8. To the extent possible, routine doctor and dental appointments should be scheduled during non-working hours.