EXHIBIT 1

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,
Plaintiff,
vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONDALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X; and ROE CORPORATIONS I through X, inclusive,
Defendants.

Case No. A-13-689113-C

Dept. No. I

AMENDED COMPLAINT

COMES NOW Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its counsel of record, HOWARD KIM & ASSOCIATES, and for causes of action against the Defendants, and each of them, complains and alleges as follows:

I.

THE PARTIES

1. FREDRIC ROSENBERG and BARBARA ROSENBERG, are, and at all times relevant to this action were, Trustees of THE FREDRIC ROSENBERG AND BARBARA ROSENBERG LIVING TRUST.

2. Plaintiff is informed and believes and therefore alleges that Defendant BANK OF AMERICA, N.A. is, and at all times relevant to this action was, conducting business in the State of Nevada.

3. Plaintiff is informed and believes and therefore alleges that Defendant BAC HOME LOANS SERVICING, LP, a foreign limited partnership, is, and at all times relevant to this action was, a subsidiary of BANK OF AMERICA, N.A. conducting business in Clark County, Nevada.

4. Plaintiff is informed and believes and therefore alleges that Defendant MACDONALD HIGHLANDS REALTY, LLC, is, and at all times relevant to this action was, a Nevada limited liability company conducting a real estate business in Clark County, Nevada.

5. Plaintiff is informed and believes and therefore alleges that Defendant MICHAEL DOIRON, an individual, is and at all times relevant to this action was, a resident of Clark County, Nevada and a duly licensed Real Estate Broker/Salesperson conducting business in Clark County, Nevada.

6. Plaintiff is informed and believes and therefore alleges that Defendant SHAHIN SHANE MALEK, an individual, is and at all times relevant to this action was, the owner of certain real property in Clark County, Nevada generally described as 594 Lairmont Place, Henderson, Nevada 89012, Assessor Parcel Number 178-27-218-002, located in the MacDonald Highlands community.

7. Plaintiff is informed and believes and therefore alleges that Defendant PAUL BYKOWKSI, is and at all times relevant to this action was, a resident of Clark County, Nevada and is a member of The Foothills at MacDonald Ranch Master Association, LLC, a member of The Foothills at MacDonald Ranch Master Association, LLC Design Review Committee and an agent of the Declarant The Foothills Partners, LP.

/ / /

8. Plaintiff is informed and believes and therefore alleges that Defendant THE FOOTHILLS at MACDONALD RANCH MASTER ASSOCIATION, LLC is, and at all times relevant to this action was, a Nevada limited liability company, master homeowner's association in Clark County, Nevada.

9. Plaintiff is informed and believes and therefore alleges that Defendant THE FOOTHILLS PARTNERS, LP is, and at all times relevant to this action was, a Nevada limited partnership and the Declarant for THE FOOTHILLS at MACDONALD RANCH MASTER ASSOCIATION, LLC.

10. Plaintiff does not presently know the true names and/or capacities of the individuals, corporations, partnerships and entities sued and identified herein in fictitious names DOES, I through XX, inclusive and ROE BUSINESS ENTITY I through XX, inclusive. Plaintiff alleges said DOES and ROE BUSNESS ENTITIES, and each of them, are liable and legally responsible to Plaintiff under the claims for relief set forth below. Plaintiff requests leave of this Court to amend this Complaint with appropriate allegations when the true names of said Defendants are known to Plaintiff.

II.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

11. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

12. On or about November 2, 2011, BANK OF AMERICA, N.A. was the owner of certain residential real property in Clark County, Nevada, generally described as 590 Lairmont Place, Henderson, Nevada, 89012, and more particularly described as Assessor Parcel Number: 178-27-218-003 (hereinafter "SUBJECT PROPERTY").

13. The SUBJECT PROPERTY is a golf course lot situated at the ninth hole of the private 18-hole championship golf course of the Dragonridge Country Club within the prestigious MacDonald Highlands community.

14. On or about August 8, 2012, Defendant SHAHIN SHANE MALEK ("MALEK") purchased certain residential real property in Clark County, Nevada, generally described as 594

Lairmont Place, Henderson, Nevada, 89012, and more particularly described as Assessor Parcel Number: 178-27-218-002 (hereinafter "MALEK PROPERTY").

15. The MALEK PROPERTY sits adjacent to the SUBJECT PROPERTY.

16. On or about October 30, 2012, DRFH Ventures, LLC was the owner of certain real property in Clark County, Nevada, generally described as the Dragonridge golf course located in Henderson, Nevada, 89012 situated in the MacDonald Highlands community and including, but not limited to, a certain .34-acre portion of Assessor Parcel Number 178-28-520-001 generally described as MacDonald Highlands Golf Hole #9 in the NW4 of Section 27, Township 22 South, Range 62 East, M.D.M. in the MacDonald Ranch Planning Area and located northwest of MacDonald Ranch Drive and Stephanie Street (hereinafter the "GOLF PARCEL").

17. Situated on the GOLF PARCEL were certain easements.

18. On or about October 30, 2012, Paul Bykowski, on behalf of MacDonald Properties, Ltd. and DRFH Ventures, LLC submitted a Vacation Application to the City of Henderson along with supporting documentation requesting to vacate existing "blanket easements" of the GOLF PARCEL (hereinafter the "VACATION APPLICATION").

19. The VACATION APPLICATION was submitted in conjunction with associated applications for Comprehensive Plan Amendment (CCPA-2012500313), Zone Change (CZCA-201 250031 4) and Tentative Map (CTMA-201 2500316) (collectively hereinafter "MACDONALD APPLICATIONS").

20. The MACDONALD APPLICATIONS sought to revise the land use designation regarding the GOLF PARCEL from public/semipublic (PS) to very low density residential (VLDR).

21. The MACDONALD APPLICATIONS sought to revise the zoning designation regarding the GOLF PARCEL from Public/Semi Public with Master Plan and Hillside Overlays (PS-MP-H) to Low Density Residential with Master Plan and Hillside Overlays (RS-2-MP-H).

22. The MACDONALD APPLICATIONS sought to amend Ordinance No. 2869, the zoning map, to reclassify certain real property within the city limits of the city, described as a portion of section 27, township 22 south, range 62 east, M.D. & M., Clark County, Nevada, located within the MacDonald Highlands Master Plan, off MacDonald Ranch Drive and Stephanie Street from PS-MP-H

(public/semipublic with master plan and hillside overlays) TO RS-2-MP-H (low-density residential with master plan and hillside overlays), and other matters relating thereto.

23. The MACDONALD APPLICATIONS sought a Resolution of the City Council of the City of Henderson, Nevada, to amend the land use policy plan of the City Of Henderson Comprehensive Plan for the purpose of changing the land use designation of that certain property within the city limits of the City of Henderson, Nevada, described as a parcel of land containing 0.34 acres, more or less, and further described as a portion of section 27, township 22 south, range 62 east, M.D.B. & M., Clark County, Nevada, located within the MacDonald Highlands Master Plan, off MacDonald Ranch Drive and Stephanie Street, in the MacDonald Ranch Planning Area, from PS (public/semipublic) to VLDR (very low-density residential).

24. The MACDONALD APPLICATIONS sought to amend the GOLF PARCEL allow an approximately 14,841 square foot common area of the GOLF PARCEL to be subsequently included and integrated into the MALEK PROPERTY (hereinafter "MALEK PROPERTY ADDITION").

25. The MACDONALD APPLICATIONS sought to remove the 0.34-acres (14,841 square feet) from Planning Area 3 (Golf Hole #9) and add it to Lot 2 of Planning Area 10.

26. The MACDONALD APPLICATIONS asserted that the amendment to the GOLF PARCEL area was "minor".

27. The MACDONALD APPLICATIONS asserted that the amendment to the GOLF PARCEL area would have "little or no impact on the adjacent properties".

28. The MACDONALD APPLICATIONS asserted that the amendment to the GOLF PARCEL area would not "conflict with any portion of the goals of the plan".

29. The MACDONALD APPLICATIONS asserted that the impact of the amendment to the GOLF PARCEL would "not adversely impact the general area or portion of the City as to traffic, public facilities, and environmentally sensitive areas or resources."

30. Upon information and belief, on or about November 5, 2012, notice of the public hearing regarding the VACATION APPLICATION was published.

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31. Upon information and belief, on or about November 5, 2012, notice of the public hearing regarding the VACATION APPLICATION was mailed to all properties within the MacDonald Highlands community.

32. Upon information and belief, on or about November 5, 2012, notice of the public hearing regarding the VACATION APPLICATION was mailed to the owners of property adjacent to the GOLF PARCEL.

33. MALEK received notices of the public hearing regarding the VACATION APPLICATION.

34. BANK OF AMERICA received notices of the public hearing regarding the VACATION APPLICATION.

35. On or about January, 2013, the MACDONALD APPLICATIONS were approved subject to certain conditions.

36. The changes and amendments to the MALEK PROPERTY lot lines resulting from the approval of the MACDONALD APPLICATIONS negatively impacted the value of the adjacent SUBJECT PROPERTY or its use in an adverse manner.

37. On or about March 8, 2013, BANK OF AMERICA, as Seller, through its real estate agent/broker Defendant MICHAEL DOIRON of Defendant MACDONALD HIGHLANDS REALTY, LLC (hereinafter collectively "SELLER's AGENTS"), listed the SUBJECT PROPERTY for sale in the Multiple Listing Service ("MLS").

38. SELLER's AGENTS marketed the SUBJECT PROPERTY as a "Tuscan-inspired estate" sitting on the ninth hole of Dragonridge Country Club, a five bedroom two-story custom home, on a golf course lot of .660 acres with golf and mountain views, more than 10,000 square feet of living area, a six car garage with amenities including a home theatre, a library/office, gym, game room, elevator, backyard patio with fireplace and resort-style pool and spa with infinity edge.

39. On or about March 13, 2013, PLAINTIFF, as Buyer, offered to purchase the SUBJECT PROPERTY for the purchase price of $2,160,000.00.

40. On or about, March 14, 2013, PLAINTIFF, as Buyer, executed Addendum No. 1 to the Purchase Agreement whereby PLAINTIFF acknowledged and agreed to enter into a side agreement

with the Master Developer for an extension of the construction clock to complete requirements of the exterior of the property

41. On or about March 19, 2013, PLAINTIFF, as Buyer, executed Addendum No. 2 to the Purchase Agreement amending the purchase price to $2,302,000.00, an increase of $142,000.00 from the original agreed upon price.

42. On or about March, 21, 2013, BANK OF AMERCIA, as Seller, executed Addendum No. 1 to the Purchase Agreement.

43 On or about March, 21, 2013, BANK OF AMERCIA, as Seller, executed Addendum No. 2 to the Purchase Agreement amending the purchase price to $2,302,000.00, an increase of $142,000.00 from the original agreed upon price.

44. On or about March, 21, 2013, BANK OF AMERCIA, as Seller, agreed to sell the SUBJECT PROPERTY to PLAINTIFF.

45. PLAINTIFF was represented in the purchase of the SUBJECT PROPERTY and the related negotiations by licensed Real Estate Agent Siobahn McGill and licensed Real Estate Broker Kathryn Bovard of Realty One Group.

46. BANK OF AMERICA was represented in its sale of the SUBJECT PROPERTY and related negotiations by Defendant MICHAEL DOIRON, licensed Real Estate Agent and Broker with MACDONALD HIGHLANDS REALTY, LLC.

47. Defendant MICHAEL DOIRON was BANK OF AMERICA's listing agent for the SUBJECT PROPERTY.

48. On or about May 15, 2013, escrow closed and the title to the SUBJECT PROPERTY transferred from BANK OF AMERICA to PLAINTIFF.

49. At no time did BANK OF AMERICA, as the SELLER, disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines were other than presented and had in fact been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

50. At no time did MICHAEL DOIRON, Seller's representative, disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines were other than as presented and had been amended in

such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

51. MICHAEL DOIRON, Seller's representative, knew, or should have known, that the adjacent MALEK PROPERTY lot lines were other than as presented to PLAINTIFF and had been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

52. BANK OF AMERICA, as Seller, knew, or should have known, that the adjacent MALEK PROPERTY lot lines were other than as presented to PLAINTIFF and had been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

53. MICHAEL DOIRON failed to disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines had been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

54. BANK OF AMERICA failed to disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines had been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

55. Sometime subsequent to the May 15, 2013 transfer of title to PLAINTIFF, PLAINTIFF became aware that the lot lines presented at the time of PLAINTIFF's negotiations and purchase of the SUBJECT PROPERTY were not accurate and that in fact the lot lines of the MALEK PROPERTY, as amended, negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

56. Upon information and belief, MALEK plans to begin construction on the MALEK PROPERTY imminently.

57. While the transfer of title in and of itself negatively impacts PLAINTIFF, and likely other residents in the area, should MALEK begin construction according to MALEK's plans, the SUBJECT PROPERTY will be even more grossly impacted given the view at the SUBJECT PROPERTY will be substantially altered.

58. All of the properties described in Plaintiff's Complaint are developed and/or undeveloped lots in the MacDonald Highlands community (hereinafter "MacDonald Highlands").

59. MacDonald Highlands is set in a hillside area that has prime views of the Las Vegas Valley, surrounding mountains and a golf course.

60. MacDonald Highlands, like a substantial number of other properties in Clark County, Nevada, has placed certain written covenants (the Master Declaration of Covenants, Conditions and Restrictions for The Foothills at MacDonald Ranch, hereinafter "Master Declaration"), on each of the residential lots within the MacDonald Highlands development that are for the benefit of all of the property owners in MacDonald Highlands.

61. The Master Declaration was intended to be covenants running with the land and burden every residential property within the MacDonald Highlands' development.

62. The Master Declaration was further intended to bind any assignees and/or successors in interest who subsequently obtained any of the residential lots under those covenants.

63. Each property in MacDonald Highlands is bound by a restrictive covenant that limits activity on any property next to the golf course or within one hundred feet of the boundary of the golf course in order to protect the use and enjoyment of the golf course (the Deed Restriction Relating to Golf Course Property, hereinafter "Golf Course Deed Restriction").

64. The Master Declaration requires strict compliance with the architectural standards set forth in Article 11 of the Master Declaration.

65. Section 11.1 of the Master Declaration requires that all construction activities consider the "unique setting of the Properties in the hillside area."

66. Applications for construction are reviewed and decided by the Design Review Committee ("DRC").

67. The members of the DRC are appointed by the Declarant.

68. The development guidelines and application and review procedures for all construction activities within MacDonald Highlands are set forth in the Design Guidelines.

69. The Design Guidelines are adopted by the DRC.

70. Each property in MacDonald Highlands is also bound by a restrictive covenant that all plans and specifications submitted to the DRC for proposed construction on a property be in compliance with the Design Guidelines in order to preserve the unique views of each property and

neighboring properties (Deed Restrictions Applicable to Construction of Residence, hereinafter "Construction Deed Restriction").

71. MALEK purchased the GOLF PARCEL subject to the Golf Course Deed Restriction, the Construction Deed Restriction and the other easements, covenants and conditions that burden all of the properties within the MacDonald Highlands community.

72. MALEK's construction plans for the MALEK PROPERTY do not comply with the Golf Course Deed Restriction and the Construction Deed Restriction.

73. All Defendants, and each of them, are, in some manner, legally responsible and liable to Plaintiff for the harm and injury to Plaintiff and the damages incurred by Plaintiff as the result of said harm and injury which damages are in an amount in excess of Ten Thousand and No/100 Dollars ($10,000.00), to be proven at time of trial.

74. Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

FIRST CLAIM FOR RELIEF

(Breach of Contract against BANK OF AMERICA)

75. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

76. Plaintiff entered into the Purchase Agreement with Defendant BANK OF AMERICA.

77. BANK OF AMERICA made express representations and warranties in the Purchase Agreement.

78. BANK OF AMERICA materially breached the Contract as detailed in paragraphs 1 through73 herein.

79. Plaintiff incurred significant damages in an amount which cannot easily be ascertained, but without question in excess of ten thousand dollars, as a direct result from the breach.

80. Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

SECOND CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing against BANK OF AMERICA)

81. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

82. Every agreement imposes, as an implied covenant, an obligation of good faith and fair dealing in its performance or enforcement.

83. Plaintiff and Defendant BANK OF AMERICA were parties to a valid and enforceable contract.

84. Defendant BANK OF AMERICA owed a duty of good faith and fair dealing under the Contract.

85. BANK OF AMERICA breached the implied covenant of good faith and fair dealing.

86. Plaintiff was justified in their expectations under the Contract and, as a result of the breach, those expectations were denied.

87. As a direct and proximate result of the breach, Plaintiff has been damaged in an amount in excess of ten thousand dollars that shall be proven at trial.

88. Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment against BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)

89. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

90. As a result of Defendant BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON actions, as fully alleged herein, each has been unjustly enriched.

91. As a result of Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON and actions, Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

FOURTH CLAIM FOR RELIEF

(Fraudulent or Intentional Misrepresentation – BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)

92. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

93. A person has committed common law fraud if that person has made a false representation or willful omission with respect to a material fact with knowledge of its falsity and with intent to deceive, and the person acts in reliance on the false representation.

94. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON knowingly made false representations and/or willful omissions to Plaintiff over the course of their involvement with Plaintiff, including but not limited to, failing to disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines were other than presented and had in fact been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

95. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON willful omitted significant information in order to deceive Plaintiff and secure the Purchase and Sale of the Subject Property.

96. Plaintiff relied on said representations and as a direct and proximate result was damaged in excess of Ten Thousand Dollars ($10,000.00), in an amount to be determined according to proof at the time of trial.

97. As a result of Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, a and MICHAEL DOIRON's actions, Plaintiff

has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

FIFTH CLAIM FOR RELIEF

(Negligent Misrepresentation – BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)

98. Plaintiff repeats and realleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

99. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON made false representations and/or willful omissions to Plaintiff over the course of their involvement with Plaintiff, including but not limited to, failing to disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines were other than presented and had in fact been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

100. Plaintiff justifiably relied upon the representations of BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON.

101. As a result, Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON actions, Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

SIXTH CLAIM FOR RELIEF

(Real Estate Brokers Violations of NRS 645 Against MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)

102. Plaintiff herein re-alleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

103. Defendants MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON owed duties and obligations to Plaintiff pursuant to NRS Chapter 645, specifically, but not limited to, NRS 645.252.

104. Defendants MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON violated the duties and obligations as defined in NRS 645.252, and additional provisions of NRS 645, by, including, but not limited to failing to disclose to PLAINTIFF that the adjacent MALEK PROPERTY lot lines were other than presented and had in fact been amended in such a way as to negatively impact the value of the SUBJECT PROPERTY or its use in an adverse manner.

105. As a result of Defendants, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON actions, Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore, as well as damages pursuant to NRS 645.257, and any other damages appropriate under NRS Chapter 645.

SEVENTH CLAIM FOR RELIEF

(Easement - MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON, and MALEK)

106. Plaintiff herein re-alleges each and every allegation as contained above and incorporates them by refrence as if fully set forth herein.

107. Defendants' MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON acted in contravention of Plaintiffs' easement in the common area surrounding the golf course.

108. Defendants' are estopped to deny Plaintiff's grant of the easement by express and implied agreement.

109. Plaintiff is entitled to an easement in an extent to be determined by the Court; said easement may negatively impact the rights of Defendant MALEK.

110. As a result, Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON actions, Plaintiff has

been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

EIGHTH CLAIM FOR RELIEF

(Declaratory Relief – ALL DEFENDANTS)

111. Plaintiff herein re-alleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

112. Plaintiff and Defendants, including MALEK, have adverse interests and a judiciable controversy exists between them.

113. Plaintiff has a legally protectable interest in this controversy as fully alleged herein.

114. The controversy before this Court is ripe for judicial determination as MALEK intends to begin construction on the MALEK PROPERTY, which will permanently impact the value of the SUBJECT PROPERTY as fully alleged herein.

115. Pursuant to Nevada's Uniform Declaratory Judgment Act, NRS 30.010 to NRS 30.160, inclusive, Plaintiff seeks a declaration from this Court regarding the respective property rights.

116. Plaintiff has been forced to incur attorneys' fees and costs in the prosecution of this action and therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

NINTH CLAIM FOR RELIEF

(Mandatory Injunction - MALEK)

117. Plaintiff repeats and realleges each and every allegation as contained above and Incorporates them by reference as if fully set forth herein.

118. Violation of the Golf Course Deed Restriction and the Construction Deed Restriction has, and unless restrained by this honorable Court, will continue to cause irreparable injury to Plaintiff, for which there is no adequate remedy at law.

119. Plaintiff is entitled to a mandatory injunction, ordering MALEK to comply with the

Golf Course Deed Restriction and the Construction Deed Restriction.

TENTH CLAIM FOR RELIEF

(Implied Restrictive Covenant - MALEK)

120. Plaintiff repeats and realleges each and every allegation as contained above and Incorporates them by reference as if fully set forth herein.

121. Before Plaintiff offered to buy the SUBJECT PROPERTY, the GOLF PARCEL was being used as part of the 18-hole golf course.

122. When Plaintiff offered to buy the SUBJECT PROPERTY, the GOLF PARCEL was being used as part of the 18-hole golf course.

123. Since Plaintiff's purchase of the SUBJECT PROPERTY, the GOLF PARCEL has continued to be used as part of the 18-hole golf course.

124. Thus, when Plaintiff offered to and did in fact buy the SUBJECT PROPERTY, the actual condition of the GOLF PARCEL was that it was being used as part of the 18-hole golf course.

125. By offering to and ultimately buying the SUBJECT PROPERTY, Plaintiff accepted the actual condition of the GOLF PARCEL.

126. An implied restrictive covenant running with the land requires the GOLF PARCEL to be used as part of the 18-hole golf course and for no other purpose.

127. This implied restrictive covenant existed when MALEK purchased the GOLF PARCEL.

128. The implied restrictive covenant binds MALEK.

129. MALEK is estopped to deny the implied restrictive covenant's existence.

130. MALEK's use of the GOLF PARCEL is or will be in violation of the implied restrictive covenant.

131. As a result of MALEK's actions, Plaintiff has been required to retain the services of Howard Kim & Associates to prosecute this action, and therefore is entitled to recover an award of reasonable attorney fees and costs of suit incurred herein.

ELEVENTH CLAIM FOR RELIEF

(Mandatory Injunction - The Foothills at MacDonald Ranch Master Association, The Foothills Partners, LP and Paul Bykowski in his capacity as member of the The Foothills at MacDonald Ranch Master Association, member of the The Foothills at MacDonald Ranch Master Association Design Review Committee and agent for The Foothills Partners, LP)

132. Plaintiff repeats and realleges each and every allegation as contained above and Incorporates them by reference as if fully set forth herein.

133. MALEK's construction plans for the MALEK PROPERTY were approved by THE FOOTHILLS at MACDONALD RANCH MASTER ASSOCIATION'S DRC on or about March 28, 2014.

134. The DRC approval of MALEK's construction plans violates the Design Guidelines because the MALEK PROPERTY will block Plaintiff's view.

135. The violation of the Design Guidelines will cause irreparable injury to Plaintiff, for which there is no adequate remedy at law.

136. Plaintiff is entitled to a mandatory injunction, ordering The Foothills at MacDonald Ranch Master Association, The Foothills Partners, LP and Paul Bykowski in his capacity as member of the The Foothills at MacDonald Ranch Master Association, member of the The Foothills at MacDonald Ranch Master Association Design Review Committee and agent for The Foothills Partners, LP to comply with the Design Guidelines and disapprove MALEK's construction plans.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

a) For judgment against Defendants, and each of them, an amount in excess of $10,000.00, which amount shall be proven at trial;

b) For judgment against Defendants, and each of them, for an award of pre-judgment and post-judgment interest on all amounts due and owing to Plaintiff;

c) For judgment against Defendants, and each of them, for attorney's fees and costs; and

d) For Declaratory Judgment;

e) For Injunctive Relief; and

f) For such other further relief as deemed appropriate by this Court.

DATED this 2nd day of January, 2015.

Respectfully submitted by:
HOWARD KIM & ASSOCIATES

/s/ Melissa Barishman
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
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The Fredric and Barbara Rosenberg Living Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system a true and correct copy of the foregoing **AMENDED COMPLAINT**, to the following parties:

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/s/ Andrew M. David
An employee of Howard Kim & Associates

EXHIBIT 2

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Attorneys for Defendant
Shahin Shane Malek

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC., a Nevada corporation; MACDONALD PROPERTIES, LTD, a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X, inclusive; and ROES I through X, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT. NO.: I **DEFENDANT SHAHIN SHANE MALEK'S ANSWER AND COUNTERCLAIM**

Comes now Defendant SHAHIN SHANE MALEK ("Malek"), by and through his counsel of record, Snell & Wilmer L.L.P., for his Answer and Counterclaim against THE FREDRIC AND BARBARA ROSENBERG TRUST ("Trust") alleges and states as follows:

PARTIES

1. Defendant admits the allegations in Paragraph 1.

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2. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 2-8.

3. Defendant admits the allegations in Paragraph 9.

4. Defendant is without information sufficient to admit or deny the allegations in Paragraph 10.

5. Paragraph 11 requires neither an admission nor denial as it merely reserves the option of amending the pleading to identify currently unknown parties.

GENERAL ALLEGATIONS

6. Answering Paragraph 12, Defendant incorporates his answers above.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraph 13.

8. Defendant admits the allegations in Paragraphs 14-40.

9. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 41-58.

10. Defendant denies that the amended lot lines "materially affect the value of the Subject Property or its use in an adverse manner"; Defendant is without information sufficient to admit or deny the remaining allegations.

11. Defendant admits the allegations in Paragraph 60.

12. Defendant denies the allegations in Paragraphs 61-63.

FIRST CLAIM FOR RELIEF

13. Malek incorporates each of his responses contained in paragraphs 1 through 12 of this Answer as if fully set forth.

14. Plaintiff's first claim for relief is not pled against Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 65-69 apply to Defendant Malek, Malek denies those allegations.

SECOND CLAIM FOR RELIEF

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15. Malek incorporates each of his responses contained in paragraphs 1 through 14 of this Answer as if fully set forth.

16. Plaintiff's second claim for relief is not pled against Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 71-77 apply to Defendant Malek, Malek denies those allegations.

THIRD CLAIM FOR RELIEF

17. Malek incorporates each of his responses contained in paragraphs 1 through 16 of this Answer as if fully set forth.

18. Plaintiff's third claim for relief is not pled against Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 79-80 apply to Defendant Malek, Malek denies those allegations.

FOURTH CLAIM FOR RELIEF

19. Malek incorporates each of his responses contained in paragraphs 1 through 18 of this Answer as if fully set forth.

20. Plaintiff's fourth claim for relief is not pled against Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 81-86 apply to Defendant Malek, Malek denies those allegations.

FIFTH CLAIM FOR RELIEF

21. Malek incorporates each of his responses contained in paragraphs 1 through 20 of this Answer as if fully set forth.

22. Plaintiff's fifth claim for relief is not pled against Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 87-90 apply to Defendant Malek, Malek denies those allegations.

SIXTH CLAIM FOR RELIEF

23. Malek incorporates each of his responses contained in paragraphs 1 through 22 of this Answer as if fully set forth.

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24. Plaintiff's sixth claim for relief is not pled against Defendant Malek; therefore no admission or denial is required. To the extent that any of the allegations in paragraphs 91-94 apply to Defendant Malek, Malek denies those allegations.

SEVENTH CLAIM FOR RELIEF

25. Malek incorporates each of his responses contained in paragraphs 1 through 24 of this Answer as if fully set forth.

26. Defendant denies the allegations in Paragraphs 96-99.

EIGHTH CLAIM FOR RELIEF

27. Malek incorporates each of his responses contained in paragraphs 1 through 26 of this Answer as if fully set forth.

28. Defendant denies the allegations in Paragraphs 100-105.

29. Defendant denies any allegation of the Complaint not expressly admitted above.

PRAYER FOR RELIEF

Malek denies that it is liable to Plaintiff for any of the requests for relief set forth in the WHEREFORE clause of the Complaint.

ADDITIONAL DEFENSES

Without admitting any of the allegations of the Complaint and without admitting or acknowledging that Malek bears any burden of proof as to any of them, Malek asserts the following additional defenses. Malek intends to rely upon any additional defenses that become available or apparent during pretrial proceedings and discovery in this action and hereby reserves the right to amend this Answer in order to assert all such further defenses.

FIRST ADDITIONAL DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND ADDITIONAL DEFENSE

Plaintiff should be estopped from asserting any claims against Defendant.

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THIRD ADDITIONAL DEFENSE

There is no legally enforceable relationship between Plaintiff and Defendant.

FOURTH ADDITIONAL DEFENSE

Plaintiff's claims are barred because it has no legal right or title in Malek's property.

FIFTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH ADDITIONAL DEFENSE

Plaintiff failed to take reasonable steps to protect itself from the damage, if any, alleged in the Complaint and failed to mitigate any such alleged damage.

SEVENTH ADDITIONAL DEFENSE

Plaintiff incorporates the defenses of all other persons or entities who are now or who may become parties to this action as if those defenses are set forth.

EIGHTH ADDITIONAL DEFENSE

Malek reserves the right to amend his answer and to raise additional defenses that may arise during the course of this litigation.

PRAYER FOR RELIEF

WHEREFORE, Malek requests that this Court:

a) Find that Plaintiff takes nothing on its claims against Malek;

b) Dismiss Plaintiff's Complaint with prejudice and deny Plaintiff any and all relief requested in the Complaint;

c) Enter judgment in favor of Malek;

d) Award Malek his attorneys' fees and costs of suit incurred in defense of the Complaint; and

e) Award Malek such other relief this Court deems appropriate.

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COUNTERCLAIMS OF DEFENDANT/COUNTERCLAIMANT, SHAHIN "SHANE" MALEK AGAINST THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST

GENERAL ALLEGATIONS

1. SHAHIN SHANE MALEK ("Counterclaimant") is, and at all times relevant to this action was, the owner of certain real property in Clark County, Nevada generally described as 594 Lairmont Place, Henderson, Nevada 89012, Assessor Parcel Number 178-27-218-002, located in the MacDonald Highlands community.

2. Counterclaimant is informed and believes, and therefore alleges, that FREDERIC ROSENBERG and BARBARA ROSENBERG are, and at all times relevant to this action were, Trustees of THE FREDERIC ROSENBERG AND BARBARA ROSENBERG LIVING TRUST ("Rosenberg Trust" or "Counter-Defendant").

3. Counterclaimant purchased his property on or about August 8, 2012. Plaintiff's property is situated along the ninth hole of the Dragonridge Country Club golf course within MacDonald Highlands.

4. Following a properly noticed and publicly held rezoning hearing with the City of Henderson, approximately 14,840 sq. ft. of undeveloped on the southeastern edge of the ninth hole, Assessor Parcel Number 178-28-520-001 ("Subject Property"), was rezoned as low-density residential with master plan and hillside overlays.

5. On or about April 8, 2013, Malek purchased the Subject Property from DRFH Ventures, LLC.

6. Counter-Defendant purchased their home, located at 590 Lairmont Place, Henderson, Nevada 89012, Assessor Parcel Number 178-27-218-003, from Bank of America, N.A. on or about May 15, 2013.

7. On September 23, 2013, Plaintiff filed its Complaint in this action.

8. Plaintiff filed a lis pendens against Malek's real property on September 30, 2013.

9. On October 24, 2013, Plaintiff released the original lis pendens and filed an Amended Notice of Lis Pendens.

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10. The lis pendens was expunged by Court order on January 9, 2014 because "Plaintiff did not meet its burden to maintain a lis pendens under NRS 14.015(3).

FIRST CLAIM FOR RELIEF

(Slander of Title)

11. Counterclaimant incorporates by this reference the allegations of paragraphs 1 through X, inclusive.

12. Counter-Defendant's lis pendens erroneously claimed a legal interest in the Subject Property.

13. By recording a false lis pendens, Counter-Defendant communicated false information that disparaged Counterclaimant's title to the Subject Property.

14. Counter-Defendant recorded the false lis pendens specifically to interfere with Counterclaimants legal rights and prevent him from building his home.

15. Counterclaimant has suffered and continues to suffer damages in excess of $10,000 as a result of Plaintiff's actions.

WHEREFORE, Malek prays for relief as follows:

1. Compensatory damages in excess of $10,000
2. Punitive damages
3. Attorneys' Fees
4. Costs
5. Any additional relief the Court deems appropriate

Dated: February 20, 2014

SNELL & WILMER L.L.P.

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Justin A. Shiroff (Nevada Bar #12869)
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Attorneys for Defendant Shahin Shane Malek

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CERTIFICATE OF SERVICE

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **DEFENDANT SHAHIN SHANE MALEK'S ANSWER AND COUNTERCLAIM** on the 20th day of February, 2014, via United States Postal Service, postage prepaid, and facsimile to the following:

Peter C. Bernhard, Esq.
Lisa J. Zastrow, Esq.
Kaempfer Crowell
8345 West Sunset Road, Suite 250
Las Vegas, NV 89113
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Fax. No. 702.796.7181

An employee of Snell & Wilmer L.L.P

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EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC., is a Nevada corporation; MACDONALD PROPERTIES, LTD., a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SAHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-689113-C

Dept. No. I

NOTICE OF VOLUNTARY DISMISSAL OF REAL PROPERTIES MANAGEMENT GROUP, INC.

PLEASE TAKE NOTICE Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST hereby voluntarily dismisses Defendant REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation ("RPMG") without prejudice pursuant to NRCP 41(a)(1)(i) which provides:

> Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, **an action may be dismissed by the plaintiff upon repayment of defendants'**

> **filing fees, without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs**, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.
>
> (emphasis added).

Upon information and belief, Defendant RPMG has not served an answer or motion for summary judgment.

DATED April 29th, 2014.

HOWARD KIM & ASSOCIATES

/s/ Diana S. Cline
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DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
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EXHIBIT 4

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Limited Partnerships; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-13-689113-C Dept. No. I **NOTICE OF VOLUNTARY DISMISSAL OF PAUL BYKOWSKI AND THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION**

PLEASE TAKE NOTICE that Plaintiff ,THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, hereby voluntarily dismisses Defendants PAUL BYKOWSKI, an individual ("Bykowski") and THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION ("Foothills") without prejudice pursuant to NRCP 41(a)(1)(i) which provides:

Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, **an action may be dismissed by the plaintiff upon repayment of defendants' filing fees, without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs**, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(emphasis added).

Upon information and belief, Defendants "Bykowski" and "Foothills" have not served an answer or motion for summary judgment.

DATED this 22nd day of April, 2015.

HOWARD KIM & ASSOCIATES

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Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of April, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, Opposition to Motion for Protective Order to the following parties:

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Attorneys for Bank of America, N.A.

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Attorneys for Michael Doiron and MacDonald Highlands Realty LLC

An employee of Howard Kim and Associates

EXHIBIT 5

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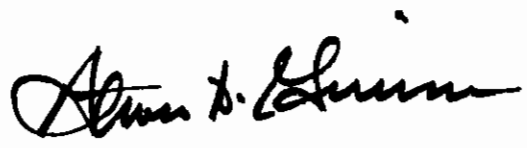

CLERK OF THE COURT

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Michael Doiron and FHP Ventures,
A Nevada Limited Partnership

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-689113-C
Dept. No.: I

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT REGARDING DEFENDANTS MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON, AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT

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PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Judgment Regarding Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and

/ / /

/ / /

FHP Ventures' Motion for Summary Judgment was entered on August 13, 2015, a copy of which is attached.

DATED this 13th day of August, 2015.

Respectfully submitted by:

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2015, pursuant to NRCP 5(b), I e-filed and e-served via the Eighth Judicial District Court electronic service system the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT REGARDING DEFENDANTS MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON, AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT** to all parties on the e-service list.

An employee of Kemp, Jones & Coulthard

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-689113-C Dept. No.: I **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT REGARDING DEFENDANTS MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON, AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT**

On June 10, 2015 at 9:00 a.m., this Court heard argument on the Motion for Summary Judgment ("MSJ") of MacDonald Highlands Realty, LLC ("MHR"), Michael Doiron

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("Doiron") and FHP Ventures, wrongfully named as The Foothills Partners ("FHP") (collectively referred to herein as the "Moving Defendants"). Attending the hearing were Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse Panoff, Esq. on behalf of the Plaintiff; Jay DeVoy, Esq. and Preston Rezaee, Esq. on behalf of Defendant Shahin Shane Malek; J. Randall Jones, Esq. and Spencer H. Gunnerson, Esq. on behalf of Moving Defendants; and William Habdas, Esq. on behalf of Defendant Bank of America, N.A. and BAC Home Loans Servicing, LP. The Court having heard oral argument and having reviewed all papers and pleadings on file in this matter makes the following findings of fact, conclusions of law and judgment.

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I.

FINDINGS OF FACT

1. On February 20, 2013, Barbara Rosenberg sent a letter of intent to Defendant Bank of America's asset manager in Connecticut, Elena Escobar, regarding the purchase of 590 Lairmont Place in Henderson, Nevada (the "subject property"). See Exhibit A to the MSJ, at 41:14-43:1 and Letter of Intent and associated documents, attached to the MSJ as Exhibit B. Barbara Rosenberg confirmed in her deposition that Exhibit B is a copy of the letter of intent she sent. Exhibit A to the MSJ at 43:21-44:4.

2. The letter of intent, which was signed by Barbara's son David Rosenberg and his wife, offered the following term:

> **It is Buyer's obligation to conduct all necessary studies, including but not limited to** environmental, construction, market feasibility, title, **zoning** & CC&R's. [sic] Buyer shall purchase the property "As-Is" and "Where-Is" and "With All Faults."

Exhibit B to the MSJ at 2, ¶ 15 (emphasis added).

3. Six days later, Ms. Rosenberg was told that she would have to wait to purchase the property while the seller completed its due diligence and marketing preparations. See E-mail from Kelli Barrington dated February 26, 2013, attached to the MSJ as Exhibit C.

4. Ms. Rosenberg continued to inquire regarding the subject property into March of 2013. See E-mail from Barbara Rosenberg dated March 6, 2013, attached to the MSJ as Exhibit D, and e-mail from Kelli Barrington dated March 7, 2013, attached to the MSJ as Exhibit E.

5. Shortly thereafter, on March 13, 2013, Ms. Rosenberg and her husband gave their highest and best offer to purchase the subject property. See E-mail from Siobhan McGill dated March 13, 2013, attached to the MSJ as Exhibit F.

6. As part of the Rosenbergs' offer to purchase the property, their real estate agent again underscored the fact that "they [the Rosenbergs] will take property AS-IS." See id. (emphasis original).

7. Also on March 13, 2013, Barbara and Frederic Rosenberg both signed a written offer to purchase the subject property under the terms of an attached Residential Purchase Agreement, attached to the MSJ as Exhibit G, at BANA 1-11 (the "Purchase Agreement"). That offer was accepted by Bank of America on March 21, 2013, see id. at BANA 11, and subject to four separate addenda. See id at BANA 12-13. See also Real Estate Purchase Addendum, attached to the MSJ as Exhibit H, at MHR 105-119.

8. Both Barbara and Frederic Rosenberg reviewed the Purchase Agreement in detail before they signed it. Exhibit A to the MSJ at 89:1-17.

9. Barbara Rosenberg testified that she and her husband could have tried to amend any of the terms of the Purchase Agreement and chose not to. See id. at 90:2-11.

10. The Purchase Agreement contained a waiver of the Rosenbergs' right to perform a survey and determine the boundary lines surrounding their property. Exhibit G to the MSJ at BANA 4, ¶ 7(C).

11. Paragraph 12(A) of the Purchase Agreement provided Plaintiff with a 12-day due diligence period in which to inspect the subject property. Id. at BANA 6.

12. The due diligence required of Plaintiff under the Purchase Agreement was as follows:

> **During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property**

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> **is satisfactory to Buyer including, but not limited to**, whether the Property is insured to Buyer's satisfaction, **whether there are unsatisfactory conditions surrounding or otherwise affecting the Property** (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, **whether the Property is properly zoned**, locality to freeways, railroads, places of worship, schools, etc.) **or any other concerns Buyer may have related to the Property. . . . Buyer is advised to consult with appropriate professionals regarding neighborhood or property conditions, including but not limited to:** schools, proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics, fire protection; other governmental services; existing and proposed transportation; **construction and development**; noise or odor from any source; and **other nuisances, hazards, or circumstances.**

Id. at BANA 6, ¶ 12(b) (emphasis added).

13. Paragraph 22 of the Purchase Agreement constituted a waiver of claims against all Brokers and their agents:

> **Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's [sic] agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. . . .**
>
> Buyer acknowledges that any statements of acreage or square footage by brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. **Buyer waives all claims against Brokers or their agents for (a) defects in the Property**; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; **(e) the Property's proximity to freeways, airports, or other nuisances; (f) the zoning of the Property**; (g) tax consequences; or **(h) factors related to Buyer's failure to conduct walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of Broker's commission/fee received in this transaction.**

See id. at BANA 8-9, ¶ 22 (emphasis added).

14. Michael Doiron and MacDonald Highlands Realty are listed in the Purchase Agreement as the agent and broker for the seller in this transaction. See id. at BANA 11.

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15. The Real Estate Purchase Addendum executed by the Rosenbergs on March 15, 2013, provides both a broad waiver of the Rosenbergs' claims against the seller and its agents, as well as a limitation of the Rosenbergs' remedies in any such claim:

> **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES AND FOR ALL CLAIMS (AS THE TERM IS DEFINED IN SECTION 26 OF THIS ADDENDUM . . .) ARISING OUT OF OR RELATING IN ANY WAY TO THE AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO . . . THE CONDITION OF THE PROPERTY, . . . THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF THE PROPERTY . . . SHALL BE LIMITED TO NO MORE THAN**
>
> **(A) A RETURN OF THE BUYER'S EARNEST MONEY DEPOSIT IF THE SALE TO BUYER DOES NOT CLOSE;**
>
> **AND**
>
> **(B) THE LESSER OF BUYER'S ACTUAL DAMAGES OR $5,000.00 IF THE SALE TO BUYER CLOSES.**

Exhibit H to the MSJ at MHR 105, ¶ 1 (emphasis original).

16. The Addendum further provided:

> **THE BUYER FURTHER WAIVES THE FOLLOWING, TO THE FULLEST EXTENT PERMITTED BY THE LAW: . . . ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO ENCROACHMENTS, EASEMENTS, BOUNDARIES, SHORTAGES IN AREAS OR ANY OTHER MATTER THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS.**

Id. at MHR 106-07(emphasis original).

17. Barbara Rosenberg understood that if she did not agree to the terms of the Real Estate Purchase Addendum, the Rosenbergs would not have been allowed to purchase the subject property. Exhibit A to the MSJ at 108:3-17.

18. Subsequent to executing the Residential Purchase Agreement and its addenda, the Rosenbergs had inquired through their real estate agent as to whether substantive changes could be made to the terms of the sale. In the words of their real estate agent, "The answer is an

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emphatic NO!" See E-mail from Siobhan McGill dated March 27, 2013, attached to the MSJ as Exhibit I. The only change allowed was for Barbara and Frederic Rosenberg to place the property in the name of their trust, the Plaintiff in this matter. See Addendum No. 4, attached to the MSJ as Exhibit J.

19. During the purchase process, Defendant Michael Doiron, a MacDonald Highlands Realty employee, represented the seller, Bank of America. As part of her disclosures to the Rosenbergs, she gave them a document entitled "ZONING CLASSIFICATIONS AND LAND USE DISCLOSURE," which the Rosenbergs received on April 13, 2013. See Exhibit K to the MSJ. After describing the zoning classifications and land use surrounding the property, the disclosure specifically stated:

> This information is current and plotted as of **February 2010**.
>
> Master plan designation and zoning classifications, ordinances[,] and regulations adopted pursuant to the master are subject to change. You may obtain more current information regarding the zoning and master plan information from **The City of Henderson, Planning Department, 240 Water Street, Henderson, NV 89015, Te:: [sic] 565-2474**.

See id. (emphasis original).

20. The zoning change on what would become Defendant Malek's property was recommended for approval on November 15, 2012. See City of Henderson Community Development Staff Report, attached to the MSJ as Exhibit Q. It was thereafter approved by the City and recorded on the City of Henderson's zoning maps on January 24, 2013. See Deposition of Michael Tassi, attached to the MSJ as Exhibit O, at 27:17-28:11. The maps on the City's website would have been updated in February of 2013. See id. at 30:6-15.

21. Paul Bykowski testified that Plaintiff's home, like other homes in the neighborhood generally, is constructed to take advantage of the "primary views" because a "maximized" view would be impossible short of building a glass house. See Deposition Transcript of Paul Bykowski, attached to the MSJ as Exhibit S, at 123:11-127:1.

22. Independent of any building on Malek's parcel, the subject property's privacy was already compromised as a result of its being a golf course and near a walking path. See

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Exhibit A, at 119:15-120:10 (in which Barbara Rosenberg admits it was possible for golfers on the course to look into the home, and that it was also possible for individuals on a nearby walking path to do so as well). See also Deposition Transcript of Richard MacDonald, attached to the MSJ as Exhibit L, at 59:22-60:4 ("The reality is you don't have any privacy when you live on a golf course, period. You have no privacy whatsoever.")

II.

CONCLUSIONS OF LAW

1. Plaintiff's claims for relief against Moving Defendants fail for multiple reasons. Plaintiff's Third, Fourth, Fifth, Sixth and Eighth Claims for Relief against Moving Defendants for unjust enrichment, fraudulent or intentional misrepresentation, negligent misrepresentation, real estate brokers violations of NRS 645, and declaratory relief (insofar as it pertains to the actions of Moving Defendants), respectively, fail due to Plaintiff's insistence and agreement on taking the subject property as-is; and as a result of Plaintiff's knowing, intentional and voluntary waivers of claims (*See* Sections A and B below). Plaintiff's Seventh, Eighth and Eleventh Claims for Relief against Moving Defendants for easement, declaratory relief, and mandatory injunction, respectively, also fail given that none of the Moving Defendants currently have any ownership interest in the subject property; there is no implied easement for view, privacy or access to light in Nevada; and any alleged implied restrictive covenant not to build on former golf course property does not appear to exist in Nevada and is truly a request for an implied easement for view, privacy, or access to light (*See* Section C below).

A. Plaintiff's insistence and agreement on taking the subject property "as-is" forecloses the possibility of a non-disclosure action against the Moving Defendants because Plaintiff assumed, as a matter of law, responsibility for all potential defects, including zoning and boundary line matters.

2. "Nondisclosure by the seller of adverse information concerning real property generally will not provide the basis for an action by the buyer to rescind or for damages when property is sold 'as is.'" Mackintosh v. Jack Matthews & Co., 855 P.2d 549, 552 (Nev. 1993). Here, findings of fact 2, 6, 12, 13, and 14 all indicate that the sale of the subject property to

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Plaintiff was "as-is" and that liability for discovering the defects complained of rested solely with the Plaintiff, not with the Moving Defendants.

3. In accordance with Facts 7 through 9 above, Plaintiff's representatives read the purchase documents in detail and understood what they were agreeing to, including the "as-is" provision, when they contracted to purchase the subject property.

4. In accordance with Facts 10 through 12 above, Plaintiff either waived its right to inspect the subject property and its boundaries or had an opportunity to conduct due diligence that it did not exercise. In either event, the facts show that Plaintiff either did not conduct diligence with regard to the property boundaries or did and failed to bring its findings to the attention of the seller or its agent.

5. In accordance with Facts 19 and 20 above, Plaintiff could have discovered any defect with the zoning or boundaries of the subject property had it performed its due diligence as required by the Purchase Agreement.

B. The purchase documents for the subject properties contained knowing, intentional, and voluntary waivers of the claims by Plaintiff against the Moving Defendants.

6. In Nevada, a waiver is "the intentional relinquishment of a known right." Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 152 P.3d 737, 740 (Nev. 2007); accord, Wood v. Milyard, 132 S. Ct. 1826, 1832 (U.S. 2012) (recognizing that "A waived claim or defense is one that a party has knowingly and intelligently relinquished"). See also State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004) (recognizing that a waiver is valid where made with knowledge of all material facts). When a right is waived, the "right is gone forever and cannot be recalled." Bernhardt v. Harrington, 775 N.W.2d 682, 686 (N.D. 2009).

7. Waivers are enforceable to grant summary judgment against a claim where the evidence shows that the plaintiff willingly and voluntarily signed the waiver, and the waiver is clear and unambiguous as to what claims were being waived against which parties. See Cobb v. Aramark Sports & Entm't Servs., LLC, 933 F. Supp. 2d 1295, 1298-99 (D. Nev. 2013).

8. In accordance with Facts 13 and 14 above, there was a clear and knowing waiver

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of all of Plaintiff's asserted claims against the Moving Defendants in this case.

9. In accordance with Facts 16 and 17 above, Plaintiff knowingly, intentionally, and voluntarily entered into a similar waiver in a separate addendum to the purchase contract for the subject property.

10. Even if Plaintiff did not waive the claims against the Moving Defendants – which it did, Fact 15 conclusively shows that Plaintiff voluntarily limited its claims in this action to no more than $5,000.

C. Plaintiff's claims for declaratory and injunctive relief cannot stand as a matter of law.

11. To the extent that Moving Defendants also requested relief on the basis that Nevada does not allow an easement for view, privacy and/or access to light, that argument is moot as to Moving Defendants MacDonald Highlands Realty and Doiron due to this Court's decision on the due diligence and waiver arguments. With regard to FHP Ventures, this Court finds that Plaintiff's claim of an easement and/or restrictive covenant not to build on the property at issue is actually a request for an easement for view, privacy or access to light. Under Nevada law, there is no such easement and, accordingly, summary judgment should be granted in favor of FHP Ventures on the claims for declaratory relief and injunctive relief. Furthermore, as a matter of law, in Nevada there is not an implied easement or implied restrictive covenant requiring property formerly owned by a golf course to remain part of the golf course indefinitely, especially where that property was not a part of the playable grass area of the golf course. See Order, Findings of Fact and Conclusions of Law, and Judgment on Defendant/Counterclaimant Shahin Shane Malek's Motion for Summary Judgment, also heard on the same date as the instant Motion and on file herein (the "Malek Decision"); see also Boyd v. McDonald, 408 P.2d 717, 722 (Nev. 1965). The Court addresses these particular issues in detail in the Malek Decision, incorporated herein by reference.

12. Additionally, the claims against Moving Defendants for declaratory relief, easement, and injunctive relief cannot stand as a matter of law against any of the Moving Defendants, none of whom currently have any ownership interest in the subject property.

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III.

JUDGMENT

This action having been submitted to the Court for decision on the Motion for Summary Judgment on June 10, 2015, and the Court having made the aforementioned findings of fact and conclusions of law, the Court decides in favor of Moving Defendants MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures, with regard to all claims against those Moving Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Moving Defendants.

DATED this 30th day of July, 2015.
11th

DISTRICT COURT JUDGE

Respectfully submitted by:
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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Moving Defendants.

DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Moving Defendants.

DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

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EXHIBIT 6

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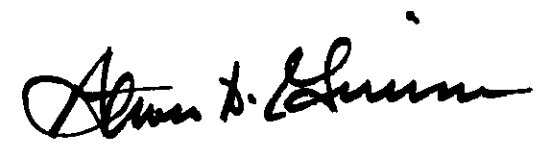

CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT NO.: I **NOTICE OF ENTRY OF ORDER**
SHAHIN SHANE MALEK, Counterclaimant, vs. THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST,	

Counterdefendant.)
)
)

NOTICE TO ALL PARTIES that on August 13, 2015 the Court entered its Order, Findings of Fact and Conclusion of Law and Judgment on Defendant / Counterclaimant Shahin Shane Malek's Motion for Summary Judgment in the above-entitled action, a copy of which is attached hereto.

DATED this 20th day of August, 2015.

/s/ Jay DeVoy, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that one this 20th day of August, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system and to be placed in the United States Mail, with first class postage prepaid thereon, and addressed the foregoing **NOTICE OF ENTRY OF ORDER** to the following parties:

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT NO.: I **[PROPOSED] ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ON DEFENDANT / COUNTERCLAIMANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion for Summary Judgment on the claims asserted against him by Plaintiff/Counterclaim Defendant The Frederic and Barbara Rosenberg Living Trust ("Plaintiff" or the "Trust"), and on Malek's Counterclaim for slander of title against the Trust. The Court heard argument on this motion on June 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse

Panoff, Esq. appeared on behalf of the Plaintiff. Preston Rezaee, Esq. and Jay DeVoy, Esq. appeared on behalf of Malek. Spencer Gunnerson, Esq. and J. Randall Jones, Esq. appeared on behalf of Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures, erroneously sued as The Foothills Partners. William Habdas, Esq. appeared on behalf of Defendants Bank of America, N.A. and BAC Home Loans Servicing, LP (collectively, and for ease of reference only, "Bank of America"). The Court, having reviewed all papers and pleadings on file in this matter in chambers, entered a minute order granting in part and denying in part Malek's Motion, and articulated its decision on the record during a status check for this matter on July 15, 2015 at 9:00 a.m.[1]

I. Introduction

This case arises from the Trust's purchase of a house within the exclusive MacDonald Highlands community, and its desire to restrict the use of Malek's neighboring property. On September 23, 2013, the Trust filed a complaint against Malek, among other defendants, seeking injunctive relief against Malek's development of his property at 594 Lairmont Place, and a portion of additional land Malek had re-zoned and agreed to purchase before the Trust purchased an adjacent parcel at 590 Lairmont Place. The Trust filed an Amended Complaint on January 12, 2015. Malek answered the Amended Complaint, and additionally asserted his Counterclaim for slander of title against the Trust.

This order considers Malek's Motion for Summary Judgment on the Trust's claims against him: easement, implied restrictive covenant, injunction, and declaratory relief. Malek has also moved for summary judgment on his counterclaim for slander of title against the Trust. In support of his motion, Malek submitted numerous exhibits, including public records, the Trust's discovery responses, and documents authenticated during depositions, as well as excerpts from numerous depositions taken in this case. The Trust opposed Malek's Motion for Summary Judgment, and referenced its Cross-Motion for Summary Judgment on Malek's slander of title counterclaim[2] in opposing that branch of Malek's motion. Malek timely replied in support of his motion.

---

[1] At this status check, Karen Hanks, Esq., appeared on behalf of the Plaintiff/Counterclaim Defendant. Jay DeVoy, Esq. appeared on behalf of Defendant/Counterclaimant Malek. Spencer Gunnerson, Esq., appeared on behalf of Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners. Ariel Stern, Esq. appeared on behalf of Bank of America.

[2] The Court denied this motion at its June 10, 2015 hearing, and subsequently entered an order to that effect.

II. Legal Standard

This Court evaluates motions for summary judgment under Nevada Rule of Civil Procedure 56. Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In reviewing the motion, the Court considers the evidence in the light most favorable to the non-moving party. *Collins v. Union Federal Savings and Loan Association,* 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

III. Findings of Fact

Based on its review of the briefing in this case, the Court makes the following findings of fact:

A. Findings Pertaining to the Trust's Claims Against Malek.

1. This case arises from a private community's sale of an out-of-bounds portion of a golf course to an adjacent lot owner in order to increase the original lot's size; this practice is common in prestigious, exclusive communities throughout the Las Vegas valley, including MacDonald Highlands, where the land at issue in this case is situated. Bykowski Dep. Vol. I at 39:16-40:19; Doiron Dep. Vol. I at 110:9-111:25; MacDonald Dep. at 126:22-128:20; Mot. Exhs. 1, 2.

2. Malek purchased the property commonly referred to as 594 Lairmont Place (APN 178-27-218-002) ("594 Lairmont"), located within the MacDonald Highlands community, in August of 2012. At the same time, Malek planned to purchase a 0.34-acre parcel of undeveloped land adjacent to 594 Lairmont (APN 178-28-520-001) (the "Golf Parcel") and annex it to 594 Lairmont. Malek Dep. at 14:17-22:10, 67:9-68:8; Bykowski Dep. Vol. I at 38:12-20; MacDonald Dep. at 60:17-21, 100:12-18; Rosenberg Dep. at 190:2-5, 213:11-23.

3. MacDonald Highlands approved of this plan and sold the Golf Parcel to Malek. Malek Dep. at 19:16-22, 21:16-22:10; Bykowski Dep. Vol. I at 38:12-20; Doiron Dep. Vol. I at 120:7-122:5.

4. The Golf Parcel consisted of an out-of-bounds area near the ninth hole of the Dragonridge Golf Course, situated within MacDonald Highlands, and occupied a portion of the space bordering the property line of 594 Lairmont, and outside of the golf course's in-play area. Rosenberg Dep. at 190:2-5; Malek Dep. at 19:16-22, 67:9-68:8; MacDonald Dep. at 60:17-21, 100:12-18; Bykowski Dep. Vol. I at 38:12-20; Rosenberg Dep. at 190:2-5, 213:11-23; *see* Mot. Exh. 7.

5. Before merging the Golf Parcel with 594 Lairmont, MacDonald Highlands needed to re-zone it from its Public / Semi-Public designation to residential use. Bykowski Dep. Vol. I at 38:12-20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9; see Bykowski Dep. Vol. II at 183:25-185:7.

6. MacDonald Highlands had performed this process several times for other property owners with lots adjacent to the golf course, and re-zoned parcels of land from Public / Semi-Public use to the appropriate residential use so that they could be merged with adjacent lots, leased to the owners of adjacent lots, or otherwise incorporated into abutting property.[3] Bykowski Dep. Vol. I at 39:16-41:23; MacDonald Dep. at 127:3-128:20; *see* Doiron Dep. I at 110:9-111:22.

7. Part of this re-zoning process included MacDonald Highlands' submission of an application to vacate easements that may exist on the Golf Parcel. In processing this application, the City of Henderson found that no such easements existed. Bykowski Dep. Vol. II at 183:25-185:7; Mot. Exh. 17.

8. To complete the re-zoning process, MacDonald Highlands retained the services of B2 Development, which in turn took the steps necessary to re-zone the Golf Parcel. Bykowski Dep. Vol. II at 95:1-20; *see* Mot. Exhs. 4, 5.

9. B2 Development took the steps necessary to properly re-zone the Golf Parcel, including organizing a community meeting to discuss the proposed re-zoning. Bykowski Dep. Vol. II at 93:22-100:19; *see* Mot. Exhs. 4, 5. B2 Development mailed notices of the meeting to the owners of record of all parcels near the Golf Parcel, including 590 Lairmont Place (APN 178-27-218-003) ("590 Lairmont"), the lot adjacent to 594 Lairmont. Bykowski Dep. Vol. II at 95:1-23; Woodbridge Dep. at 56:19-58:2; Mot. Exh. 6.

10. At the time B2 Development mailed its notices for the community meeting in October 2012, Defendant Bank of America owned 590 Lairmont. Woodbridge Dep. at 15:1-20; Rosenberg Dep. at 43:31-44:25; *see* Mot. Exh. 8. B2 Development mailed its notice to a valid address for Bank of America, which never objected to the Golf Parcel's re-zoning. Woodbridge Dep. at 15:1-20; Mot.

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[3] As noted above, this practice is not limited to MacDonald Highlands, but is common within other Golf Communities within the Las Vegas valley.

Exh. 8. In fact, nobody objected to the Golf Parcel's re-zoning at the community meeting, or separately to the City of Henderson. Tassi Dep. at 55:3-23; *see* Bykowski Dep. II at 92:2-18.

11. Acting for MacDonald Highlands, B2 further followed the City of Henderson's zoning process in re-zoning the Golf Parcel by obtaining the City Counsel's approval of the Golf Parcel's proposed re-zoning at two consecutive meetings, and the City's adoption of a resolution approving the zoning change. Tassi Dep. at 16:6-23:17; *see* Mot. Exhs. 4, 5.

12. MacDonald Highlands' applications for the Golf Parcel's re-zoning were properly heard by the City of Henderson; the City adopted a resolution re-zoning the Golf Parcel to residential use on December 8, 2012, and the City recorded its resolution on January 7, 2013. Bykowski Dep. Vol. II at 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:17; Mot. Exhs. 4, 5.

13. Maps and information reflecting the Golf Parcel's changed zoning were readily and almost immediately available to the public. By January 24, 2013, the Golf Parcel's new, residential zoning was reflected in zoning maps that were publicly available at the front desk of Henderson City Hall. Tassi Dep. at 23:10-24:6, 25:2-26:1, 27:17-28:11, 56:16-24.

14. Less than a month later in mid-February of 2013, the Golf Parcel's residential zoning could be seen in an online zoning map publicly available from the City of Henderson's website. *Id.* at 30:6-20; Mot. Exh. 7.

15. According to one of the City of Henderson's planners, a member of the public could access a specific address on this online map in less than five minutes. *Id.* at 26:14-27:7.

16. Following the City of Henderson's duly passed resolution approving the Golf Parcel's re-zoning to residential use, the Golf Parcel's sale was recorded and it was merged into 594 Lairmont, creating one parcel of land that was zoned for residential use. Bykowski Dep. I at 38:12-20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9.

17. Beginning in February of 2013, Barbara Rosenberg, an experienced residential real estate broker and a trustee of the Trust, and David Rosenberg,[4] an attorney in Las Vegas and a beneficiary of the Trust, began contacting Bank of America in an attempt to purchase 590 Lairmont

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[4] David Rosenberg had lived in the Green Valley area of the Las Vegas metropolitan region since 2009, and was familiar with the MacDonald Highlands community.

before the property was publicly listed for sale. Rosenberg Dep. at 43:20-46:3, 55:1-57:14; Mot. Exhs. 8, 9.

18. Barbara Rosenberg not only had more than 25 years of experience as a residential real estate broker, but estimates she has sold more than 500 homes in her career. Rosenberg Dep. at 12:19-13:15, 88:8-25. Individually and through the Trust, Barbara Rosenberg and her husband have made numerous real estate purchases in the past, including an 8,000 square foot primary residence, two other houses in California, and two condos in Manhattan Beach, California—in addition to 590 Lairmont. *Id.* at 13:16-16:13.

19. When 590 Lairmont was listed for sale, Barbara Rosenberg offered to purchase it for $1,750,000—above the listing price of $1,600,000—in an all-cash transaction. She then increased her offer and submitted the winning bid to purchase the home for $2,302,000, all cash. Rosenberg Dep. at 43:20-46:3, 50:3-51:25, 85:1-86:5; Mot. Exhs. 8, 9, 14.

20. Barbara Rosenberg did not do any research about 590 Lairmont's zoning, or the use of surrounding land, prior to purchasing the property. Rosenberg Dep. at 95:9-19, 103:17-104:23, 115:12-116:15, 121:23-123:6, 129:1-130:2; *see* Tassi Dep. at 55:24-56:12. The Rosenbergs were motivated to purchase this property as quickly as possible because they considered it their "dream" home. Rosenberg Dep. at 115:17-24, 210:5-19.

21. When Barbara Rosenberg walked through the property, despite generally waiving the Trust's right to an inspection, she did not even look over to 594 Lairmont or the Golf Parcel, the latter of which was marked with stakes that had been in place since December of 2012. Rosenberg Dep. at 130:3-23; Malek Dep. at 112:4-113:10.

22. In the course of purchasing 590 Lairmont, MacDonald Highlands Realty provided Barbara Rosenberg with numerous disclosures, waivers, and other warnings that she and her husband signed. Rosenberg Dep. at 95:1-16, 129:1-130:2; Mot. Exhs. 10, 11, 12, 13, 14; *see* Doiron Dep. Vol. I at 145:25-149:25.

23. Additionally, Barbara Rosenberg knew that there would be subsequent home construction on the vacant lots surrounding 590 Lairmont, including 594 Lairmont, at the time the Trust purchased 590 Lairmont. Rosenberg Dep. at 46:19-47:24; Mot. Exh. 8.

24. The Trust was given five days to conduct due diligence before the sale would be completed. Doiron Dep. Vol. I at 145:25-149:25; Mot. Exh. 13, 14. Barbara Rosenberg also signed a zoning disclosure form stating specifically advising the Trust that the zoning information provided was current as of February of 2010—more than three years before the Trust signed its purchase agreement for 590 Lairmont—and the Trust should seek the most current zoning information from the City of Henderson. Rosenberg Dep. at 120:10-23, 121:12-22; Mot. Exh. 12, 14. Among still other warnings and waivers, Barbara Rosenberg signed a disclosure informing her and the Trust of 590 Lairmont's reduced privacy inherent in its location adjacent to the golf course. Rosenberg Dep. at 116:18-118:19; Mot. Exh. 11.

25. Additionally, due to the topography of the house and its views onto nearby streets, the Trust already faced certain limitations on its privacy by virtue of the house's existing position and condition. Rosenberg Dep. at 213:11-23, 201:10-203:5, 213:11-23, 201:10-203:5.

26. Nonetheless, the Trust purchased 590 Lairmont "as-is, where-is," and accepted the property as it was when it signed the purchase documents in April of 2013. Rosenberg Dep. at 86:11-88:7, 94:15-25, 95:9-19, 95:25-97:4, 99:10-100:7; Mot. Exh. 14 at 8:48-51. The Trust closed on 590 Lairmont, and title in the property transferred to the Trust on May 15, 2013.

27. Later, in the Summer of 2013, the Trust investigated the use of 594 Lairmont, which now included the Golf Parcel, for the first time. According to Malek's deposition testimony, David Rosenberg confronted him and threatened to sue him if he planned to build on the expanded 594 Lairmont. Malek Dep. at 102:13-103:14; *see* Doiron Dep. Vol. I at 80:15-82:17.

28. During the course of the litigation, the Trust's discovery responses indicated its only concern was the loss of view, light, and privacy that might accompany Malek's construction on 594 Lairmont (including the Golf Parcel). Barbara Rosenberg's deposition testimony and the Trust's responses to interrogatories propounded by Defendants Bank of America, MacDonald Highlands Realty LLC, and Michael Doiron repeatedly identified potential loss of view, light, and privacy[5] as the

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[5] As Barbara Rosenberg noted in her deposition, she did not even know what Malek planned to build on 594 Lairmont, and stated that she nonetheless sought this Court's order prohibiting his construction due to the mere possibility of 590 Lairmont losing what Ms. Rosenberg described as its view and privacy.

damages arising if the Malek built on 594 Lairmont. Rosenberg Dep. at 184:22-187:20, 195:11-12; Mot. Exhs. 15, 16.

29. Specifically, the Trust's interrogatory responses stated that 590 Lairmont would be affected by Malek's construction on the Golf Parcel, with effects upon "the view of the golf course and mountains, privacy, and light entering [the property]." Mot. Exhs. 15, 16.

30. The evidence produced to the Court, however, did not show any express easement that would prohibit Malek from building on 594 Lairmont, including the Golf Parcel. All that was required for Malek to construct his house was for him to obtain the MacDonald Highlands' Design Review Committee's approval of his construction plans.[6] Malek Dep. at 73:9-12; Bykowski Dep. II at 36:10-37:21; *see* Doiron Dep. I at 71:10-72:10.

31. Meanwhile, and during the course of this litigation, the Design Review Committee tasked with approving all plans for new buildings within the MacDonald Highlands community before construction may commence, approved Malek's building plans for 594 Lairmont in early 2015. Bykowski Dep. Vol. II at 74:16-21, 76:4-77:23. The Design Review Committee evaluates proposed construction to ensure it maintains the unique character of the MacDonald Highlands community. MacDonald Dep. at 34:16-36:9; 37:3-20; Bykowski Dep. Vol. II at 39:23-42:7. Had Malek's plans not satisfied the Design Review Committee's standards, or negatively affected other residents within the community, the Design Review Committee would not have approved them. *See* Bykowski Dep. Vol. II at 74:16-77:23.

B. Findings of Fact Related to Malek's Counterclaim.

32. At the time the Trust filed this action, it filed a *lis pendens* on Malek's property at 594 Lairmont. *See* Sept. 23, 2013 Notice of *Lis Pendens*.

33. The Trust subsequently filed an amended *lis pendens* on 594 Lairmont. *See* Oct. 24, 2013 Amended Notice of *Lis Pendens*.

34. On January 9, 2014, the Court ordered the *lis pendens* on Malek's property expunged. This prior order found that there was no basis for the Trust to have a *lis pendens* on Malek's property under NRS 14.015(3). *See* Jan. 9, 2014 Order on Malek's Motion to Expunge *Lis Pendens*.

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[6] And subsequent approval from the City of Henderson, although the MacDonald Highlands Design Guidelines were stated to be more restrictive than the City of Henderson's requirements.

35. Barbara Rosenberg, being a residential real estate agent, was familiar with *lis pendens* filings and their potential consequences for properties upon which they are filed. Rosenberg Dep. at Rosenberg Dep. at 265:3-16.

36. However, she did not testify that she specifically knew the *lis pendens* the Trust filed on Malek's property was false. *Id.* Moreover, the declaration of the Trust's former counsel, Peter Bernhard, stated that he acted with a reasonable belief that the *lis pendens* was true when filing it on Malek's property. Decl. of Peter Bernhard.

37. Malek submitted evidence of claimed damages in the form of a supplemental disclosure, and testified in his deposition that he had incurred attorneys' fees in this action, which included expunging the Trust's prior *lis pendens*. Malek Dep. at 106:25-107:17; Mot. Exh. 18.

IV. Conclusions of Law

All of the Trust's claims against Malek fail for numerous reasons. The evidence adduced to the Court shows that the Trust's basis for seeking an easement over Malek's property is based solely on the impermissible grounds of view, light, and privacy. While Nevada law has not previously recognized a claim for implied restrictive covenant, and will not do so now, it also would fail for the same reasons as the Trust's easement claim. Additionally, the Trust's claims for declaratory and injunctive relief are remedies, rather than causes of action that stand on their own, and Malek is entitled to judgment in his favor on both. Questions of fact, however, preclude this Court from entering judgment in Malek's favor on his counterclaim.

A. The Trust's Claims of Easement and Implied Restrictive Covenant Are Premised on Grounds Not Recognized Under Nevada Law, and Nevada Law Does Not Even Recognize the Latter Claim.

1. Nevada law has squarely and repeatedly repudiated the notion that easements or restrictive covenants may arise by implication to protect views, privacy, or access to light. *Probasco v. City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969); *Boyd v. McDonald*, 81 Nev. 642, 650-51, 408 P.2d 717, 722 (1965).

2. In this case, the Trust has argued alternately that an implied easement and an implied restrictive covenant prevent Malek from building on the Golf Parcel. An easement is a right to use the land of another, *Boyd*, 81 Nev. at 647, 408 P.2d at 720, while a restrictive covenant is "an easement or

a servitude in the nature of an easement." *Meredith v. Washoe County Sch. Dist.*, 84 Nev. 15, 17, 435 P.2d 750, 752 (1968). Based on the evidence on record, and the bases for the Trust's claim for an easement or implied restrictive covenant in Malek's property, the classification of the Trust's claimed restriction as an easement or restrictive covenant "does not matter" for the Court's analysis in this case. *Venetian Casino Resort L.L.C. v. Local Joint Exec. Bd.*, 257 F.3d 937, 946 (9th Cir. 2001). Because an implied restrictive covenant is a form of easement, they are analyzed in the same manner here.

3. The Trust has not produced any evidence showing the existence of an easement requiring the Golf Parcel to remain part of the golf course indefinitely. While the Trust adopted this argument in opposing Malek's Motion for Summary Judgment, that is, as far as the Court can tell, the first time such a theory arose. Counsel's arguments do not replace facts in the analysis of a summary judgment motion. *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 706, 220 P.3d 684, 691, 695 (2009).

4. In contrast, the evidence before the Court shows only that the Trust has based its claim for an implied easement on its fear of potentially losing the view, privacy, or access to light 590 Lairmont presently enjoys. The Trust has not shown any evidence of an express easement keeping Malek from building on the Golf Parcel. Nevada law will not imply an easement or restrictive covenant for the only, and undisputed, reasons that the Trust seeks them—protection of 590 Lairmont's views, privacy, and access to light. *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722.

5. In considering claims for injunctive relief, the Court must consider the totality of the circumstances in which relief is sought. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 325 130 P.3d 1280, 1285 (2006). Here, a seasoned real estate professional appears to have disregarded all warnings and notices before paying more than two million dollars for the Rosenbergs' "dream" home. There similarly is no evidence the Trust's attorney beneficiary did any research before the Trust purchased the house in which he now resides. There is, however, undisputed evidence of the Trust and its trustee's substantial experience buying and selling high-end, residential real estate. To that end, the Trust's failure to use its acquired skill and knowledge in these areas effectively waived, under the

circumstances, any claim it could have for the Court to exercise its jurisdiction to impose a restrictive covenant over Malek's property. *Id.*

6. Related to its claim for easement, the Court concludes that the Trust's claim for implied restrictive covenant also fails. Nevada has not previously recognized a cause of action for implied restrictive covenant, and this Court declines to do so. Consistent with the precedent of Nevada's Supreme Court, this Court will not recognize a novel cause of action. *Brown v. Eddie World LLC*, 131 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440 (2001); *Greco v. United States*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-48 (1995); *see Nat'l R.R. Passenger Corp v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457-58 (1974) (promoting the doctrine of *expressio unius est exclusion alterius*, which prohibits theories of liability that are not expressly authorized). This Court's decision to not recognize this cause of action is steeped in the lack of a cohesive national standard, the subjective nature of the claim's object, and the difficulty of proving the claim. *Badillo*, 117 Nev. at 42-44, 16 P.3d at 440-41.

7. Among the states that do recognize this claim, the standards for offensively imposing an implied restrictive covenant differ widely. *See Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990); *Knotts Landing Corp. v. Lathem*, 315 Ga. 321, 323, 348 S.E. 651, 653 (1986); *Arthur v. Lake Tansi Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *see also Peck v. Lanier Golf Club, Inc.*, 315 Ga. App. 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012). Moreover, Trust seeks to use this claim to enforce its subjective desire to preserve its view, light, and privacy, further militating against the Court recognizing this cause of action. *Greco*, 111 Nev. at 409, 893 P.2d at 348.

8. To the extent the Trust's claim for implied restrictive covenant is duplicative of, or otherwise subsidiary within, the Trust's claim for easement, it fails for the reasons stated above. *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722. The Trust has not advanced any evidence that its claim for an implied restrictive covenant seeks to preserve or protect anything other than its view, light, or privacy. Any of these three concerns are insufficient bases for the Court to imply an easement or restrictive covenant exists over the Golf Parcel. As the Trust has not produced any evidence showing an alternate, cognizable basis for the Court to impose an

implied restrictive covenant on the Golf Parcel, the Court will not do so. The Court therefore enters judgment in Malek's favor on this claim.

B. The Trust's Claims for Injunctive and Declaratory Relief Also Fail as a Matter of Law.

9. Additionally, the Court enters judgment in Malek's favor on the Trust's remaining claims for declaratory and injunctive relief. This Court concurs with the United States Court of Appeals for the Ninth Circuit and finds that declaratory relief is a remedy, rather than a cause of action. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

10. Similarly, this Court adopts the position of the United States District Court for the District of Nevada and several other courts, and concludes that injunctive relief is merely a remedy, rather than an independent claim. *In re Walmart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007); *see Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999); *Art Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640, 646-47 (Cal. Ct. App. 1992).

11. To the extent the Trust has styled these remedies as causes of action, the Court enters judgment in Malek's favor on them. As the Court finds in Malek's favor on the Trust's substantive claims of easement and implied restrictive covenant (to the extent the latter may be recognized as a claim), the Trust has no avenue to assert these remedies against Malek. Therefore, judgment in Malek's favor is appropriate.

C. Questions of Fact Preclude the Court from Granting Malek's Motion for Summary Judgment on his Counterclaim.

12. For the same reasons discussed in the Court's Order entered July 23, 2015, denying the Trust's Cross-Motion for Summary Judgment on Malek's counterclaim, and incorporated by reference herein, the Court also denies Malek's Motion for Summary Judgment on the same claim. To prevail, Malek must show that the Trust made a false statement about his title or possession of the Golf Parcel with actual malice—a knowingly false statement, or one made with reckless disregard for the truth—that caused him damage. *Executive Mgmt., Ltd. v. Ticor Title Co.*, 114 Nev. 823, 963 P.2d 465, 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

13. Questions of material fact exist as to whether the Trust and its Trustee, Barbara Rosenberg, acted with actual malice in filing the *lis pendens* on Malek's property.[7] Additionally, the

Court finds that there is a question of fact as to the calculation of Malek's damages on his slander of title claim, which shall be left to the jury. Malek's Motion for Summary Judgment on his Counterclaim therefore is denied.

V. Conclusion

For the foregoing reasons, it is **ORDERED** that Defendant Shahin Shane Malek's Motion for Summary Judgment is **GRANTED** in part, and the Court enters judgment in Malek's favor on Plaintiff's claims against him, and **DENIED** in part, as the Court denies Malek's Motion for Summary Judgment as it relates to his Counterclaim.

VI. Judgment

This action having been submitted to the Court for decision at trial on June 10, 2015, and the Court having made the foregoing findings of fact and conclusions of law, the Court decides Plaintiff's claims in favor of moving Defendant Shahin Shane Malek, with regard to all of Plaintiff's claims against him.

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It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

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[7] "In order to prove malice it must be shown that the defendant knew that the statement was false or acted in reckless disregard of its truth or falsity." *Rowland*, 99 Nev. at 313, 662 P.2d at 1335.

IT IS SO ORDERED

Dated: Aug 11, 2015

DISTRICT JUDGE

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CERTIFICATE OF SERVICE

It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

IT IS SO ORDERED

Dated: _____, 2015

_____

DISTRICT JUDGE

Respectfully Submitted:

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IT IS SO ORDERED

Dated: _____, 2015

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CERTIFICATE OF SERVICE

IT IS SO ORDERED

Dated: _____, 2015

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Attorneys for Defendants Bank of America N.A. and BAC Home Loans Servicing, LP.

CERTIFICATE OF SERVICE

I hereby certify that one this ____ day of July, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system and to be placed in the United States Mail, with first class postage prepaid thereon, and addressed the foregoing **[PROPOSED] ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ON DEFENDANT / COUNTERCLAIMANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY JUDGMENT** to the following parties:

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/s/ Jacqueline Martinez
Employee of The Firm, P.C.

EXHIBIT 7

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual;) SHAHIN SHANE MALEK, an individual;) PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership;) DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT NO.: I **ORDER ON DEFENDANT SHAHIN SHANE MALEK'S MOTION FOR ATTORNEYS' FEES AND COSTS AND PLAINTIFF THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST'S MOTION TO RETAX COSTS**

Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion for Attorneys' Fees and Costs, and Plaintiff The Fredric and Barbara Rosenberg Living Trust's (the "Trust['s]") Motion to Retax Malek's Memorandum of Costs. A detailed history of these motions and the Court's order deciding them follows.

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I. Relevant Procedural History

On September 9, 2015, Malek filed his Motion for Attorneys' Fees and Costs and Verified Memorandum of Costs in this action. On September 21, 2015, the Trust filed its Motion to Re-Tax Malek's Memorandum of Costs. Malek opposed the Trust's motion on October 2, 2015.

The Court scheduled both motions decided in this Order to be heard in its chambers on October 12, 2015, but scheduled argument for October 22, 2015 following the Trust's request for a hearing on these motions.[1] Karen Hanks, Esq. and Jackie Gilbert, Esq. for the Trust, Jay DeVoy, Esq. for Malek, and Matthew Carter, Esq. for defendants MacDonald Highlands Realty, Michael Doiron, and FHP Ventures, attended the October 22, 2015 hearing. During this scheduled argument, the Court heard the Trust's Motion to Retax Malek's Memorandum of Costs. The Court also called Malek's motion for attorneys' fees and costs, to which the Trust had not filed an opposition.[2] By agreement of counsel for the Trust and Malek, the Court continued the hearing on Malek's Motion for Attorneys' Fees and Costs until December 1, 2015, when the Court calendared its next hearing on Malek's Motion for Attorneys' Fees and Costs. The Court, however, did not indicate a time during this hearing.

Following the October 22, 2015 hearing, the Trust filed its opposition to Malek's Motion for Attorneys' Fees and Costs on October 23, 2015. Malek timely filed his reply in support of his Motion for Attorneys' Fees and Costs on November 19, 2015. Jay DeVoy, Esq., then appeared for Malek at the December 1, 2015 hearing; no counsel appeared for any other party, including the Trust. Mr. DeVoy represented that he had left a voice mail for Ms. Hanks confirming the time of the December 1, 2015 hearing on the late afternoon before, November 30, 2015.

II. Legal Analysis

The Court grants in part, and denies in part, both the Trust's Motion to Retax Costs, and Malek's Motion for Attorneys' Fees and Costs. As set forth below, the Court awards Malek a total of $25,986.00 in Attorneys' Fees and Costs. Additionally, the Court sanctions the Trust $500 for conduct requiring more than one hearing for Malek's counsel to argue the Motion for Attorneys' Fees and Costs.

A. The Trust's Motion to Retax Malek's Memorandum of Costs

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[1] The Trust filed its Notice of Hearing for the October 22, 2015 hearing on these motions, pursuant to its request for hearing, on October 14, 2015.

[2] It was not until the hearing that the Trust became aware there was an issue with filing of the Opposition, as the Trust counsel believed it had been filed.

The Trust's Motion to Retax Malek's Costs is granted to the extent it seeks to disallow a full reimbursement of the funds paid to Craig Jiu in connection with his deposition. Additionally, the mutually agreed-upon costs of private mediation that Malek sought in his memorandum of costs cannot be imposed on the Trust. All other costs in Malek's memorandum of costs are reasonably and necessarily incurred incident to this litigation, and the Court exercises its jurisdiction to award them to Malek in the amount of $7,568.50.

B. Malek's Motion for Attorneys' Fees and Costs

The Court grants in part Malek's Motion for Attorneys' Fees and Costs under NRS 18.010(2)(b) on the basis that the Trust lacked reasonable grounds to maintain this litigation, even if it initially had reasonable grounds to file suit. Based on the facts and law presented in Malek's Motion for Summary Judgment filed on April 16, 2015, it was unreasonable for the Trust to maintain this litigation against him from that date onward. Having reviewed the requested fees and Trust's Opposition[3] to Malek's motion, the Court finds Malek's requested fees from April 17, 2015 until the date of the Motion's filing, for a total of $18,417.50, to be reasonably incurred. The Court therefore awards attorneys' fees to Malek in the amount of $18,417.50, as they were incurred after the Trust lacked reasonable grounds to maintain this action against him.

C. Sanctions

The Court's inherent powers include the orderly administration of cases before it. Because of the delayed hearing on Malek's Motion for Attorneys' Fees and Costs and then the Trust's failure to appear at the scheduled December 1, 2015 hearing, the Court exercises its discretion to impose a monetary sanction on the Trust.[4] The Court's sanction upon the Trust shall be in the amount of $500.00, based on a calculation of the two hours Mr. DeVoy waited for this matter to be called and heard on the December 1, 2015 hearing date, calculated based on the $250 per hour rate submitted in Malek's Motion for Attorneys' Fees and Costs.

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[4] This sanction is imposed on the trust itself, as a party, and not upon its counsel.

It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and entitled to $7,568.50 in costs, $18,417.50 in his reasonable attorneys' fees incurred in this action, and a sanction of $500, against the Trust, in a total amount of $26,486.00.

IT IS SO ORDERED

Dated: 12 day of January 2016

DISTRICT JUDGE

Respectfully Submitted:

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Approved in content and form by:

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William Habdas
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Attorneys for Defendants Bank of America N.A. and BAC Home Loans Servicing, LP.

It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and entitled to $7,568.50 in costs, $18,417.50 in his reasonable attorneys' fees incurred in this action, and a sanction of $500, against the Trust, in a total amount of $26,486.00.

IT IS SO ORDERED

Dated: _____, 2015

_____

DISTRICT JUDGE

Respectfully Submitted:

_____

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Attorneys for Defendants Bank of America N.A. and BAC Home Loans Servicing, LP.

It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and entitled to $7,568.50 in costs, $18,417.50 in his reasonable attorneys' fees incurred in this action, and a sanction of $500, against the Trust, in a total amount of $26,486.00.

IT IS SO ORDERED

Dated: _____, 2015

_____

DISTRICT JUDGE

Respectfully Submitted:

_____

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It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and entitled to $7,568.50 in costs, $18,417.50 in his reasonable attorneys' fees incurred in this action, and a sanction of $500, against the Trust, in a total amount of $26,486.00.

IT IS SO ORDERED

Dated: _____, 2015

_____

DISTRICT JUDGE

Respectfully Submitted:

_____

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EXHIBIT 8

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

SHAHIN SHANE MALEK,

Counter-Claimant,

vs.

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No. A-13-689113-C

Dept. No. I

NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS BANK OF AMERICA, N.A. WITH PREJUDICE

PLEASE TAKE NOTICE that on March 10, 2016 this Court entered a **Stipulation and**

Order to Dismiss Bank of America, N.A with Prejudice. A copy of said Stipulation and Order is attached hereto.

DATED this 18th day of March, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **STIPULATION AND ORDER TO DISMISS BANK OF AMERICA, N.A. WITH PREJUDICE**, to the following parties:

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/s/ Tomas Valerio
An Employee of Kim Gilbert Ebron

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONDALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: I

STIPULATION AND ORDER TO DISMISS BANK OF AMERICA, N.A. WITH PREJUDICE

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THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST ("Plaintiff") and BANK OF AMERICA, N.A. ("BANA") (collectively, the "Parties"), by and through their counsel of record, stipulate and agree that Plaintiff's claims against BANA, as set forth in the Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, each party to bear its own attorney's fees and costs associated with this lawsuit.

IT IS SO STIPULATED.

DATED this ____ day of March, 2016.
KIM GILBERT EBRON

Diana Cline Ebron, Esq.
Nevada Bar No. 10580
Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10580
Karen L. Hanks, Esq.
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Attorneys for Plaintiff

DATED this 17th day of March, 2016.
AKERMAN LLP

Ariel E. Stern, Esq.
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Darren T. Brenner, Esq.
Nevada Bar No. 8386
Steve Shevorski, Esq.
Nevada Bar No. 8256
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Attorneys for Bank of America, N.A

DATED this ____ day of March, 2016.
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Nevada Bar No. 10729
Jay M. DeVoy, Esq.
Nevada Bar No. 11950
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Attorneys for Shahin Shane Malek

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///

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THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST ("Plaintiff") and BANK OF AMERICA, N.A. ("BANA") (collectively, the "Parties"), by and through their counsel of record, stipulate and agree that Plaintiff's claims against BANA, as set forth in the Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, each party to bear its own attorney's fees and costs associated with this lawsuit.

IT IS SO STIPULATED.

DATED this 4 day of March, 2016.
KIM GILBERT EBRON

Diana Cline Ebron, Esq.
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Jacqueline A. Gilbert, Esq.
Nevada Bar No. 10580
Karen L. Hanks, Esq.
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Attorneys for Plaintiff

DATED this ____ day of March, 2016.
AKERMAN LLP

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Steve Shevorski, Esq.
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DATED this 4th day of March, 2016.
THE FIRM, P.C.

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///

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///

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ORDER

Upon stipulation of the Parties, and good cause appearing therefore, it is hereby ORDERED that Plaintiff's claims against BANA, as set forth in the Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, with each party to bear its own fees and costs.

IT IS SO ORDERED.

DATED this 1st day of March, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted By:
KIM GILBERT EBRON

Diana Cline Ebron, Esq.
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Jacqueline A. Gilbert, Esq.
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EXHIBIT 9

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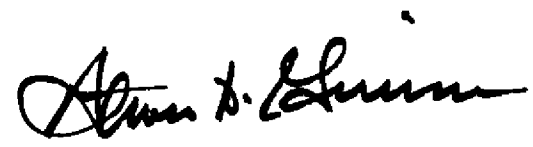

CLERK OF THE COURT

NEO
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Attorneys for Defendant/Counterclaimant
SHAHIN SHANE MALEK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants. _____ SHAHIN SHANE MALEK, Counterclaimant, vs. THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, _____	CASE NO.: A-13-689113-C DEPT NO.: I **NOTICE OF ENTRY OF STIPULATION AND ORDER**

)
Counterdefendant.)
)

NOTICE TO ALL PARTIES that on May 17, 2016 the Court entered its Stipulation and Order for Dismissal of Counterclaim Without Prejudice Pursuant to Nevada Rule of Civil Procedure 41(a)(1) in the above-entitled action, a copy of which is attached hereto.

DATED this 18 day of May, 2016.

/s/ Jay DeVoy, Esq.
Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant, Shahin Shane Malek

CERTIFICATE OF SERVICE

I hereby certify that one this 18 day of May, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system and to be placed in the United States Mail, with first class postage prepaid thereon, and addressed the foregoing **NOTICE OF ENTRY OF ORDER** to the following parties:

Karen Hanks
Melissa Barishman
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim Defendant,
The Fredric and Barbara Living Trust

J. Randall Jones
Spencer H. Gunnerson
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Steven Shevorski
William Habdas
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans Servicing, LP

/s/ Jacqueline Martinez
An employee of The Firm, P.C.

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CLERK OF THE COURT

SAO
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Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant
SHAHIN SHANE MALEK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants. SHAHIN SHANE MALEK, Counterclaimant, vs. THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Counterdefendant.	CASE NO.: A-13-689113-C DEPT NO.: I **STIPULATION AND ORDER FOR DISMISSAL OF COUNTERCLAIM WITHOUT PREJUDICE PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 41(a)(1)**

STIPULATION AND ORDER FOR DISMISSAL OF COUNTERCLAIM WITHOUT PREJUDICE PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 41(a)(1)

Counterclaimant SHAHIN SHANE MALEK ("Malek"), and counterclaim defendant THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST (the "Trust"), through their undersigned counsel of record, stipulate and agree pursuant to Nevada Rule of Civil Procedure 41(a)(1) and (c), that Malek's counterclaim against the Trust is voluntarily dismissed **WITHOUT PREJUDICE**, with both parties to bear their respective attorneys' fees and costs. The parties hereto further agree that in the event any appeal of the Trust's underlying claims against Malek are remanded by the Nevada Court of Appeals or Nevada Supreme Court for further proceedings before this Court, Malek shall be entitled to re-file and revive the instantly dismissed counterclaim without payment of any costs to the Trust under Rule 41(d), and that the statute of limitations and five-year time limitation for Malek's counterclaim be tolled during the pendency of any appeal of the Trust's claims against Malek in this case before the Nevada Court of Appeals or Nevada Supreme Court under Rule 41(e), so that Malek may reinstitute or revive his counterclaim within 180 days of this Court obtaining jurisdiction upon any remand of this case, or otherwise re-file the claim dismissed by this stipulation.

Dated May ____, 2016

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant, Shahin Shane Malek

Dated May 25, 2016

Karen Hanks
Nevada Bar No. 9578
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff/Counterclaim Defendant, The Fredric and Barbara Living Trust

ORDER

In light of the foregoing stipulation, it is **ORDERED** that Malek's counterclaim against the Trust is **DISMISSED WITHOUT PREJUDICE**, with each party to bear its own attorney's

STIPULATION AND ORDER FOR DISMISSAL OF COUNTERCLAIM WITHOUT PREJUDICE PURSUANT TO NEVADA RULE OF CIVIL PROCEDURE 41(a)(1)

Counterclaimant SHAHIN SHANE MALEK ("Malek"), and counterclaim defendant THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST (the "Trust"), through their undersigned counsel of record, stipulate and agree pursuant to Nevada Rule of Civil Procedure 41(a)(1) and (c), that Malek's counterclaim against the Trust is voluntarily dismissed **WITHOUT PREJUDICE**, with both parties to bear their respective attorneys' fees and costs. The parties hereto further agree that in the event any appeal of the Trust's underlying claims against Malek are remanded by the Nevada Court of Appeals or Nevada Supreme Court for further proceedings before this Court, Malek shall be entitled to re-file and revive the instantly dismissed counterclaim without payment of any costs to the Trust under Rule 41(d), and that the statute of limitations and five-year time limitation for Malek's counterclaim be tolled during the pendency of any appeal of the Trust's claims against Malek in this case before the Nevada Court of Appeals or Nevada Supreme Court under Rule 41(e), so that Malek may reinstitute or revive his counterclaim within 180 days of this Court obtaining jurisdiction upon any remand of this case, or otherwise re-file the claim dismissed by this stipulation.

Dated May 6, 2016

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
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Attorneys for Defendant/Counterclaimant, Shahin Shane Malek

Dated May ____, 2016

Karen Hanks
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Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff/Counterclaim Defendant, The Fredric and Barbara Living Trust

ORDER

In light of the foregoing stipulation, it is **ORDERED** that Malek's counterclaim against the Trust is **DISMISSED WITHOUT PREJUDICE**, with each party to bear its own attorney's

fees and costs. This dismissal without prejudice is subject to Malek's right to revive or re-file his counterclaim, including upon any remand of the Trust's underlying claims against Malek, without any payment of costs to the Trust normally allowable under Rule 41(d); and, pursuant to Rule 41(e), the tolling of the statute of limitations and five-year rule applicable to Malek's counterclaim during the pendency of any appeal of the Trust's claims against Malek, upon which this Court previously granted summary judgment to Malek. In the event the Nevada Court of Appeals or Nevada Supreme Court remands any of the Trust's claims against Malek in this action to this Court, Malek may revive or re-file his Counterclaim within 180 days of this Court obtaining jurisdiction over the remanded proceedings, with the statute of limitations and five-year rule for such counterclaim tolled during that time.

With all claims being resolved, the trial deadlines in this action, including the pretrial conference and trial date for Malek's counterclaim, are hereby **VACATED**.

IT IS SO ORDERED.

Dated: May 13, 2016.

DISTRICT COURT JUDGE

Submitted by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
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Attorneys for Defendant/Counterclaimant, Shahin Shane Malek

EXHIBIT 10

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CLERK OF THE COURT

J. RANDALL JONES, ESQ. (#1927)
r.jones@kempjones.com
SPENCER H. GUNNERSON, ESQ. (#8810)
s.gunnerson@kempjones.com
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169
Attorneys for Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC, Dragonridge Golf Club, Inc., MacDonald Properties, Ltd., MacDonald Highlands Realty, LLC, and Michael Doiron

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC. is a Nevada corporation; MACDONALD PROPERTIES, LTD., a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X, inclusive; ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	Case No.: A689113 Dept. No.: I **NOTICE OF ENTRY OF ORDER GRANTING IN PART DEFENDANTS DRFH VENTURES, LLC f/k/a DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC.; MACDONALD PROPERTIES, LTD; MACDONALD HIGHLANDS REALTY, LLC; AND MICHAEL DOIRON'S (1) JOINDER TO BANK OF AMERICA, N.A.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND (2) MOTION TO DISMISS**

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on the 7th day of January, 2014. A copy of said Order is attached hereto.

DATED this 10th day of January, 2014.

KEMP, JONES & COULTHARD

J. Randall Jones, Esq., NV Bar No. 1927
Spencer H. Gunnerson, Esq., NV Bar No. 8810
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of January, 2014, a copy of the **NOTICE OF ENTRY OF ORDER** was served on the following person by mailing a copy thereof, first class mail, postage prepaid, to:

Peter C. Bernhard, Esq.
Lisa J. Zastrow, Esq.
Kaempfer Crowell
8345 W. Sunset Road, Ste. 250
Las Vegas, NV 89113
Attorneys for Plaintiffs

Erica Bennett
An employee of Kemp, Jones & Coulthard

KEMP, JONES & COULTHARD, LLP
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CLERK OF THE COURT

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Attorneys for Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC, Dragonridge Golf Club, Inc., MacDonald Properties, Ltd., MacDonald Highlands Realty, LLC, and Michael Doiron

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC. is a Nevada corporation; MACDONALD PROPERTIES, LTD., a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X, inclusive; ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	Case No.: A689113 Dept. No.: I **ORDER GRANTING IN PART DEFENDANTS DRFH VENTURES, LLC f/k/a DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC.; MACDONALD PROPERTIES, LTD; MACDONALD HIGHLANDS REALTY, LLC; AND MICHAEL DOIRON'S (1) JOINDER TO BANK OF AMERICA, N.A.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND (2) MOTION TO DISMISS**

KEMP, JONES & COULTHARD, LLP
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(702) 385-6000 • Fax (702) 385-6001
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Defendants DRFH Ventures, LLC, formerly known and incorrectly identified as Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron (collectively "Defendants"), by and through their counsel, Spencer H. Gunnerson, Esq. of the law firm Kemp, Jones & Coulthard, LLP; and Plaintiff The Fredric and Barbara Rosenberg Living Trust, by and through its counsel, James E. Smythe, Esq. of

the law firm of Kaempfer Crowell, appeared before this Court on December 19, 2013, at 10:00 a.m. for the hearing on Defendants' Joinder to Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint and on Defendants' Motion to Dismiss. The Court having reviewed the pleadings and papers on file herein and heard the arguments of counsel made at the hearing, and other good cause appearing therefor,

IT IS HEREBY ORDERED that Defendants' Joinder to Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint and Defendants' Motion to Dismiss are GRANTED IN PART, in that all claims against Defendants DRFH Ventures, LLC, formerly known and incorrectly identified as Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; and MacDonald Properties, Ltd. are hereby dismissed without prejudice; and

IT IS FURTHER ORDERED that Defendants' Joinder to Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint and Defendants' Motion to Dismiss are DENIED IN PART, as they pertain to the claims against Defendants MacDonald Highlands Realty, LLC, and Michael Doiron.

DATED this 7 day of December, 2013.

DISTRICT COURT JUDGE JS

Respectfully Submitted by:

KEMP, JONES & COULTHARD, LLP

J. Randall Jones, Esq.
Spencer H. Gunnerson, Esq.
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Attorneys for Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC, Dragonridge Golf Club, Inc., MacDonald Properties, Ltd., MacDonald Highlands Realty, LLC, and Michael Doiron

Approved as to form ~~and content:~~

KAEMPFER CROWELL

Peter C. Bernhard, Esq.
Lisa J. Zastrow, Esq.
Kaempfer Crowell
8345 W. Sunset Road, Ste. 250
Las Vegas, NV 89113

Attorneys for Plaintiffs

KEMP, JONES & COULTHARD, LLP
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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
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EXHIBIT 11

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CLERK OF THE COURT

NOAS

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KAREN L. HANKS, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONDALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-689113-C Dept. No.: I **NOTICE OF APPEAL**
SHAHIN SHANE MALEK, Counterclaimant, vs. THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Counter-Defendant.	

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

The FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its counsel of record, Kim Gilbert Ebron, hereby appeals the following:

1. The Findings of Fact, Conclusions of Law, and Judgment on Defendant/Counterclaimant Shahin Shane Malek's Motion for Summary Judgment, entered on August 13, 2015; and

2. All other orders made appealable thereby.

DATED this 23th day of May, 2016.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
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Attorneys for Plaintiff

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LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23th day of May, 2016, pursuant to NRCP 5(b), I served, via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF APPEAL**, to the following parties:

Select All Select None

Akerman LLP

Name	Email	Select
Akerman Las Vegas Office	akermanlas@akerman.com	☑
Darren T. Brenner, Esq.	darren.brenner@akerman.com	☑
Steven G. Shevorski, Esq.	steven.shevorski@akerman.com	☑

Kemp Jones & Coulthard

Name	Email	Select
Ian P. McGinn	ipm@kempjones.com	☑
Sandy Sell	s.sell@kempjones.com	☑

Kemp, Jones & Coulthard

Name	Email	Select
J. Randall Jones	jrj@kempjones.com	☑
Janet Griffin	janetjamesmichael@gmail.com	☑
Janet Griffin	jlg@kempjones.com	☑
Matthew Carter	m.carter@kempjones.com	☑
Sandy Sell	s.sell@kempjones.com	☑
Spencer Gunnerson	s.gunnerson@kempjones.com	☑

Kemp, Jones & Coulthard, LLP

Name	Email	Select
Pamela Montgomery	p.montgomery@kempjones.com	☑

The Firm

Name	Email	Select
Jay M. DeVoy	jay@thefirm-lv.com	☑

The Firm, P.C.

Name	Email	Select
Jacqueline Martinez	jacqueline@thefirm-lv.com	☑
Preston P. Rezaee, Esq.	preston@thefirm-lv.com	☑
Ryan E. Alexander, Esq.	ryan@ryanalexander.us	☑

/s/Jacqueline A. Gilbert
An Employee of Howard Kim & Associates

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Appellant, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; Respondents.	Case No. 70478 District Court Case No: A-13-689113-C **APPELLANT FREDRIC AND BARBARA ROSENBERG LIVING TRUST'S DOCKETING STATEMENT**

Electronically Filed
Jun 27 2016 03:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal. A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions. This court has

Docket 70478 Document 2016-20089

noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents. Pursuant to NRAP 14(a), appellant SFR Investments Pool 1, LLC, hereby submits its Docketing Statement in the above-captioned appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement.

1. Judicial District Eighth Department 1

County: Clark Judge: The Honorable Kenneth C. Cory

District Ct. Case No. A-13-689113-C

2. Attorney Filing this docketing statement:

Attorney: Jacqueline A. Gilbert Telephone: 702-485-3300

Firm : KIM GILBERT EBRON

Address: 7625 Dean Martin Drive, Suite 110, Las Vegas, Nevada 89139

Client(s): Fredric and Barbara Rosenberg Living Trust ("Trust")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement. N/A

3. Attorney(s) representing respondents(s):

Attorney: Preston R. Rezaee Telephone: 702-222-3476
Jay DeVoy
Firm: THE FIRM, P.C.
Address : 200 East Charleston Blvd., Las Vegas, Nevada 89104
Client(s): Shahin Shane Malek

4. **Nature of disposition below (check all that apply):**
   - ☐ Judgment after bench trial
   - ☐ Judgment after jury verdict
   - **X** Summary judgment
   - ☐ Default judgment
   - ☐ Grant/Denial of NRCP 60(b) relief
   - ☐ Grant/Denial of injunction
   - ☐ Grant/Denial of declaratory relief
   - ☐ Review of agency determination
   - ☐ Dismissal:
     - ☐ Lack of jurisdiction
     - ☐ Failure to state a claim
     - ☐ Failure to Prosecute
   - **X** Other (specify): Order granting Motion for Attorneys' Fees and Costs
   - ☐ Divorce Decree:
     - ☐ Original
     - ☐ Modification
   - ☐ Other disposition (specify): _____

5. **Does this appeal raise issues concerning any of the following? N/A**
   - ☐ Child Custody
   - ☐ Venue
   - ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously or pending before this court which are related to this appeal:

Rosenberg Living Trust v. MacDonald Highlands Realty, LLC, Case No. 69399 (pending; **joint motion to consolidate pending, filed 6/20/16**)

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

A-13-689113-C – all claims have been resolved:

November 10, 2015, Certification pursuant to Rule 54(b) entered finalizing orders granting summary judgment and attorneys' fees in favor of the MacDonald Parties and against the Trust (orders entered on August 13, 2015 and November 10, 2015 respectively).

Summary judgment entered in favor of Malek on the Trust's claims was entered on August 13, 2015. The order granting attorneys' fees and costs in favor of Malek was entered on January 13, 2016. Malek's claim for slander of title was voluntarily dismissed by stipulation and order entered on May 17, 2016.

The Trust's voluntarily dismissed its claims against BANA and BAC by stipulation and order entered on March 10, 2106.

No further claims remain.

8. Nature of the action. Briefly describe the nature of the action and result below:

This is an action for declaratory relief and to enforce an implied restrictive covenant following the Trust's purchase of a golf-course frontage home in MacDonald Highlands where it was later learned that a piece of the golf course in front of an adjoining lot had been sold and rezoned to allow the owner, Malek to build out past the original property building envelope, without disclosure of the sale, rezoning or vacating easements.

The Trust brought claims for Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing against BANA (seller of the property); Unjust Enrichment and Fraudulent or Intentional Misrepresentation and Negligent Misrepresentation against BANA, BAC Home Loans Servicing, LP, and the MacDonald Parties; Real Estate Brokers Violation of NRS 645 against the MacDonald Parties; Easement against the MacDonald Parties and Malek; Declaratory Relief against all defendants; Mandatory Injunction against Malek;

Implied Restrictive Covenant against Malek; Mandatory Injunction against the Foothills at MacDonald Ranch Master Association, the Foothills Partners, LP, and Paul Bykowski in his various capacities.

Malek counter-claimed against the Trust for slander of title. **(Exhibit 2)**

Original defendants Dragonridge Properties, LLC, Dragonridge Golf Club, Inc, and MacDonald Properties, Ltd were dismissed without prejudice on January 10, 2014. (Exhibit 13)

The Trust voluntarily dismissed defendants Real Properties Management Group, Inc. on April 29, 2014. **(Exhibit 3)** The Trust voluntarily dismissed defendants Bykowski and Foothills at MacDonald Ranch Master Association on April 22, 2015. **(Exhibit 4)**

The Trust filed an amended complaint on January 12, 2015, bringing the following claims: Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing against BANA; Unjust Enrichment and Fraudulent, Intentional and Negligent Misrepresentation against BANA, BAC Home Loans Servicing, LP, and the MacDonald Parties; Real Estate Brokers Violation of NRS 645 against the MacDonald Parties; Easement against the MacDonald Parties and Malek; Declaratory Relief against all defendants; Mandatory Injunction against Malek; Implied Restrictive Covenant against Malek; Mandatory Injunction against the Foothills at MacDonald Ranch Master Association, the Foothills Partners, LP, and Paul Bykowski in his various capacities. FHP Ventures, LP ("FHP") later filed a motion to dismiss stating it is the correct party in place of The Foothills Partners, LP. **(Exhibit 1)**

The MacDonald Parties and FHP filed a motion for summary judgment. Trust filed a motion for summary judgment against Malek's counter-claim for slander of title. Malek filed a motion for summary judgment on his counter-claim.

The district court granted summary judgment in favor of the MacDonald

Parties and FHP by an order entered on August 13, 2015 **(Exhibit 5)** and in favor of Malek on the Trust's claims for implied easement by an order entered on August 13, 2015 **(Exhibit 6),** incorporated by reference into FHP order.

An order granting Malek's motion for attorneys' fees and costs was entered on January 13, 2016. (**Exhibit 7**)

The Trust dismissed its claims against BANA and BAC by stipulation and order entered on March 10, 2016. **(Exhibit 8.)** Malek dismissed his claim for slander of title pursuant to a stipulation and order entered on May 17, 2106 **(Exhibit 9).**

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in concluding that the Trust's claims against Malek to enforce an implied easement and/or restrictive covenant failed as a matter of law stating there is no implied easement or restrictive covenant requiring property formerly owned by a golf course to remain part of the golf course.

Whether the district court erred by granting Malek attorneys' fees and costs when there was insufficient evidence to show that the Trust lacked reasonable grounds to maintain this action against Malek.

10. Pending proceeding in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Rosenberg Trust v. MacDonald Highlands Realty, Case No 69399.

Because the order appealed from in 69399 incorporates by reference the order appealed from in this case, the two are interrelated.

11. Constitutional issues. If this appeal challenges the constitutionality of a statue, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and 30.130?

X N/A
☐ Yes
☐ No
If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An Issue arising under the United States and/or Nevada Constitutions
X A substantial issue of first impression
☐ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ A ballot question
If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Presumptively retained by the Supreme Court under NRAP 17(a)(13)

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from**

August 13, 2015 (SJ) **(Exhibit 6)**

January 13, 2016 (Atty fees/costs) **(Exhibit 7)**

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served**

August 20, 2015 (SJ) **(Exhibit 6)**

January 20, 2016 (Atty Fees/costs) **(Exhibit 7)**

Was service by:

- ☐ Delivery
- **X** Mail/**electronic**/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)** N/A

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date of filing
- ☐ NRCP 52(b) Date of filing
- ☐ NRCP 59 Date of filing:

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v Washington, 126 Nev. ___, 245 P.3d 1190 (2010). N/A

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

- ☐ Delivery
- ☐ Mail
- ☐ Electronic service via Wiznet

19. Date notice of appeal filed

May 23, 2016 **(Exhibit 11)**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

X NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is taken from an order granting summary judgment and award of attorneys' fees/costs in favor of defendant Malek. The notice of appeal was filed within thirty days of the last order resolving the final claims in the case, the SAO dismissing Malek's claim against the Trust for slander of title, entered on May 18, 2016 (**Ex. 9**).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

The Fredric and Barbara Rosenberg Living Trust: Plaintiff/Counter-defendant

Bank of America, N.A. ("BANA"): Defendant

BAC Home Loans Servicing, LP ("BAC"): Defendant

MacDonald Highlands Realty, LLC: Defendant

Michael Doiron: Defendant

Shahin Shane Malek: Defendant/cross-claimant

Paul Bykowski: Defendant

The Foothills at MacDonald Ranch Master Association: Defendant

The Foothills Partners, LP ("FHP Ventures, LP"): Defendant

Dragonridge Properties, LLC: Defendant

Dragonridge Golf Club, Inc.: Defendant

MacDonald Properties, Ltd.: Defendant

Real Properties Management Group, Inc.: Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, e.g., formally dismissed, not served, or other:

BANA and BAC were dismissed by stipulation and order entered on March

10, 2016 (**Ex. 8**).

Dragonridge Properties, Dragonridge Gold Club, MacDonald Properties were dismissed by order entered on January 10, 2104. **(Exhibit 10)**

Real Property Management Group – voluntarily dismissed April 29, 2014 (Rule 41) **(Exhibit 3)**

Bykowski – voluntarily dismissed April 22, 2015 (Rule 41) **(Exhibit 4)**

Foothills at MacDonald Ranch Master Ass'n – voluntarily dismissed April 22, 2105 (Rule 41) **(Exhibit 4)**

MacDonald Highlands Realty, Doiron, and FHP ("MacDonald Parties") – summary judgment entered in favor of MacDonald Parties on August 13, 2013 **(Ex. 5)** – cross-appeals filed in Case No. 69399 – motion to consolidate pending.

23. Give a brief description (3 to 4 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

A. Plaintiff SFR's claims:

1. Breach of Contract – BANA – March 10, 2016 (**Ex. 8**);

2. Breach of Implied Covenant of Good Faith and Fair Dealing – BANA – March 10, 2016 (**Ex. 8**);

3. Unjust Enrichment – BANA, BAC, MacDonald Parties – March 10, 2016 (**Ex. 8**); August 13, 2015 **(Ex. 5),** respectively;

4. Fraudulent or Intentional Misrepresentation – BANA, BAC, and MacDonald Parties – March 10, 2016 (**Ex. 8**); August 13, 2015 **(Exhibit 5)**;

5. Negligent Misrepresentation – March 10, 2016 (**Ex. 8**); **(Ex. 5)** ;

6. Real Estate Brokers violations of NRS 645 – MacDonald Parties - August 13, 2015 **(Ex. 5)** ;

7. Easement - MacDonald Parties and Malek - August 13, 2015 **(Ex. 5) (Ex. 6)**;

8. Declaratory Relief – all defendants – March 10, 2016 (**Ex. 8**); August 13, 2015 **(Ex. 5) (Ex. 6)**;

9. Mandatory Injunction – Malek - August 13, 2105 **(Ex. 6)**.

10. Implied Restrictive Covenant – Malek - August 13, 2105 **(Ex. 6);**

11. Mandatory Injunction –August 13, 2105 **(Ex. 5)**; Association and Bykowski voluntarily dismissed on April 22, 2105 **(Ex. 4)**.

B. Defendant/Cross-claimant Shahin Malek

1. Slander of title – May 20, 2016 **(Ex. 9)**.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes
X No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

All other parties claims resolved prior per # 20 above.

(b) Specify the parties remaining below: none

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? **N/A**

☐ Yes
☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? **(Exhibit 11)**

☐ Yes
☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)): Dismissal of Malek's counterclaim resolved final remaining claim remaining in the district court action.

27. Attach file-stamped copies of the following documents: - *see exhibits*

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Date Filed	Description
1	1/12/15	Rosenberg Trust - Amended Complaint
2	2/20/14	Malek – Answer and Counter-claim
3	4/28/14	Notice of Voluntary Dismissal of Real Prop. Mgmt Grp.
4	4/22/15	Notice of Voluntary Dismissal of Bykowski and Association
5	8/13/15	Notice of Entry and Findings of Fact and Conclusion of Law, and Judgment Regarding Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures' Motion for Summary Judgment
6	8/13/15 8/20/15	NOE and Order Findings of Fact and Conclusions of Law and Judgment on Defendant/Counterclaimant Shahin Shane Malek's Motion for Summary Judgment
7	1/13/16	Order Granting (1) Malek's Motion for Attorney Fees and Costs and (2) Trust's Motion to Retax [no NOE entered]
8	3/10/16 3/18/16	NOE and Stipulation and Order Dismissing BANA and BAC
9	5/17/16 5/18/16	NOE and Stipulation and Order Dismissing Slander of Title against Trust

10	1/10/14 1/13/14	NOE and Order dismissing defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, Ltd.
11	5/23/16	Notice of Appeal

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement (Case No. 68584), that the information provided in this docketing statement is true and complete to the best of knowledge, information and belief, and that I have attached all required documents to this docketing statement.

SFR Investments Pool 1, LLC Name of Appellant June 27, 2016 Date	Jacqueline A. Gilbert, Esq Name of counsel of record */s/Jacqueline A. Gilbert* Signature of Counsel of Record
Clark County, Nevada State and county where signed	

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CERTIFICATE OF SERVICE

I certify that on the 27th day of June, 2016, I filed the foregoing, completed **Docketing Statement with Exhibits (Case No. 70478) which shall be served via electronic service from the Court's eflex system to:**

Master Service List

Docket Number and Case Title:	69399 - ROSENBERG LIVING TRUST VS. MACDONALD HIGHLANDS LLC
Case Category	Civil Appeal
Information current as of:	Jan 18 2016 01:27 p.m.

Electronic notification will be sent to the following:

Preston Rezaee
[counsel for Respondent]

Dated this 27th day of June, 2016

/s/Jacqueline A. Gilbert
an employee of KIM GILBERT EBRON