

**TAB 14**

**TAB 14**

**TAB 14**

**JA 0110**

AFFT  
Howard Kim & Associates, Attorneys at Law  
Melissa Barishman, Esq.  
1055 Whitney Ranch Dr., Suite 110  
Henderson, NV 89014  
State Bar No.: 12935  
Attorney(s) for: Plaintiff(s)

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

The Fredric and Barbara Rosenberg Living Trust

vs

Bank of America, N.A.; et al

Plaintiff(s)

Defendant(s)

Case No.: A-13-689113-C

Dept. No.: I

Date: January 16, 2015

Time: 9:00AM

AFFIDAVIT OF SERVICE

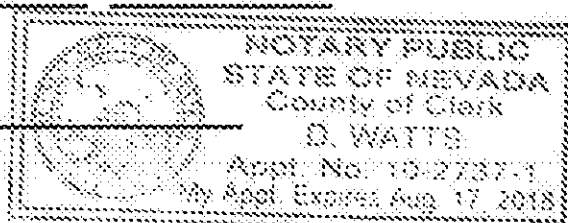
I, Myla Carson, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Amended Complaint on the 15th day of January, 2015 and served the same on the 15th day of January, 2015 at 3:49 PM by delivering and leaving a copy with the Defendant(s), Paul Bykowski, an individual at Place of Employment, MacDonald Properties, LTD, 1730 W Horizon Ridge Pkwy., #120, Henderson, NV 89012.

State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

16th day of January 2015

Notary Public D. Watts



Affiant - Myla Carson # R-067968

Legal Process Service - License # 604  
WorkOrderNo 1500397



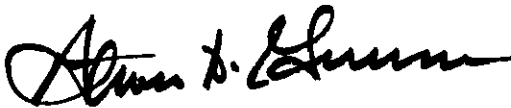
JA\_0111

# **TAB 15**

Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1 AFFT  
2 Howard Kim & Associates, Attorneys at Law  
3 Melissa Barishman, Esq.  
4 1055 Whitney Ranch Dr., Suite 110  
5 Henderson, NV 89014  
6 State Bar No.: 12935  
7 Attorney(s) for: Plaintiff(s)

Electronically Filed  
01/16/2015 09:56:50 AM



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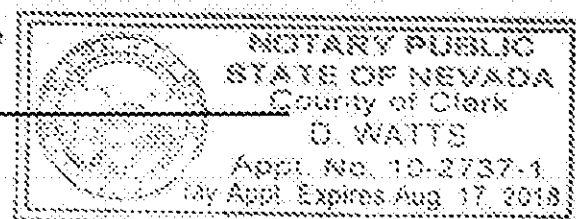
State of Nevada, County of Clark

SUBSCRIBED AND SWORN to before me on this

16th day of January 2015



Notary Public D. Watts





Affiant - Myla Carson

# R-067968

Legal Process Service - License # 604  
WorkOrderNo 1500399



JA 0113



# **TAB 16**

AFFT  
Howard Kim & Associates, Attorneys at Law  
Melissa Barishman, Esq.  
1055 Whitney Ranch Dr., Suite 110  
Henderson, NV 89014  
State Bar No.: 12935  
Attorney(s) for: Plaintiff(s)

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

The Fredric and Barbara Rosenberg Living Trust

vs

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Plaintiff(s)

Defendant(s)

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AFFIDAVIT OF SERVICE

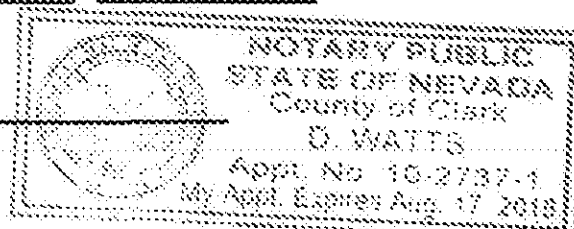
I, Myla Carson, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons: Amended Complaint on the 15th day of January, 2015 and served the same on the 15th day of January, 2015 at 3:49 PM by serving the Defendant(s), The Foothill Partners, a Nevada limited partnership by personally delivering and leaving a copy at MacDonald Properties, LTD, 1730 W Horizon Ridge Pkwy., #120, Henderson, NV 89012 with Paul Bykowski as President an agent lawfully designated by statute to accept service of process.

State of Nevada, County of Clark

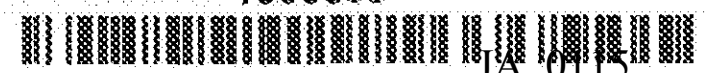
SUBSCRIBED AND SWORN to before me on this

16th day of January 2015

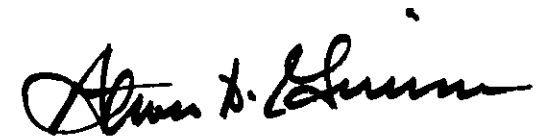
Notary Public D. Watts

  
Affiant - Myla Carson # R-067968

Legal Process Service - License # 604  
WorkOrderNo 1500398



# **TAB 17**



CLERK OF THE COURT

**AACC**

Preston P. Rezaee, Esq.  
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Jay M. DeVoy, Esq., Of Counsel  
Nevada Bar No. 11950  
THE FIRM, P.C.  
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Telephone: (702) 222-3476  
Facsimile: (702) 252-3476

Sarah M. Chavez, Esq.  
Nevada Bar No.: 11935  
THE LAW OFFICE OF SARAH M. CHAVEZ, PLLC  
200 E. Charleston Blvd.  
Las Vegas, NV 89104  
Attorneys for Defendant,  
SHAHEN SHANE MALEK

**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)  
CORPORATIONS I through XX, inclusive,

Defendants.

CASE NO.: A-13-689113-C

DEPT NO.: I

**ANSWER TO AMENDED COMPLAINT  
AND COUNTERCLAIM**

1 Defendant Shahin Shane Malek (“Defendant”), through his undersigned attorneys of record,  
2 answers the allegations in the Amended Complaint of Plaintiff The Frederic and Barbara Rosenberg  
3 Living Trust (“Plaintiff,” or the “Trust”) as follows.

4 1. Defendant admits the allegations in Paragraph 1.

5 2. Defendant is without sufficient information to admit or deny the allegations in  
6 Paragraphs 2 through 5, inclusive.

7 3. Defendant admits the allegations in Paragraph 6.

8 4. Defendant is without sufficient information to admit or deny the allegations in  
9 Paragraphs 7 through 9, inclusive.

10 5. Paragraph 10 requires neither an admission nor denial, and merely reserves the option  
11 of amending the pleading to identify presently unknown parties.

12 6. Defendant incorporates his answers above in answering Paragraph 11.

13 7. Defendant is without sufficient information to admit or deny the allegations in  
14 Paragraph 12.

15 8. Defendant admits the allegations in Paragraphs 13-16.

16 9. Defendant is without sufficient information to admit or deny the allegations in  
17 Paragraph 17.

18 10. Defendant admits the allegations in Paragraphs 18-32.

19 11. Defendant is without sufficient information to admit or deny the allegations in  
20 Paragraphs 33-34.

21 12. Defendant admits the allegations in Paragraph 35.

22 13. Defendant denies the allegations in Paragraph 36.

23 14. Defendant admits the allegations in Paragraphs 37-48.

24 15. Defendant is without sufficient information to admit or deny the allegations in  
25 Paragraphs 49-55.

26 16. Defendant admits the allegations in Paragraph 56.

27 17. Defendant denies the allegations in Paragraph 57.

28 18. Defendant admits the allegations in Paragraph 58-70.

1           19. Defendant denies the allegations in Paragraphs 71-73.

2           20. Defendant admits Paragraph 74 only to the extent that Plaintiff has been required to  
3 retain the services of an attorney to prosecute this action, but denies that Plaintiff is entitled to costs  
4 and reasonable attorney's fees incurred in the action.

5           21. Defendant incorporates his responses in Paragraphs 1-20 above in answering Paragraph  
6 75.

7           22. Plaintiff's first claim for relief is not pled against Defendant, and thus no admission or  
8 denial is required. To the extent any of the allegations in Paragraphs 76-80 apply to Defendant, the  
9 Defendant denies them.

10          23. Defendant incorporates his responses in Paragraphs 1-22 above in answering Paragraph  
11 81.

12          24. Plaintiff's second claim for relief is not pled against Defendant, and thus no admission  
13 or denial is required. To the extent any of the allegations in Paragraphs 82-88 apply to Defendant, the  
14 Defendant denies them.

15          25. Defendant incorporates his responses in Paragraphs 1-24 above in answering Paragraph  
16 89.

17          26. Plaintiff's third claim for relief is not pled against Defendant, and thus no admission or  
18 denial is required. To the extent any of the allegations in Paragraphs 90-91 apply to Defendant, the  
19 Defendant denies them.

20          27. Defendant incorporates his responses in Paragraphs 1-26 above in answering Paragraph  
21 92.

22          28. Plaintiff's fourth claim for relief is not pled against Defendant, and thus no admission  
23 or denial is required. To the extent any of the allegations in Paragraphs 93-97 apply to Defendant, the  
24 Defendant denies them.

25          29. Defendant incorporates his responses in Paragraphs 1-28 above in answering Paragraph  
26 98.

30. Plaintiff's fifth claim for relief is not pled against Defendant, and thus no admission or denial is required. To the extent any of the allegations in Paragraphs 99-101 apply to Defendant, the Defendant denies them.

31. Defendant incorporates his responses in Paragraphs 1-30 above in answering Paragraph 102.

32. Plaintiff's sixth claim for relief is not pled against Defendant, and thus no admission or denial is required. To the extent any of the allegations in Paragraphs 103-105 apply to Defendant, the Defendant denies them.

33. Defendant incorporates his responses in Paragraphs 1-32 above in answering Paragraph 106.

34. Defendant denies the allegations in Paragraphs 107-110.

35. Defendant incorporates his responses in Paragraphs 1-34 above in answering Paragraph 111.

36. Defendant denies the allegations in Paragraphs 112-116.

37. Defendant incorporates his responses in Paragraphs 1-36 above in answering Paragraph 117.

38. Defendant denies the allegations in Paragraphs 118-119

39. Defendant incorporates his Responses in Paragraphs 1-38 above in answering Paragraph 120.

40. Defendant denies the allegations in Paragraphs 121-131.

41. Defendant incorporates his responses in Paragraphs 1-40 above in answering Paragraph 132.

42. Plaintiff's eleventh claim for relief is not pled against Defendant, and thus no admission or denial is required. To the extent any of the allegations in Paragraphs 133-136 apply to Defendant, the Defendant denies them.

## REQUEST FOR RELIEF

Defendant denies that he is liable to Plaintiff for any of the requests for relief set forth in the Amended Complaint's wherefore clause (Compl. at 18).

1 **AFFIRMATIVE DEFENSES**

2 Without admitting any of the Complaint's allegations, and without admitting or acknowledging  
3 that Defendant bears any burden of proof, Defendant asserts the following affirmative defenses.  
4 Defendant intends to rely upon any additional defenses that become available or apparent during  
5 pretrial proceedings and discovery, and reserves the right to amend this Answer in order to assert any  
6 and all further defenses as they become known.

7 First Affirmative Defense

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

9 Second Affirmative Defense

10 Plaintiff is estopped from asserting any claims against Defendant.

11 Third Affirmative Defense

12 Plaintiff is barred by the doctrine of laches from asserting any claims against Defendant.

13 Fourth Affirmative Defense

14 Plaintiff and Defendant are not in parity and there is no legally enforceable relationship  
15 between them.

16 Fifth Affirmative Defense

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

18 Sixth Affirmative Defense

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

20 Seventh Affirmative Defense

21 Plaintiff failed to take reasonable steps to protect itself from the damage, if any, alleged in the  
22 Complaint, and has failed to mitigate its alleged damages.

23 Eighth Affirmative Defense

24 Defendant incorporates by reference the defenses of all other persons or entities who are now  
25 or may become parties to this action as if those defenses are set forth herein.

26 Ninth Affirmative Defense

27 Defendant reserves the right to amend this Answer and raise additional defenses that arise  
28 during the course of this litigation.



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Wherefore, Defendant requests that this Court:

1. Find that Plaintiff takes nothing on his claims against Defendant;
2. Dismiss Plaintiff's Amended Complaint with prejudice and deny Plaintiff any and all relief requested in the Amended Complaint;
3. Enter judgment in Defendant's favor;
4. Award Defendant his costs and reasonable attorneys' fees in defending this action; and
5. Award Defendant all further relief the Court deems appropriate.

## COUNTERCLAIM

1. Shahin Shane Malek (“Malek,” or the “Counterclaimant”) is, and at all times relevant to this action, was and is 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 (“594 Lairmont”).

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 and Barbara Rosenberg Living Trust, the counterclaim defendant in this action (the “Trust”, or the “Counterclaim Defendant”).

3. Counterclaimant purchased 594 Lairmont on or about August 8, 2012.

4. Counterclaimant's property is situated along the ninth hole of the Dragonridge Country Club golf course, within the MacDonald Highlands community.

5. On or about April 8, 2013, Malek purchased a bare lot of approximately 14,840 square feet adjacent to 594 Lairmont and found on the southeastern edge of the Dragonridge Country Club golf course's ninth hole, identified as Clark County assessor parcel number 178-28-520-001 (the "Golf Parcel").

6. Prior to Malek purchasing the Golf Parcel, the City of Henderson re-zoned the Golf Parcel from semipublic to low-density residential with master plan and hillside overlays.

7. Prior to Malek purchasing the Golf Parcel, the City of Henderson vacated all easements, restrictions, and covenants in the Golf Parcel.

8. The City of Henderson took the actions identified in Paragraphs 6 and 7 after a properly noticed and publicly held hearing.

9. The Trust purchased the real property generally described at 590 Lairmont Place, Henderson, Nevada 89012, assessor parcel number 178-27-218-003 (“590 Lairmont”) from Bank of America, N.A. on or about May 15, 2013.

10. The Trust filed suit against Malek and other defendants on September 23, 2013.

11. The Trust filed a lis pendens against Malek and 594 Lairmont on September 30, 2013.

12. On October 24, 2013, the Trust released its lis pendens on Malek's property, only to file an Amended Notice of Lis Pendens on the same property.

13. The Court expunged the Trust's lis pendens on Malek's property on January 9, 2014 because the Trust did not meet its burden to maintain a lis pendens under NRS 14.015(3).

### FIRST CAUSE OF ACTION

## Slander of Title

14. Counterclaimant incorporates by reference every preceding paragraph in this Counterclaim as if set forth fully herein.

15. The Trust's lis pendens falsely claimed a legal interest in 594 Lairmont.

16. The Trust's lis pendens also falsely stated that the legal title of 594 Lairmont was uncertain or disputed.

17. By recording a false lis pendens, the Trust communicated false information about 594 Lairmont to third parties.

18. The Trust's false statements about 594 Lairmont, in the form of their unprivileged filing of lis pendens on the property, damaged the property's value.

19. The Trust filed its lis pendens on Malek's property for the purpose of preventing Malek from beginning construction on 594 Lairmont and the Golf Parcel.

20. The Court's order expunging the Trust's lis pendens on Malek's property confirmed that the Trust's lis pendens contained false information about Malek's property.

21. As a result of the Trust's false statements, the value of Counterclaimant's property has been injured more than \$10,000.

1           22.     As a direct and proximate result of the Trust's false and unjustified lis pendens,  
2 Counterclaimant has been damaged in excess of \$10,000.

3                               **REQUEST FOR RELIEF**

4           Wherefore, Counterclaimant prays for the Court to enter an order and judgment providing the  
5 following relief:

- 6           1.   Compensatory damages for the diminution in value of Counterclaimant's real property, in  
7               excess of \$10,000;
- 8           2.   Compensatory damages for Counterclaimant's harm in excess of \$10,000;
- 9           3.   An award of Counterclaimant's costs and reasonable attorneys' fees incurred in removing the  
10               Trust's slander of title in this action; and
- 11           4.   Any further relief the Court deems just and appropriate.

12  
13 Respectfully submitted this 27 day of January, 2015

14   The Firm, P.C.

15  
16   /s/ Jay M. DeVoy, Esq.  
17   Preston P. Rezaee, Esq.  
18   Nevada Bar No. 10729  
19   Jay M. DeVoy, Esq., Of Counsel  
20   Nevada Bar No. 11950  
21   THE FIRM, P.C.  
22   200 E. Charleston Blvd.  
23   Las Vegas, NV 89104  
24   Telephone: (702) 222-3476  
25   Facsimile: (702) 252-3476  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27 day of January, 2015, pursuant to NRCP 5(b), I served via the  
3 Eighth Judicial District Court electronic service system and to be placed in the United States Mail,  
4 with first class postage prepaid thereon, and addressed the foregoing **ANSWER TO AMENDED**  
5 **COMPLAINT AND COUNTERCLAIM** to the following parties:

6 Howard C. Kim, Esq.

7 Email: Howard@hkimlaw.com

Diana S. Cline, Esq.

8 Email: Diana@hkimlaw.com

Jacqueline A. Gilbert, Esq.

9 Email: Jackie@hkimlaw.com

10 Attorneys for Plaintiff

11 Darren Brenner

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12 Deb Julien

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13 Natalie Winslow

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14 Attorneys for Bank of America, N.A.

15 Erica Bennett

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J. Randall Jones

17 Email: Jrj@kempjones.com

18 Janet Griffin

Email: janetjamesmichael@gmail.com

19 Email: jlg@kempjones.com

Spencer Gunnerson

20 Email: S.gunnerson@kempjones.com

21 Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

22  
23 /s/ Jacqueline Martinez

24 Employee of The Firm, P.C.

# **TAB 18**



CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)  
r.jones@kempjones.com  
2 SPENCER H. GUNNERSON, ESQ. (#8810)  
s.gunnerson@kempjones.com  
3 KEMP, JONES & COULTHARD, LLP  
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4 Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
5 Facsimile: (702) 385-6001  
*Attorneys for Defendants MacDonald Highlands Realty, LLC*  
6 *and Michael Doiron*

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

11 Plaintiff,

12 vs.

13 BANK OF AMERICA, N.A.; BAC HOME  
14 LOANS SERVICING, LP, a foreign limited  
partnership; DRAGONRIDGE PROPERTIES,  
15 LLC; DRAGONRIDGE GOLF CLUB, INC. is  
a Nevada corporation; MACDONALD  
16 PROPERTIES, LTD., a Nevada corporation;  
MACDONALD HIGHLANDS REALTY,  
17 LLC, a Nevada limited liability company;  
MICHAEL DOIRON, an individual; SHAHIN  
18 SHANE MALEK, an individual; REAL  
PROPERTIES MANAGEMENT GROUP,  
19 INC., a Nevada corporation; DOES I through  
X, inclusive; ROE BUSINESS ENTITY I  
20 through XX, inclusive,

21 Defendants.

Case No.: A689113  
Dept. No.: I

**DEFENDANTS MACDONALD  
HIGHLANDS REALTY, LLC AND  
MICHAEL DOIRON'S ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT**

22  
23 COMES NOW Defendants MACDONALD HIGHLANDS REALTY, LLC ("MHR"), a  
24 Nevada limited liability company, and MICHAEL DOIRON ("DOIRON"), by and through their  
25 attorneys of record, KEMP, JONES & COULTHARD, LLP, and hereby answers the allegations as  
26 set forth in Plaintiff's Amended Complaint.

27 ///

28 ///

I.

**THE PARTIES**

1. Answering Paragraphs 1, 2, 3, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

2. Answering Paragraph 4, Defendants MHR and Doiron admit the allegations contained therein.

3. Answering Paragraph 5, Defendants MHR and Doiron deny that Doiron was a Real Estate Salesperson, but admit the remaining allegations therein.

4. Answering Paragraphs 6, 7, 8, 9 and 10, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

II.

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5. Answering Paragraph 11, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporate the same as though fully set forth in this paragraph.

6. Answering Paragraphs 12, 13, and 14, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

7. Answering Paragraph 15, Defendants MHR and Doiron admit the allegations contained therein.

8. Answering Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

9. Answering Paragraph 36, Defendants MHR and Doiron deny any and all allegations contained therein.

///

10. Answering Paragraphs 37, 38, and 39, Defendants MHR and Doiron admit the allegations contained therein.

11. Answering Paragraph 40, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the allegation that Plaintiff executed Addendum No.1, and on that basis, deny that allegation. Defendants MHR and Doiron admit the remaining allegations contained therein.

12. Answering Paragraph 41, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the allegation that Plaintiff executed Addendum No.2, and on that basis, deny that allegation. Defendants MHR and Doiron admit the remaining allegations contained therein.

13. Answering Paragraphs 42, 43, and 44, Defendants MHR and Doiron admit the allegations contained therein.

14. Answering Paragraph 45, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

15. Answering Paragraphs 46 and 47, Defendants MHR and Doiron admit the allegations contained therein.

16. Answering Paragraph 48, Defendants MHR and Doiron admit that escrow closed on or about May 15, 2013, but are without information and belief sufficient to allow them to respond to the remaining allegations, and on that basis, deny the remaining allegations contained therein.

17. Answering Paragraph 49, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

18. Answering Paragraph 50, Defendant MHR is without information and belief sufficient to allow it to respond to the same, and on that basis, denies the allegations contained therein. Defendant Doiron admits she did not discuss the neighbor's lot lines with Plaintiff, but denies any and all remaining allegations contained therein.

///



1           19.     Answering Paragraph 51, Defendants MHR and Doiron deny any and all allegations  
2 contained therein.

3           20.     Answering Paragraph 52, Defendants MHR and Doiron are without information and  
4 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
5 contained therein.

6           21.     Answering Paragraph 53, Defendant MHR is without information and belief  
7 sufficient to allow it to respond to the same, and on that basis, denies the allegations contained  
8 therein. Defendant Doiron admits she did not discuss the neighbor's lot lines with Plaintiff, but  
9 denies any and all remaining allegations contained therein.

10          22.     Answering Paragraphs 54, 55, 56, and 57, Defendants MHR and Doiron are without  
11 information and belief sufficient to allow them to respond to the same, and on that basis, deny the  
12 allegations contained therein.

13          23.     Answering Paragraph 58, Defendants MHR and Doiron admit the allegations  
14 contained therein.

15          24.     Answering Paragraphs 59, 60, 61, 62, 63, 64, and 65, Defendants MHR and Doiron  
16 are without information and belief sufficient to allow them to respond to the same, and on that basis,  
17 deny the allegations contained therein.

18          25.     Answering Paragraph 66, Defendants MHR and Doiron deny any and all allegations  
19 contained therein, but are without information and belief sufficient to respond as to all defendants.

20          26.     Answering Paragraph 67, Defendant Doiron admits the allegations contained therein.  
21 Defendant MHR is without information and belief sufficient to allow it to respond to the same, and  
22 on that basis, denies the allegations contained therein.

23          27.     Answering paragraph 68, Defendants MHR and Doiron are without information and  
24 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
25 contained therein.

26          28.     Answering paragraphs 69 and 70, Defendants MHR and Doiron deny any and all  
27 allegations contained therein, but are without information and belief sufficient to respond as to all  
28 defendants.

29. Answering paragraphs 71 and 72, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

30. Answering Paragraph 73, Defendants MHR and Doiron deny any and all allegations contained therein, but are without information and belief sufficient to respond as to all defendants, and on that basis, deny the same.

31. Answering Paragraph 74, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract against Bank of America)**

32. Answering Paragraph 75, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

33. Answering Paragraphs 76, 77, 78, 79, and 80, the paragraphs do not assert any claim or allegation against these Defendants and, therefore, no response is necessary. To the extent a response is deemed necessary, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

**SECOND CLAIM FOR RELIEF**

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

34. Answering Paragraph 81, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

35. Answering Paragraphs 82, 83, 84, 85, 86, 87 and 88, the paragraphs do not assert any claim or allegation against these Defendants and, therefore, no response is necessary. To the extent a response is deemed necessary, Defendants MHR and Doiron are without information and belief

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1 sufficient to allow them to respond to the same, and on that basis, deny the allegations contained  
2 therein.

### 3 **THIRD CLAIM FOR RELIEF**

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

5 36. Answering Paragraph 89, Defendants MHR and Doiron repeat and re-allege each and  
6 every admission, denial and allegation contained herein and incorporates the same as though fully  
7 set forth in this paragraph.

8 37. Answering Paragraphs 90 and 91, Defendants MHR and Doiron deny any and all  
9 allegations contained therein as they pertain to them, and are without information and belief  
10 sufficient to respond as to any other defendants, and on that basis, deny the same.

### 11 **FOURTH CLAIM FOR RELIEF**

#### 12 **(Fraudulent or Intentional Misrepresentation - BANK OF AMERICA, BAC HOME LOAN 13 SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)**

14 38. Answering Paragraph 92, Defendants MHR and Doiron repeat and re-allege each and  
15 every admission, denial and allegation contained herein and incorporates the same as though fully  
16 set forth in this paragraph.

17 39. Answering Paragraph 93, the allegations contained therein constitute legal  
18 conclusions to which no response is required. To the extent an answer is required, Defendants MHR  
19 and Doiron deny each and every allegation contained therein.

20 40. Answering Paragraphs 94 and 95, Defendants MHR and Doiron deny any and all  
21 allegations contained therein as they pertain to them, and are without information and belief  
22 sufficient to respond as to any other defendants, and on that basis, deny the same.

23 41. Answering Paragraph 96, Defendants MHR and Doiron are without information and  
24 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
25 contained therein.

26 42. Answering Paragraph 97, Defendants MHR and Doiron deny any and all  
27 allegations contained therein as they pertain to them, and are without information and belief  
28 sufficient to respond as to any other defendants, and on that basis, deny the same.

**FIFTH CLAIM FOR RELIEF**

**(Negligent Misrepresentation - BANK OF AMERICA, BAC HOME LOAN SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)**

43. Answering Paragraph 98, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

44. Answering Paragraph 99, Defendants MHR and Doiron deny any and all allegations contained therein as they pertain to them, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

45. Answering Paragraph 100, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

46. Answering Paragraph 101, Defendants MHR and Doiron deny any and all allegations contained therein, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

**SIXTH CLAIM FOR RELIEF**

**(Real Estate Brokers Violations of NRS 645 Against MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)**

47. Answering Paragraph 102, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

48. Answering Paragraph 103, the allegations contained therein constitute legal conclusions to which no response is required. To the extent an answer is required, Defendants MHR and Doiron deny each and every allegation contained therein.

49. Answering Paragraphs 104 and 105, Defendants MHR and Doiron deny any and all allegations contained therein, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

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**SEVENTH CLAIM FOR RELIEF**

**(Easement - DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALD PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON, REAL PROPERTY MANAGEMENT GROUP, INC. and MALEK)**

50. Answering Paragraph 106, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

51. Answering Paragraph 107, Defendants MHR and Doiron deny any and all allegations contained therein as they pertain to them, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

52. Answering Paragraphs 108 and 109, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

53. Answering Paragraph 110, Defendants MHR and Doiron deny any and all allegations contained therein as they pertain to them, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

**EIGHTH CLAIM FOR RELIEF**

**(Declaratory Relief - ALL DEFENDANTS)**

54. Answering Paragraph 111, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

55. Answering Paragraph 112, Defendants MHR and Doiron deny any and all allegations contained therein, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

56. Answering Paragraph 113, Defendants MHR and Doiron state this paragraph calls for a legal conclusion for which no answer is required. To the extent an answer is required, Defendants MHR and Doiron deny each and every allegation contained therein.

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1           57.     Answering Paragraphs 114 and 115, Defendants MHR and Doiron are without  
2 information and belief sufficient to allow them to respond to the same, and on that basis, deny the  
3 allegations contained therein.

4           58.     Answering Paragraph 116, Defendants MHR and Doiron deny any and all allegations  
5 contained therein.

6                           **NINTH CLAIM FOR RELIEF**

7                           **(Mandatory Injunction - Malek)**

8           59.     Answering Paragraph 117, Defendants MHR and Doiron repeat and re-allege each  
9 and every admission, denial and allegation contained herein and incorporates the same as though  
10 fully set forth in this paragraph.

11           60.     Answering Paragraphs 118 and 119, the paragraphs do not assert any claim or  
12 allegation against these Defendants and, therefore, no response is necessary. To the extent a  
13 response is deemed necessary, Defendants MHR and Doiron are without information and belief  
14 sufficient to allow them to respond to the same, and on that basis, deny the allegations contained  
15 therein.

16                           **TENTH CLAIM FOR RELIEF**

17                           **(Implied Restrictive Covenant - Malek)**

18           61.     Answering Paragraph 120, Defendants MHR and Doiron repeat and re-allege each  
19 and every admission, denial and allegation contained herein and incorporates the same as though  
20 fully set forth in this paragraph.

21           62.     Answering Paragraphs 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, and 131, the  
22 paragraphs do not assert any claim or allegation against these Defendants and, therefore, no response  
23 is necessary. To the extent a response is deemed necessary, Defendants MHR and Doiron are  
24 without information and belief sufficient to allow them to respond to the same, and on that basis,  
25 deny the allegations contained therein.

26     ///  
27     ///  
28     ///

**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 Foothills at MacDonald Ranch Master Association, member of the Foothills at MacDonald Ranch Master Association Design Review Committee and agent for the Foothills Partners, LP)**

63. Answering Paragraph 132, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

64. Answering Paragraphs 133, 134, 135 and 136, the paragraphs do not assert any claim or allegation against these Defendants and, therefore, no response is necessary. To the extent a response is deemed necessary, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim for which relief may be granted.  
2. Plaintiff's claims are barred by the doctrine of estoppel.  
3. Plaintiff is guilty of unclean hands and therefore is not entitled to any relief from Defendants MHR and Doiron.

4. Any damages which Plaintiff may have sustained were proximately caused by the acts of persons other than Defendants MHR and Doiron, and therefore, Plaintiff is not entitled to any relief from Defendants MHR and Doiron.

5. Plaintiff's damages, if any, resulted from the acts or omissions of third parties over whom Defendants MHR and Doiron have no control. The acts of such third parties constitute intervening or superseding causes of the harm, if any, suffered by Plaintiff.

6. Alternatively, should Defendants MHR and Doiron be found liable, the fault of all parties, joined and non-joined, including that of Plaintiff, must be evaluated and liability apportioned among all persons and entities appropriate to respective fault.

///



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Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

- 1           7.       Plaintiff's claims should be dismissed for failure to join indispensable parties.
- 2           8.       Plaintiff has expressly and/or impliedly waived its rights to assert the claims alleged
- 3 in its Complaint.
- 4           9.       If Plaintiff relied on the representations, if any, of Defendants MHR and Doiron, such
- 5 reliance was unreasonable.
- 6           10.      Plaintiff has failed to do equity toward Defendants MHR and Doiron and therefore is
- 7 not entitled to any relief.
- 8           11.      Plaintiff's claims are not well grounded in fact and are not warranted by existing law
- 9 or a good faith argument for the extension or modification of existing law, but are initiated only for
- 10 purposes of harassment and the occurrence of needless costs of litigation to Defendants MHR and
- 11 Doiron.
- 12           12.      Any injuries Plaintiff claims to have suffered was not proximately or materially
- 13 caused by Defendants MHR's and/or Doiron's alleged acts, conduct, or omissions, and Plaintiff is
- 14 therefore barred from recovery.
- 15           13.      By reason of its own acts, Plaintiff has released and discharged Defendants MHR and
- 16 Doiron from the claims alleged in Plaintiff's Complaint and from any and all claims of Plaintiff
- 17 against Defendants MHR and Doiron.
- 18           14.      Plaintiff was on notice of the change in the lot lines of its neighbor's property when it
- 19 acquired the property.
- 20           15.      Defendants MHR and Doiron hereby adopt and incorporate by this reference any and
- 21 all other defenses asserted or to be asserted by any other Defendant in this proceeding to the extent
- 22 that Answering Defendants may share in such defenses.
- 23           16.      Any change in lot lines of the neighbor's property was not a material issue or defect
- 24 and did not require disclosure by Defendants MHR and Doiron.
- 25           Pursuant to N.R.C.P. Rule 11, as amended, all possible affirmative defenses may not have
- 26 been alleged herein insofar as sufficient facts were not available – after reasonable inquiry – upon
- 27 the filing of the Answering Defendants' Answer and as such, Answering Defendants reserve the
- 28 ///



1 right to amend their Answer to add additional affirmative defenses if subsequent investigation  
2 warrants such an action.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Defendants MHR and Doiron pray for judgment as follows:

- 5 1. Plaintiff take nothing and the Complaint be dismissed with prejudice;  
6 2. Defendants MHR and Doiron be awarded their fees and costs; and  
7 3. For such other and further relief as this Court may deem just and proper.

8 DATED this 2nd day of February, 2015.

9 Respectfully submitted by:

10 /s/ David T. Blake, Esq.

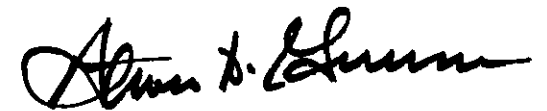
11 J. Randall Jones, Esq. (#1927)  
12 Spencer H. Gunnerson, Esq. (#8810)  
13 David T. Blake, Esq. (#11059)  
14 KEMP, JONES & COULTHARD, LLP  
15 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
16 Las Vegas, Nevada 89169  
17 Attorneys for Defendants MacDonald Highlands  
18 Realty, LLC and Michael Doiron

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 2nd day of February, 2015, pursuant to NRCP 5(b), I e-served via  
21 the Eighth Judicial District Court electronic service system the foregoing **DEFENDANTS**  
22 **MACDONALD HIGHLANDS REALTY, LLC AND MICHAEL DOIRON'S ANSWER TO**  
23 **PLAINTIFF'S AMENDED COMPLAINT** to all parties on the e-service list.

24 /s/ Erica M. Bennett  
25 An employee of Kemp, Jones & Coulthard

# **TAB 19**



CLERK OF THE COURT

**MSJD**

KAREN L. HANKS, ESQ.  
Nevada Bar No. 009578  
E-mail: karen@hkimlaw.com  
MELISSA BARISHMAN, ESQ.  
Nevada Bar No. 12935  
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HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Case No. A-13-689113-C

Dept. No. I

Plaintiff,

vs.

**PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AGAINST DEFENDANT  
SHAHIN SHANE MALEK**

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.

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through  
its counsel of record, HOWARD KIM & ASSOCIATES, hereby moves for summary judgment against  
Defendant SHAHIN SHANE MALEK ("Malek") pursuant to NRCP 56(c).

This Motion is made and based upon the pleadings and papers already on file herein, the  
following Memorandum of Points and Authorities, the Declaration of Karen L. Hanks, Esq. attached

1 hereto as Exhibit 1, the Declaration of Peter Bernhard, Esq. attached hereto as Exhibit 2, and any  
2 argument allowed by the Court at the hearing of this matter.

3 DATED this 15<sup>th</sup> day of April, 2015.

5 Respectfully submitted by:

6 HOWARD KIM & ASSOCIATES

7   
8

9 Karen L. Hanks, Esq.  
10 Nevada Bar No. 009578  
1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
11 Telephone: (702) 485-3300  
12 Facsimile: (702) 485-3301  
13 *Attorneys for Plaintiff,*  
*The Fredric and Barbara Rosenberg Living Trust*

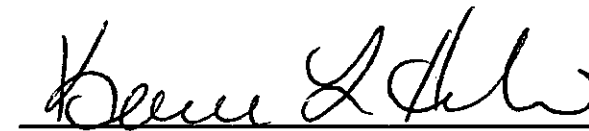
14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that on 19 day of May, 2015, in Department I of  
16 the above-entitled Court, at the hour of 9:00am a.m./p.m., or as soon thereafter as counsel may be  
17 heard, the undersigned will bring PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
18 AGAINST DEFENDANT SHAHIN SHANE MALEK before this Court for hearing.

19 DATED this 15<sup>th</sup> day of April, 2015.

20 Respectfully submitted by:

21 HOWARD KIM & ASSOCIATES

22   
23

24 KAREN L. HANKS, ESQ.  
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25 Telephone: (702) 485-3300  
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27 *Attorneys for Plaintiff,*  
*The Fredric and Barbara Rosenberg Living Trust*  
28

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant Malek's specious claim for slander of title fails as a matter of law because Defendant Malek has not produced a scintilla of evidence that Plaintiff filed the lis pendens with malicious intent, nor has Defendant Malek demonstrated that he was damaged by the filing of the lis pendens. As such, summary judgment against Defendant Malek is warranted.

**II. STATEMENT OF RELEVANT FACTS**

On or about May 15, 2013, Bank of America, N.A. sold real property commonly known as 590 Lairmont Place, Henderson, Nevada 89012 ("the Subject Property") to Plaintiff, The Fredric and Barbara Rosenberg Living Trust. Bank of America had acquired the Subject Property via a foreclosure. The Subject Property is a 10,000+ square foot custom home located on the 9<sup>th</sup> hole of the Dragon Ridge Golf Course, and boasts golf course, city and mountain views.

At the time Plaintiff purchased the Subject Property, the lot adjacent to it, 594 Lairmont Place, was vacant/unimproved. This lot had been previously sold to Defendant Malek on or about August 8, 2012, but Defendant Malek had not begun construction. Unbeknownst to Plaintiff, at the time Defendant Malek purchased 594 Lairmont, he entered into an agreement to also purchase a portion of the golf course to extend the rear of his lot by 1/3 of an acre ("Golf Parcel").

Because the Golf Parcel was not zoned for residential housing, before this purchase could be finalized, the parties had to apply to the City of Henderson to amend MacDonald Highland's comprehensive plan, change the zoning, revise the land use and vacate any easements. The entire process took approximately eight (8) months. In December 2012, the City of Henderson approved the re-zoning. On April 8, 2013, the Golf Parcel was transferred to Malek. Thereafter, on or about June 23, 2013, the final map delineated the new lot lines for 594 Lairmont Place was recorded.

1 On September 23, 2013, Plaintiff filed its Complaint. On September 30, 2013, Plaintiff also filed  
2 its Notice of Lis Pendens for the Golf Parcel. On October 24, 2013, Plaintiff filed a Release of Notice of  
3 Lis Pendens and subsequently filed an Amended Notice of Lis Pendens for the Golf Parcel. On December  
4 19, 2013, this Court expunged the lis pendens, without prejudice.

### 5 6 **III. LEGAL ARGUMENT**

#### 7 **A. Motion for Summary Judgment Standard.**

8 Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate  
9 that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a  
10 judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029  
11 (2005). When a Nevada court reviews a motion for summary judgment, “the evidence, and any  
12 reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving  
13 party.” *Id.*

14 “The purpose of summary judgment ‘is to avoid a needless trial when an appropriate showing  
15 is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to  
16 judgment as a matter of law.’” *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev.  
17 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77  
18 (1964).) “Summary judgment is appropriate if, when view in light most favorable to the nonmoving  
19 party, the record reveals that there are no genuine issues of material fact and the moving party is  
20 entitled to judgment as a matter of law.” *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv. Op.  
21 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82,  
22 87 (2002)).

23 Here, Defendant Malek “must, by affidavit or otherwise, set forth specific facts demonstrating  
24 the existence of a genuine issue for trial or have summary judgment entered against [it].” *Wood*, 121  
25 Nev. at 32, 121 P.3d at 1031. Defendant Malek “‘is not entitled to build a case on the gossamer  
26 threads of whimsy, speculation, and conjecture.’” *Id.* Rather, Defendant Malek must demonstrate  
27 specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29,  
28 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though

1 inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment, like  
2 Defendant Malek, must show that it can produce evidence at trial to support its claim. *Van Cleave v.*  
3 *Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981). Here, Defendant Malek cannot;  
4 and therefore, summary judgment in favor of Plaintiff is appropriate.

5  
6 **B. Summary Judgment Against Malek is Appropriate Because No Genuine Issues of  
Material Fact Exists Regarding Malice and Special Damages.**

7 To state a slander of title claim, a defendant must allege a “false and malicious  
8 communication, disparaging to one’s title in land, and causing special damage.” *Exec. Mgmt., Ltd. V.*  
9 *Ticor Title Ins. Co.*, 114 Nev. 823, 842, 963 P.2d 465, 478 (1998). Slander of title fails as a claim  
10 unless the defendant proves that the plaintiff maliciously published false statements that caused  
11 defendant special damages as a natural and direct result of being spoken. *See Rowland v. Lepire*, 99  
12 Nev. 308, 313, 662 P.2d 1332, 1335 (1983). In order to prove malice, it must be shown that the  
13 plaintiff knew that the statement was false or acted in reckless disregard of its truth or falsity. *Id.*  
14 “[E]vidence of a defendant’s reliance on the advice of counsel tends to negate evidence of malice.”  
15 *Id.* Slander of title is not found where defendant merely brings an action to clear a cloud on his title.  
16 *See Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007).

17 Defendant Malek cannot sustain a claim for slander of title because he fails to allege any false  
18 and malicious statement made by Plaintiff disparaging his title -- least of all one that caused him  
19 special damages. First, Plaintiff did not act maliciously to injure Defendant Malek’s title. When  
20 asked why the lis pendens was recorded, Barbara Rosenberg testified, “I think because of the new  
21 piece of property, to try to stop him from building on the new piece of property.” *See* excerpts from  
22 Barbara Rosenberg’s deposition, 265:3-10, attached hereto as **Exhibit 1-A**. When further questioned  
23 about the purpose of recording the lis pendens, Mrs. Rosenberg testified, “I am not a lawyer.” *Id.* at  
24 266:4. This is the sum total of the questioning by Defendant Malek’s counsel about Plaintiff’s motive  
25 for recording the lis pendens, and neither answer rises to any level of malice. Instead, Mrs.  
26 Rosenberg’s response shows that the reason for recording the lis pendens was to protect the very thing  
27 she was fighting for in this litigation i.e. no construction on the Golf Parcel.

1 But when further pushed on what she believed the effect of the lis pendens was, she stated she  
2 was not a lawyer. This answer evidences that she had a basic understanding of the lis pendens, but  
3 beyond this she was relying on her attorney. In fact, when asked through written discovery the reasons  
4 for filing the lis pendens, Mrs. Rosenberg responded, “[t]he filing of the lis pendens was based on the  
5 advice of counsel.” See Plaintiff’s Errata to Answers to Defendant Malek’s Interrogatories attached  
6 hereto as **Exhibit 1-B**. As the *Rowland* Court noted, reliance on the advice of counsel tends to negate  
7 malice. *Rowland, supra*.

8 Moreover, Peter Bernhard, Esq., the counsel who recorded the lis pendens has been listed as a  
9 witness, and will testify that he was the attorney primarily responsible for recording the lis pendens;  
10 that he made careful investigation into the legal contentions warranting the lis pendens, and believed  
11 in good faith that the lis pendens was appropriate under the law. Exhibit 2, ¶ 3. Mr. Bernhard will  
12 further testify that he did not believe Plaintiff had any ulterior motive or purpose in filing the lis  
13 pendens, and believes that Plaintiff relied upon him on this issue. *Id.* ¶ 4. Based on the declaration of  
14 Mr. Bernhard, it is clear that there was a good faith basis for recording the lis pendens, and that no  
15 reasonable jury could find any evidence of malice. Even though this Court later expunged the lis  
16 pendens, this was done without prejudice, and this Court made no finding of malice or bad faith on  
17 the part of Plaintiff. Based on this evidence, no reasonable jury could find that Plaintiff acted with  
18 malice, and therefore no genuine issue of material fact exists regarding the first element of Defendant  
19 Malek’s slander of title claim.

20 Although a party need only negate one element of a claim to justify summary judgment  
21 (*Foster v. Costco Wholesale Corp.*, 291 P.3d 150, 154 (Nev. 2012)), Defendant Malek’s claim also  
22 fails as a matter of law because he has proven no special damages as a direct result of the lis pendens.  
23 The lis pendens was recorded on October 24, 2013, and expunged on December 19, 2013. As such, at  
24 best, Defendant Malek can only have sustained special damages between this 57-day time period.  
25 Nevertheless, Defendant Malek has not disclosed one iota of evidence to support any special  
26 damages. In fact, the closest Malek comes to alleging damages is a generic statement in his NRCP  
27 16.1 disclosures that states, “Defendant claims attorneys’ fees and costs as an element of his  
28 damages.” See Defendant’s Second Supplemental NRCP 16.1 Disclosure attached hereto as **Exhibit**



1 **1-C.** But NRCP 16.1(a)(1)(C) requires “a ‘computation,’ supported by documents” for special  
2 damages. *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 295 (2d Cir. 2006) (analyzing the nearly  
3 identical federal analogue to NRCP 16.1(a)(1)(C)). See also, *Nelson v. Heer*, 121 Nev. 832, 834, 122  
4 P.3d 1252, 1253, (2005) (recognizing that “federal decisions involving the Federal Rules of Civil  
5 Procedure provide persuasive authority when this court examines its rules”). Despite this requirement,  
6 Defendant Malek has not produced any documentation or computation for that matter, of his claimed  
7 special damages.

8 Moreover, the Nevada Supreme Court has held that “attorneys fees as damages must be  
9 specially pleaded under NRCP 9(g).” *Horgan, supra*, citing *Sandy Valley Associates v. Sky Ranch*  
10 *Estates*, 117 Nev. 948, 35 P.3d 964 (2001). See also, *City of Las Vegas v. Cragin Industries*, 86 Nev.  
11 933, 478 P.2d 585 (1970) (award of attorney fees not proper when the complaint only alleged the  
12 necessity for the services of counsel and simply requested attorney fees). The *Horgan* Court noted  
13 that “the plain language of NRCP 9(g) requires that ‘[w]hen items of special damages are claimed,  
14 they shall be specifically stated.” *Horgan, supra*, citing, *Conservative Club of Washington v.*  
15 *Finkelstein*, 738 F.Supp. 6 (D.D.C.1990) (recognizing in dictum that attorney fees as special damages  
16 in a slander of title action must be pleaded with particularity); *Spencer v. Harmon Enterprises, Inc.*,  
17 234 Cal.App.2d 614 (1965) (implicitly acknowledging that attorney fees as special damages for a  
18 slander of title claim must be specifically pleaded).

19 In the present case, Defendant Malek has neither specially pleaded nor disclosed any special  
20 damages. Defendant Malek’s Counterclaim simply claims “attorneys fees” in the “wherefore” section  
21 of his counterclaim. *See* Defendant Shahin Shane Malek’s Answer and Counterclaim on file herein.  
22 As set forth above, this does not comport with the requirements of NRCP 9(g). Also, Defendant  
23 Malek does not provide any computation as required by NRCP 16.1(a)(1)(C). Moreover, when  
24 specifically asked about his special damages in deposition, Defendant Malek answered, “I don’t  
25 know, but I’m sure it will be provided at some point. I don’t know.” *See* excerpts from Defendant  
26 Malek’s deposition, 106:25 through 107:1-14, attached as **Exhibit 1-D**. The reality is, Defendant  
27 Malek has not provided any computation of damages or the supporting documentation for such  
28 damages. As such, summary judgment in favor of Plaintiff is appropriate.

1  
2 **IV. CONCLUSION**

3 Based on the foregoing, Plaintiff respectfully requests this Court enter summary judgment in  
4 favor of Plaintiff and against Defendant Malek on Malek's claim for slander of title.

5 DATED this 15<sup>th</sup> day of April, 2015.  
6

7 Respectfully submitted by:

8 HOWARD KIM & ASSOCIATES  
9

10   
11

12 Karen L. Hanks, Esq.

13 Nevada Bar No. 009578

14 1055 Whitney Ranch Drive, Suite 110

15 Henderson, Nevada 89014

16 Telephone: (702) 485-3300

17 Facsimile: (702) 485-3301

18 *Attorneys for Plaintiff,*

19 *The Fredric and Barbara Rosenberg Living Trust*  
20  
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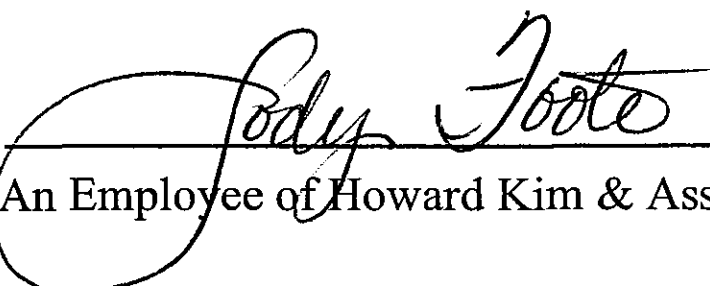
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 11<sup>th</sup> day of April, 2015, pursuant to NRCP 5(b), I served via the  
3 Eighth Judicial District Court electronic service system the foregoing, PLAINTIFF'S MOTION FOR  
4 SUMMARY JUDGMENT AGAINST DEFENDANT SHAHIN SHANE MALEK to the following  
5 parties:  
6

7  
8 THE FIRM, P.C.  
9 Jay DeVoy, Esq.  
10 jay@thefirm-lv.com  
11 *Attorneys for Shahen Shane Malek*

12 AKERMAN LLP  
13 Steven Shevorski, Esq.  
14 Steven.shevorski@akerman.com  
15 *Attorneys for Bank of America, N.A.*

16 KEMP, JONES & COULTHARD, LLP  
17 Spencer H. Gunnerson, Esq.  
18 s.gunnerson@kempjones.com  
19 *Attorneys for Michael Doiron and MacDonald*  
20 *Highlands Realty LLC*

21  
22  
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27  
28  
  
An Employee of Howard Kim & Associates

Ex. 1

# EXHIBIT 1

Ex. 1

**DECLARATION OF KAREN L. HANKS, ESQ. IN SUPPORT OF PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT AGAINST DEFENANT SHAHIN SHANE MALEK**

I, Karen L. Hanks, Esq., hereby declare as follows:

1. I am an attorney licensed in Nevada, and represent Plaintiff, The Frederic and Barbara Rosenberg Living Trust, in the matter styled *The Frederic and Barbara Rosenberg Living Trust v. Bank of America, N.A.*, et al., Case No. A-13-689113.

2. Attached hereto as Exhibit 1-A is true and correct copies of excerpts from Barbara Rosenberg's deposition.

3. Attached hereto as Exhibit 1-B is a true and correct copy of Plaintiff's Errata to Answers to Defendant Malek's Interrogatories.

4. Attached hereto as Exhibit 1-C is a true and correct copy of Defendant's Second Supplemental NRCP 16.1 Disclosure.

5. Attached hereto as Exhibit 1-D is true and correct copies of excerpts from Defendant Malek's deposition.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Dated this 15<sup>th</sup> day of April, 2015.

Karen L. Hanks  
KAREN L. HANKS, ESQ.

Ex. 1-a

# EXHIBIT 1-a

Ex. 1-a

## DISTRICT COURT

## CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA )  
ROSENBERG LIVING TRUST, )

Plaintiff, )

vs. )

No. A-13-689113-C

Dept. No. I

BANK OF AMERICA, N.A.; )  
BAC HOME LOANS SERVICES, )  
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; and ROE )  
CORPORATIONS I through )  
X, inclusive, )

Defendants. )

## DEPOSITION OF BARBARA ROSENBERG

Taken on Monday, December 8, 2014

By a Certified Court Reporter

At 1:04 p.m.

At Akerman, LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

CSR ASSOCIATES OF NEVADA  
LAS VEGAS, NEVADA (702) 382-5015

1 lis pendens on the same property, 594 Lairmont?

2 A. I don't know about that.

3 Q. Speaking generally about the lis  
4 pendens, and speaking both the amended original  
5 lis pendens collectively as a lis pendens, do  
6 you know why you filed a lis pendens on Malek's  
7 property?

8 A. I think because of the new piece of  
9 property, to try to stop him from building on  
10 the new piece of property.

11 Q. You are a real estate agent. You know  
12 what a lis pendens is, correct?

13 A. Yes.

14 Q. You know the effect a lis pendens  
15 could have on a piece of property?

16 A. Yes.

17 Q. You filed it for the purposes of  
18 keeping him from constructing on the new  
19 property?

20 A. We filed it because we felt what he  
21 was doing was illegal.

22 Q. And the collateral effect of filing a  
23 lis pendens is that you believe he could not  
24 build on the property while it was pending?

25 MS. CLINE: Objection. Calls for

1 house?

2 A. Well, if the market goes down, then  
3 the value of the property goes down.

4 Q. You had clients who have had their  
5 property value decrease after you sold them a  
6 home?

7 A. Yes.

8 Q. Had they ever complained to you about  
9 it?

10 A. No.

11 Q. None in the --

12 A. They have whined about the fact that  
13 the property was worthless, but they haven't  
14 complained in terms of it being my fault.

15 Q. Are you aware of any other property  
16 owners ever complaining about your client's  
17 purchase of the home degrading their property  
18 value?

19 MS. CLINE: Objection. Form.

20 THE WITNESS: Say it again.

21 (Record read as follows:

22 "Q. Are you aware of any other  
23 property owners ever complaining  
24 about your client's purchase of  
25 the home degrading their property

1 speculation, form.

2 MR. DEVOI: I am only asking for her  
3 state of mind at the time she filed --

4 THE WITNESS: I am not a lawyer.

5 BY MR. DEVOI:

6 Q. You were not unhappy that a lis  
7 pendens would have kept him from building on the  
8 property?

9 A. I would not be unhappy, no.

10 Q. And you are aware that the lis pendens  
11 was discharged by the court, right?

12 A. Yes.

13 Q. You mentioned earlier that disclosure  
14 is a big issue, you said you would have lost  
15 your license in California if you had not  
16 disclosed something of this character. Have you  
17 ever had any complaints arising from  
18 circumstances arising after you sold a house to  
19 someone?

20 A. After I sold a house?

21 Q. Yes.

22 A. No.

23 Q. Are you aware of any clients you had  
24 during the course of your career that had their  
25 property values decline after you sold them the

1 value?")

2 THE WITNESS: Not that I remember.

3 BY MR. DEVOI:

4 Q. Are you aware of any clients ever  
5 being involved with litigation arising from  
6 homes that you sold them?

7 A. Not that I remember.

8 Q. Have you only sold completed  
9 residences or have you ever sold bare land such  
10 as the case here with 594 Lairmont?

11 A. I sold bare land.

12 Q. Have you ever had situations where the  
13 construction was tied up in litigation for some  
14 reason?

15 A. I haven't sold properties where -- I  
16 sold vacant lots, but I haven't sold properties  
17 under construction, in other words, like a spec  
18 house or something. Is that what you are  
19 talking about?

20 Q. No. Have you ever sold bare land that  
21 was later built up to a house similar to what is  
22 happening now with 594 Lairmont?

23 A. Where they bought the lot and they  
24 built a house?

25 Q. Correct.



Ex. 1-b

# EXHIBIT 1-b

Ex. 1-b

1 KAREN L. HANKS, ESQ.  
2 Nevada Bar No. 009578  
3 E-mail: karen@hkimlaw.com  
4 HOWARD KIM & ASSOCIATES  
5 1055 Whitney Ranch Drive, Suite 110  
6 Henderson, Nevada 89014  
7 Telephone: (702) 485-3300  
8 Facsimile: (702) 485-3301  
9 *Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

10 THE FREDRIC AND BARBARA  
11 ROSENBERG LIVING TRUST,

Case No. A-13-689113-C

Dept. No. I

Plaintiff,

vs.

**PLAINTIFF'S ERRATA TO ANSWERS TO  
DEFENANT MALEK'S  
INTERROGATORIES**

12 BANK OF AMERICA, N.A.; BAC HOME  
13 LOANS SERVICING, LP, a foreign limited  
14 partnership; MACDONALD HIGHLANDS  
15 REALTY, LLC, a Nevada limited liability  
16 company; MICHAEL DOIRON, an  
17 individual; SAHAHIN SHANE MALEK, an  
18 individual; PAUL BYKOWSKI, an  
19 individual; THE FOOTHILLS AT  
20 MACDONALD RANCH MASTER  
21 ASSOCIATION, a Nevada limited liability  
22 company; THE FOOTHILLS PARTNERS, a  
23 Limited Partnerships; DOES I through X; and  
24 ROE CORPORATIONS I through X,  
25 inclusive,

Defendants.

26 Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its  
27 counsel of record, HOWARD KIM & ASSOCIATES, hereby answers Defendant, Shahin Shane Malek's  
28 First Set of Interrogatories.

**INTERROGATORY NO. 1:**

State with specificity the reasons You filed a lis pendens on 594 Lairmont during the course of  
the above-captioned lawsuit.

1 **ANSWER TO INTERROGATORY NO. 1:**

2 The filing of the lis pendens was based on the advice of counsel.

3 **INTERROGATORY NO. 2:**

4 State with specificity the reasons you believe the Golf Parcel is subject to an easement that would  
5 prohibit Malek from constructing a residence on that parcel.

6 **ANSWER TO INTERROGATORY NO. 2:**

7 Plaintiff believes an express easement exists on the Golf Parcel with respect to the "Perimeter Strip"  
8 as that term is defined in the CC&Rs. Plaintiff also believes an implied restrictive covenant exists based on  
9 the fact that (1) MacDonald Highlands was advertised as a golf course community; (2) golf course,  
10 mountain and city views were advertised as part of MacDonald Highlands; (3) the lots along Lairmont Place  
11 which abut the 9<sup>th</sup> Hole of the Golf Course were plotted in a such a way to maximize the mountain, golf  
12 course and city views; (4) both the CC&Rs and the Design Guidelines place limitations on golf course  
13 parcels to insure preservation of the views from those parcels; (5) Foothills Partners always intended  
14 MacDonald Highlands to be a golf course community; (6) the Golf Course was in operation years before  
15 the parcels on Lairmont Place were even plotted, let alone sold; (7) the Golf Course is the center piece of  
16 MacDonald Highlands; (8) the plat maps showed the Golf Course at the heart of MacDonald Highlands,  
17 and these maps were never changed to show any sale of a portion of the Golf Course to Mr. Malek; (9) the  
18 CC&Rs reference the Golf Course as well as easements that exist because of the Golf Course; (10) the  
19 Design Guidelines prohibit certain types of fencing and the placement of accessory buildings for parcels  
20 that are adjacent to the Golf Course; (11) all deeds reference the CC&Rs; and (12) all parcels purchased in  
21 MacDonald Highlands are subject to the Design Guidelines.  
22  
23  
24

25 **INTERROGATORY NO. 3:**

26 State with specificity the reasons You believe 594 Lairmont is subject to an easement that would  
27 prohibit Malek from constructing a residence on that parcel.  
28

1 **ANSWER TO INTERROGATORY NO. 3:**

2 Plaintiff does not believe any easements exist on 594 Lairmont that prohibit Malek from  
3 constructing a residence to the extent 594 Lairmont does not include any portion of the Golf Parcel that was  
4 subsequently sold to Mr. Malek. In other words, the original lot lines for 594 Lairmont, subject to any  
5 restrictions set by the Design Guidelines and CC&Rs, do not contain any easements that restrict construction  
6 of a residence. However, it is Plaintiff's understanding that the Golf Parcel is now considered part of 594  
7 Lairmont Place. To that extent, Plaintiff repeats and incorporates its answer to Interrogatory No. 2 as though  
8 fully set forth herein.  
9

10 **INTERROGATORY NO. 4:**

11 Identify to the best of Your ability the earliest date you had knowledge of Malek's plan to construct  
12 a residence on 594 Lairmont and/or the Golf Parcel.

13 **ANSWER TO INTERROGATORY NO. 4:**

14 Objection. This question is compound, and therefore impossible to clearly answer. Subject to and  
15 without waiving said objection, with respect to 594 Lairmont, at the time Plaintiff purchased 590 Lairmont  
16 Place, it believed 594 Lairmont Place did not include any portion of the Golf Parcel as part of its lot lines.  
17 With the understanding that all lots purchased in MacDonald Highlands had to construct a residence at some  
18 point, Plaintiff expected a residence to be built on 594 Lairmont Place at a date unknown in the future, but  
19 only within the original lot lines. With respect to the Golf Parcel, Plaintiff does not recall the exact date it  
20 discovered that Mr. Malek purchased this parcel but it was sometime after Plaintiff purchased 590 Lairmont  
21 Place.  
22

23 **INTERROGATORY NO. 5:**

24 Identify what future construction You knew would occur on Lairmont Drive, other than Malek's  
25 construction, at the time you purchased 590 Lairmont.  
26

27 **ANSWER TO INTERROGAOTRY NO. 5:**

28 Objection. This question assumes facts not otherwise admitted into evidence i.e. that Plaintiff knew

1 about Malek's construction. The question is also overly broad in that it appears to ask about every lot along  
2 Lairmont Drive. Finally, there is no such place as "Lairmont Drive," within MacDonald Highlands so as to  
3 make a response impossible without speculation. Subject to and without waiving said objection, Plaintiff  
4 was not aware of any specific construction along Lairmont Place other than the general understanding that  
5 eventually residences would be built on each lot. The construction of these residences, however, would be  
6 subject to any restrictions/limitations set by the CC&Rs and Design Guidelines.

7 **INTERROGATORY NO. 6:**

8 Identify any Persons who provided You with information leading you to alleged in your proposed  
9 amended complaint that 594 Lairmont and the Golf Parcel are subject to an implied restrictive covenant.

10 **ANSWER TO INTERROGATORY NO. 6:**

11 Objection. This question seeks information that is protected by the attorney-client privilege. Subject  
12 to and without waiving said objection, Howard Kim & Associates.

13 **INTERROGATORY NO. 7:**

14 State with specificity the Communications You had with the Persons identified in Interrogatory No.  
15 6 that led you to allege in your proposed amended complaint that 594 Lairmont and the Golf Parcel are  
16 subject to an implied restrictive covenant.

17 **ANSWER TO INTERROGATORY NO. 7:**

18 Objection. This question seeks information that is protected by the attorney-client privilege.

19 **INTERROGATORY NO. 8:**

20 Identify any documents containing information leading You to allege in Your proposed amended  
21 complaint that 594 Lairmont and the Golf Parcel are subject to an implied restrictive covenant.

22 **ANSWER TO INTERROGATORY NO. 8:**

23 The CC&Rs, the Design Guidelines, any and all promotional materials for MacDonald Highlands,  
24 the plat maps for MacDonald Highlands, the website for MacDonald Highlands, the community map for  
25 MacDonald Highlands, the final map for MacDonald Highlands.

1  
2 **INTERROGATORY NO. 9:**

3 State the scope of the easement against Malek that you contend exists in your favor as to the Golf  
4 Parcel.

5 **ANSWER TO INTERROGATORY NO. 9:**

6 Objection. The question is vague and ambiguous as to the term "scope" so as to make a response  
7 impossible without speculation. Subject to and without waiving said objection, Plaintiff believes the express  
8 and implied restrictive covenants prohibit Malek from constructing any portion of his residence on the Golf  
9 Parcel. This also includes the construction of any fencing, whether a view fence or a solid wall fence.  
10

11 **INTERROGATORY NO. 10:**

12 State the scope of the easement against Malek that you contend exists in your favor as to 594  
13 Lairmont.

14 **ANSWER TO INTERROGATORY NO. 10:**

15 Plaintiff does not believe any easements exist on 594 Lairmont that prohibit Malek from  
16 constructing a residence to the extent 594 Lairmont does not include any portion of the Golf Parcel that was  
17 subsequently sold to Mr. Malek. In other words, the original lot lines for 594 Lairmont, subject to any  
18 restrictions set by the Design Guidelines and CC&Rs, do not contain any easements that restrict construction  
19 of a residence. However, it is Plaintiff's understanding that the Golf Parcel is now considered part of 594  
20 Lairmont Place. To that extent, Plaintiff repeats and incorporates its answer to Interrogatory No. 9 as though  
21 fully set forth herein.  
22

23 **INTERROGATORY NO. 11:**

24 State with specificity the nature of your use, if any, of 594 Lairmont since your purchase of 590  
25 Lairmont.  
26

27 **ANSWER TO INTERROGATORY NO. 11:**

28 Objection. The question is vague and ambiguous as to the term "use" and what is included in 594

1 Lairmont, so as to make a response impossible without speculation. Subject to and without waiving said  
2 objection, to the extent the question means 594 Lairmont exclusive of any portion of the Golf Parcel that  
3 was subsequently sold to Mr. Malek, Plaintiff has not "used" 594 Lairmont Place.

4 **INTERROGATORY NO. 12:**

5 State with specificity the nature of your use, if any, of the Golf Parcel since your purchase of 590  
6 Lairmont.

7 **ANSWER TO INTERROGATORY NO. 12:**

8 Objection. The question is vague and ambiguous as to the term "use" so as to make a response  
9 impossible without speculation. Subject to and without waiving said objection, Plaintiff has "used" the Golf  
10 Parcel as part of the entire Golf Course. Plaintiff has also "used" the Golf Parcel to maintain its view corridor  
11 from various areas of its property.  
12

13  
14 DATED this 9<sup>th</sup> day of March, 2014.  
15

16 Respectfully submitted by:

17 HOWARD KIM & ASSOCIATES

18   
19

20 KAREN L. HANKS, ESQ.

Nevada Bar No. 009578

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

*Attorneys for Plaintiff,*

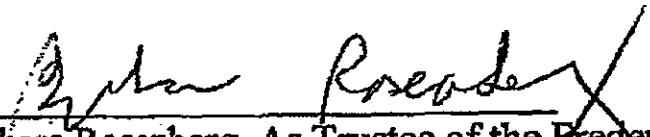
*The Fredric and Barbara Rosenberg Living Trust*

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**VERIFICATION**

I, Barbara Rosenberg, as Trustee of the Fredric and Barbara Rosenberg Living Trust, have reviewed Plaintiff's Answers to Defendant Malek's Interrogatories, and declare under penalty of perjury under the laws of the State of Nevada that the answers contained therein are true and accurate to the best of my knowledge.

Dated this \_\_\_\_ day of February, 2015.

  
Barbara Rosenberg, As Trustee of the Fredric  
and Barbara Rosenberg Living Trust



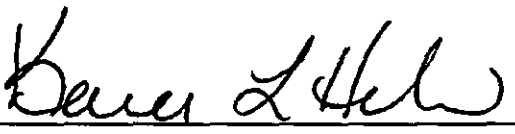
**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of March, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing **PLAINTIFF'S ERRATA TO ANSWERS TO DEFENANT MALEK'S INTERROGATORIES**, to the following parties:

THE FIRM, P.C.  
Preston P. Rezaee, Esq.  
Preston.thefirm-lv.com  
*Attorneys for Shahren Shane Malek*

AKERMAN LLP  
Natalie L. Winslow, Esq.  
Natalie.winslow@akerman.com  
*Attorneys for Bank of America, N.A.*

KEMP, JONES & COULTHARD, LLP  
Spencer H. Gunnerson, Esq.  
s.gunnerson@kempjones.com  
*Attorneys for Michael Doiron and MacDonald  
Highlands Realty LLC*

  
An Employee of Howard Kim & Associates

Ex. 1-c

# EXHIBIT 1-c

Ex. 1-c

1 Preston P. Rezaee, Esq.  
Nevada Bar No. 10729  
2 Jay DeVoy, Esq., of counsel  
Nevada Bar No. 11950  
3 Sarah M. Chavez, Esq., of counsel  
Nevada Bar No.: 11935  
4 THE FIRM, P.C.  
200 E. Charleston Blvd.  
5 Las Vegas, NV 89104  
Telephone: (702) 222-3476  
6 Facsimile: (702) 252-3476  
7 Attorneys for Defendant,  
SHAHEN SHANE MALEK

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE FREDERIC AND BARBARA	)	CASE NO.: A-13-689113-C
11 ROSENBERG LIVING TRUST,	)	DEPT NO.: I
	)	
12 Plaintiff,	)	
13 vs.	)	
	)	
14 BANK OF AMERICA, N.A.; BAC HOME	)	<b>DEFENDANT'S SECOND</b>
LOANS SERVICING, LP, a foreign limited	)	<b>SUPPLEMENTAL NRCP 16.1</b>
partnership; DRAGONRIDGE PROPERTIES,	)	<b>DISCLOSURE</b>
15 LLC; DRAGONRIDGE GOLF CLUB, INC.,	)	
16 a Nevada Corporation; MACDONALD	)	
PROPERTIES, LTD., a Nevada Corporation;	)	
17 MACDONALD HIGHLANDS REALTY,	)	
LLC, a Nevada limited liability company;	)	
18 MICHAEL DOIRON, an individual; SHAHIN	)	
SHANE MALEK, an individual; REAL	)	
19 PROPERTIES MANAGEMENT GROUP,	)	
INC., a Nevada corporation; DOES I through	)	
20 X, inclusive; and ROE BUSINESS ENTITY I)	)	
21 through XX, inclusive,	)	
	)	
22 Defendants.	)	
	)	

24 Defendant Shahin Shane Malek (hereinafter "Defendant"), by and through his undersigned  
25 counsel, hereby submits his second supplemental disclosure as required by Rule 16.1 of the Nevada  
26 Rules of Civil Procedure. New information is identified below in **bold**.

27 ///

28 ///

I.

LIST OF WITNESSES

Defendant hereby discloses the following list of witnesses, specifically reserving the right to supplement this initial disclosure to add the names of persons who may have relevant information, including expert witnesses, if subsequent information and investigation so warrant:

1. Rule 30(b)(6) witness for  
The Frederic & Barbara Rosenberg Living Trust  
c/o Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
Jacqueline A. Gilbert, Esq.  
Howard Kim & Associates  
1055 Whitney Ranch Dr., Ste. 110  
Henderson, NV 89014

The Rule 30(b)(6) witness for Plaintiff The Frederic & Barbara Living Trust is expected to testify to the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

1. Defendant Shahin Shane Malek  
c/o Preston P. Rezaee, Esq.  
Jay DeVoy, Esq, of counsel  
Sarah M. Chavez, Esq., of counsel  
The Firm, P.C.  
200 E. Charleston Blvd.  
Las Vegas, NV 89104

Defendant is expected to testify to the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

2. Rule 30(b)(6) witness for  
Bank of America, N.A.  
c/o Darren T. Brenner, Esq.  
Natalie L. Winslow, Esq.  
Ackerman, LLP  
1160 N. Town Center Drive, Ste. 330  
Las Vegas, NV 89144

The Rule 30(b)(6) witness for Defendant Bank of America, N.A. is expected to testify to the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

///

///

///

1 3. Rule 30(b)(6) witness for  
2 DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC  
3 c/o J. Randall Jones, Esq.  
4 Spencer H. Gunnerson, Esq.  
5 Kemp, Jones, Coulthard, LLP  
6 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
7 Las Vegas, NV 89169

8 The Rule 30(b)(6) witness for Defendant DRFH Ventures, LLC f/k/a DragonRidge Properties,  
9 LLC is expected to testify to the facts and circumstances surrounding the claims and defenses as  
10 asserted in the pleadings.

11 4. Rule 30(b)(6) witness for  
12 Dragonridge Golf Club, Inc.  
13 c/o J. Randall Jones, Esq.  
14 Spencer H. Gunnerson, Esq.  
15 Kemp, Jones & Coulthard, LLP  
16 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
17 Las Vegas, NV 89169

18 The Rule 30(b)(6) witness for Defendant Dragonridge Golf Club, Inc. is expected to testify to  
19 the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

20 5. Rule 30(b)(6) witness for  
21 MacDonald Properties, Ltd.  
22 c/o J. Randall Jones, Esq.  
23 Spencer H. Gunnerson, Esq.  
24 Kemp, Jones & Coulthard, LLP  
25 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
26 Las Vegas, NV 89169

27 The Rule 30(b)(6) witness for Defendant MacDonald Properties, Ltd. is expected to testify to  
28 the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

6. Rule 30(b)(6) witness for  
MacDonald Highlands Realty, LLC  
c/o J. Randall Jones, Esq.  
Spencer H. Gunnerson, Esq.  
Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
Las Vegas, NV 89169

The Rule 30(b)(6) witness for Defendant MacDonald Highlands Realty, LLC is expected to  
testify to the facts and circumstances surrounding the claims and defenses as asserted in the pleadings.

///

///

1 7. Defendant Michael Doiron  
2 c/o J. Randall Jones, Esq.  
3 Spencer H. Gunnerson, Esq.  
4 Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
Las Vegas, NV 89169

5 Defendant Michael Doiron is expected to testify to the facts and circumstances surrounding the  
6 claims and defenses as asserted in the pleadings.

7 Any and all witnesses identified by any party to this action.

8 Any and all witnesses necessary for rebuttal and/or impeachment purposes.

9 Defendant reserves the right to supplement this list as additional information becomes known  
10 and available throughout the course of discovery.  
11

12 II.

13 LIST OF DOCUMENTS

14

Bates Range	Description	Dates
15 MALEK000001- 16 MALEK000067	Escrow and Purchase Records for 594 Lairmont Place and adjacent bare lot portion of Assessor Parcel No. 178-28-520-001 alongside MacDonald Highlands Golf Hole #9 (hereinafter "Golf Parcel")	Varied
17 MALEK000068- 18 MALEK000342	Escrow and Purchase Records for 594 Lairmont Place and Golf Parcel and The Foothills at MacDonald Ranch Master Association Welcome Documents	Varied
19 MALEK000343- 20 MALEK000446	MacDonald Highlands f/k/a The Foothills at MacDonald Ranch Master Association General Information, Public Offering Statement, Statutory Information, CC&R's, Bylaws, Financials, Budget and Zoning Map	Varied
21 MALEK000447	Revised Site and Guest House Plan	
22 MALEK000448	Neat Document-Wiring instructions for golf course	
23 MALEK000449- 24 MALEK000461	Email Correspondences	
MALEK000462- MALEK000536	Wallace-Morris Surveying's Response to Subpoena Duces Tecum of Defendant Shahen Shane Malek	Varied

25 The above documents are being produced on a Compact Disk enclosed herein.

26 Defendant specifically reserves the right to designate as an exhibit any document designated by  
27 any party, and to supplement this list as any document(s) become known through the course and scope  
28 of discovery.

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INSURANCE AGREEMENTS THAT MAY APPLY IN THIS MATTER

Defendant is not aware of any insurance agreements at this time, and specifically reserves the right to supplement this initial disclosure to add relevant information, if subsequent information and investigation so warrant.

/s/ Sarah M. Chavez  
Sarah M. Chavez, Esq., of counsel  
Nevada Bar No. 11935  
THE FIRM, P.C.  
200 E. Charleston Blvd.  
Las Vegas, NV 89104  
Telephone: (702) 222-3476  
Facsimile: (702) 252-3476  
Attorney for Defendant,  
SHAHEN SHANE MALEK

/s/ Sarah M. Chavez  
Sarah M. Chavez, Esq., of counsel  
Nevada Bar No. 11935  
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200 E. Charleston Blvd.  
Las Vegas, NV 89104  
Telephone: (702) 222-3476  
Facsimile: (702) 252-3476  
Attorney for Defendant,  
SHAHEN SHANE MALEK

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22 day of December, 2014, pursuant to NRCP 5(b), I served via  
3 the Eighth Judicial District Court electronic service system and to be placed in the United States Mail,  
4 with first class postage prepaid thereon, and addressed the foregoing **DEFENDANT SHAHIN**  
5 **SHANE MALEK'S NRCP 16.1 SECOND SUPPLEMENTAL DISCLOSURE** to the following  
6 parties:

7 Howard C. Kim, Esq.  
8 Email: [Howard@hkimlaw.com](mailto:Howard@hkimlaw.com)

9 Diana S. Cline, Esq.  
10 Email: [Diana@hkimlaw.com](mailto:Diana@hkimlaw.com)

11 Jacqueline A. Gilbert, Esq.  
12 Email: [Jackie@hkimlaw.com](mailto:Jackie@hkimlaw.com)

13 Attorneys for Plaintiff

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16 Deb Julien  
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21 Erica Bennett  
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23 J. Randall Jones  
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25 Janet Griffin  
26 Email: [janetjamesmichael@gmail.com](mailto:janetjamesmichael@gmail.com)

27 Email: [jlg@kempjones.com](mailto:jlg@kempjones.com)

28 Spencer Gunnerson

Email: [S.gunnerson@kempjones.com](mailto:S.gunnerson@kempjones.com)

Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

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



Ex. 1-d

# EXHIBIT 1-d

Ex. 1-d

**In Re:**

*The Fredric and Barbara Rosenberg Living Trust vs.  
Bank of America, N.A., et al*

---

*Shahin Shane Malek*

*January 27, 2015*

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*www.depointernational.com*



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Page 105

1 Q. I want to talk about the counterclaim.  
2 Again, I don't want to get into any conversation you  
3 had with your attorney, but do you understand you  
4 filed a counterclaim against the Fredric and Barbara  
5 Rosenberg Trust?  
6 A. Yes.  
7 Q. And the claim is slander of title,  
8 correct?  
9 A. Yes.  
10 Q. And it looks like that was in relation to  
11 a lis pendens that was filed but eventually removed  
12 from your property; is that right?  
13 A. Again, I'm not -- I'm not familiar with  
14 the legal aspects, so my attorneys are handling  
15 that.  
16 Q. Okay. Do you know what a lis pendens is?  
17 A. Honestly, I don't know exactly what it is.  
18 I just know I didn't like it and I had to fight it  
19 because it was apparently keeping me from moving  
20 forward with my plans to build.  
21 Q. Do you believe that the Rosenbergs,  
22 Barbara and Fredric Rosenberg, the trustees of the  
23 Rosenberg Trust maliciously filed the lis pendens?  
24 MR. DEVOY: Objection. Foundation. Calls  
25 for speculation.

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1 THE WITNESS: Can I speculate?  
2 MR. DEVOY: She's asking if you have  
3 knowledge.  
4 THE WITNESS: I don't know exactly what  
5 that means, but towards me, I feel it was very  
6 malicious, yes. I was threatened that he was going  
7 to do that. He had no round, so, yes, it was very  
8 malicious.  
9 BY MS. HANKS:  
10 Q. Okay. And you're referring to David  
11 Rosenberg?  
12 A. I talked to David and then they followed  
13 through. So I don't know who is representing who.  
14 The guy told me he is an attorney. I don't know if  
15 he's an attorney for Fredric or for Barbara or who  
16 the hell these people are, but it's very malicious,  
17 yes.  
18 Q. Do you know when that interaction happened  
19 between and Mr. -- or David Rosenberg?  
20 A. Yeah, it was July -- June or July or  
21 August. It was in the summer. I know it was hot  
22 because he was sweating very badly.  
23 Q. What year?  
24 A. 2013.  
25 Q. As you sit here today, do you know the

Page 107

1 amount of attorney fees that you incurred up until  
2 the time it took to get the lis pendens removed from  
3 the property?  
4 THE WITNESS: I mean, I can guess. Should  
5 I -- is that something I should answer?  
6 BY MS. HANKS:  
7 Q. I don't want you to guess, but if you  
8 have -- you can certainly approximate. But I don't  
9 want you to guess. So if you don't know, I rather  
10 you say you don't know. But if you have an  
11 approximate or a general number of how much  
12 incurred, then yes, please provide that.  
13 A. I don't know, but I'm sure it will be  
14 provided at some point. I don't know.  
15 Q. So it's information that you could obtain  
16 from your own records?  
17 A. Probably.  
18 Q. You indicated that the positioning of the  
19 residence has changed since some of the earlier  
20 plans; is that right?  
21 A. Yes.  
22 Q. Was that because the Design Review  
23 Committee denying it?  
24 A. No.  
25 Q. Okay. That was just a personal decision

Page 108

1 between you and the architect at some point during  
2 the design planning?  
3 A. It was a personal --  
4 MR. DEVOY: Objection. Vague.  
5 THE WITNESS: Sorry about that. I just  
6 decided to pull the house back a lot further just on  
7 my own because I wanted the nicer bigger backyard.  
8 So that's -- the house is pulled back a lot.  
9 MS. HANKS: I don't have anything further.  
10 Do you have anything?  
11 (Conversation held outside the  
12 hearing of the court  
13 reporter.)  
14 BY MS. HANKS:  
15 Q. There came a point -- and I don't know if  
16 it was either prior to this litigation or during  
17 this actual litigation that the Rosenbergs and  
18 you -- when I say you and the Rosenbergs, through  
19 your attorneys, discussed possibly buying your  
20 parcels. Did that happen between you and the  
21 Rosenbergs?  
22 MR. DEVOY: Objection. Foundation.  
23 THE WITNESS: The attorneys spoke about  
24 it.  
25

Ex. 2

# EXHIBIT 2

Ex. 2

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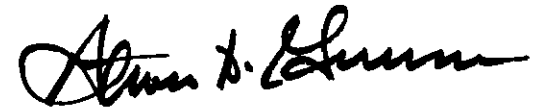
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3.

# **TAB 20**



CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)  
r.jones@kempjones.com  
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3 MATTHEW S. CARTER, ESQ. (#9524)  
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6 Facsimile: (702) 385-6001  
*Attorneys for Defendants*  
7 *MacDonald Highlands Realty, LLC,*  
*Michael Doiron and FHP Ventures,*  
8 *A Nevada Limited Partnership*

9  
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, N.A.; BAC HOME  
16 LOANS SERVICING, LP, a foreign limited  
17 partnership; MACDONALD HIGHLANDS  
18 REALTY, LLC, a Nevada limited liability  
19 company; MICHAEL DOIRON, an  
20 individual; SHAHIN SHANE MALEK, an  
21 individual; PAUL BYKOWSKI, an  
22 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,

23 Defendants.

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

**MOTION FOR SUMMARY  
JUDGMENT**

24 Defendants MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures,  
25 A Nevada Limited Partnership (sued as "The Foothills Partners").<sup>1</sup> The parties have agreed  
26 to dismiss Paul Bykowski from this lawsuit, but they have not yet submitted to the Court a  
27

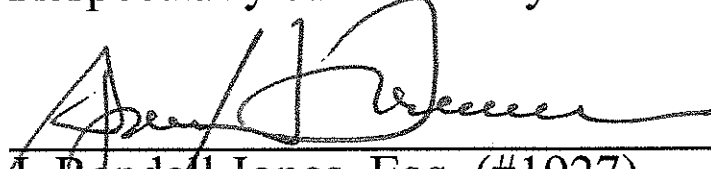
28 <sup>1</sup> The Moving Defendants as named in this motion do not currently include Paul Bykowski. This is based on Plaintiff's expressed representation that Bykowski would be voluntarily dismissed from this lawsuit. In the event that the dismissal does not get filed, Bykowski will join this motion.

1 stipulation and order doing so. Once Bykowski is dismissed from the litigation, the parties  
2 agree he will no longer be among the Moving Defendants on this motion , by and through  
3 their attorneys of record, J. Randall Jones, Esq. and Spencer H. Gunnerson, Esq., of the law  
4 firm of Kemp, Jones & Coulthard, LLP, hereby move this Court for an order granting  
5 summary judgment in their favor.

6 This Motion is made and based upon NRCP 56, the following memorandum of points  
7 and authorities, the pleadings and papers on file herein, any exhibits attached hereto, and any  
8 oral argument this Court may entertain at a hearing on this Motion.

9 DATED this 16<sup>th</sup> day of April, 2015.

10 Respectfully submitted by:

11   
12 J. Randall Jones, Esq. (#1927)  
13 Spencer H. Gunnerson, Esq. (#8810)  
14 Matthew S. Carter, Esq. (#9524)  
15 KEMP, JONES & COULTHARD, LLP  
16 3800 Howard Hughes Parkway  
17 Seventeenth Floor  
18 Las Vegas, Nevada 89169  
19 Attorneys for Defendants  
20 MacDonalld Highlands Realty, LLC,  
21 Michael Doiron and FHP Ventures,  
22 A Nevada Limited Partnership  
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KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

## NOTICE OF MOTION


TO: Plaintiff the Fredric and Barbara Rosenberg Living Trust; and

TO: Howard Kim & Associates, its counsel.

You, and each of you, will please take notice that Defendants MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures, A Nevada Limited Partnership will bring the above-entitled Motion for Summary Judgment on for hearing on the 19 day of May @ 9:00am, 2015, in Department I of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada or soon thereafter as counsel may be heard.

DATED this 6<sup>th</sup> day of April, 2015.

Respectfully submitted by:

  
J. Randall Jones, Esq. (#1927)  
Spencer H. Gunnerson, Esq. (#8810)  
Matthew S. Carter, Esq. (#9524)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
*Attorneys for Defendants*  
*MacDonald Highlands Realty, LLC,*  
*Michael Doiron and FHP Ventures,*  
*A Nevada Limited Partnership*

## POINTS AND AUTHORITIES

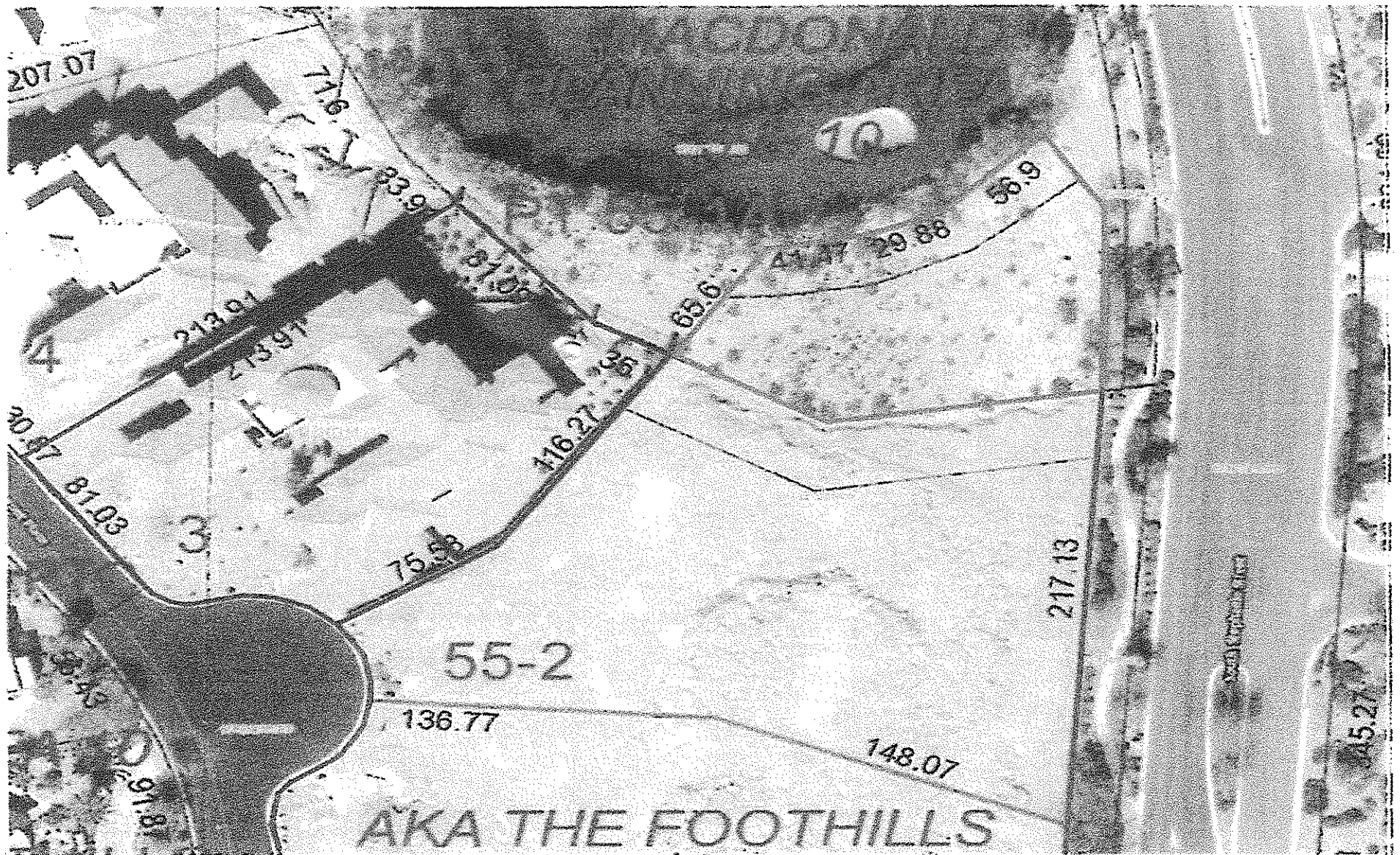
### I.

### INTRODUCTION

This is a case in which a Plaintiff who, having received a prestigious piece of golf-course fronting property at a bargain price from a bank sale, now seeks to extort money from the seller, the seller's agent, and the community for giving Plaintiff exactly what it asked for. Plaintiff's home and the neighboring properties, currently appear this

///

way from above<sup>2</sup>:



The golf-course view to the north and northeast, which continues to be immaculate and meticulously preserved, is not at issue before this Court. Instead, Plaintiff is arguing that its view *in a different direction*—of an embankment, a parking lot, a street, and a clubhouse structure across the street—is the view that matters. This view apparently became important when Plaintiff learned that its neighbor on that side, Shane Malek, was going to build on his lots—something that could have been discovered and surmised by Plaintiff had it deigned to perform the due diligence it promised to do *before* purchasing the subject property. Plaintiff also argues that Malek’s building on his lot will compromise the privacy of its home, which was always going to remain open to a golf course regardless of what Malek did with his property.

Rather than address its view and privacy concerns with the due diligence period it was

<sup>2</sup> In this image, the red outline represents Plaintiff’s lot. The dark green outline represents Malek’s original lot, and the light green line represents the additional land purchased by Malek that Plaintiff alleges impacted its views and privacy in this litigation. To the extent that this image shows any setback lines, they are not germane to this particular illustration.

1 provided in the Purchase Agreement, Plaintiff apparently conducted no due diligence. Now,  
2 Plaintiff's non-golf-course view and privacy concerns may or may not<sup>3</sup> be impacted by  
3 construction on the adjacent lots, and the question is who to blame. As a matter of law, the  
4 answer cannot be Moving Defendants. Through Michael Doiron, MacDonald Highlands  
5 Realty served as the seller's agent in the bank sale of the subject property to Plaintiff. The  
6 Moving Defendants' error, Plaintiff claims, came when Doiron did not disclose that Malek  
7 was under contract to obtain the parcel of property that could possibly block Plaintiff's view  
8 of the parking lot, road, and building, if built upon in a certain way, and that the associated  
9 zoning changes had been approved by the City of Henderson before Plaintiff purchased the  
10 subject property. Whether Doiron actually had knowledge of the zoning approval at the time  
11 that the property was sold to Plaintiff is in question<sup>4</sup>; what is *not* in question is that  
12 responsibility for discovering that information rested solely with Plaintiff.

13 In the deposition of Barbara Rosenberg, Plaintiff's representative who, along with her  
14 husband Frederic, signed the Purchase Agreement and related documents for the subject  
15 property, it was established that the Rosenbergs not only signed the Purchase Agreement  
16 documents but also reviewed them thoroughly. Barbara agreed that they could have tried to  
17 ask for changes to those particular documents before signing, but they did not. Those  
18 documents contained lengthy statements about the "as-is" nature of the sale and Plaintiff's  
19 obligation to perform due diligence. They contained waivers for any claims related to views  
20 or easements. They contained multiple provisions that limited Plaintiff's remedies. Perhaps  
21 most importantly, the documents Doiron gave Plaintiff contained a zoning disclosure that  
22 stated that the zoning around the property may have changed, and that Plaintiff could have  
23 obtained that information with a simple phone call to the City of Henderson, a drive to its  
24 office, or a visit to its website; that information was available in hard copy on January 24,  
25

---

26 <sup>3</sup> It should be noted that, as of the filing of this motion, nothing has actually been built on Malek's  
27 property. Plaintiff's damages, then, are speculative and would therefore be unrecoverable under  
28 Nevada law. See Fireman's Fund Ins. Co. v. Shawcross, 442 P.2d 907, 912 (Nev. 1968).

<sup>4</sup> See Deposition of Michael Doiron, Volume II, attached hereto as Exhibit P, at 204:5-15.

1 2013, and online in February of 2013. See Deposition of Michael Tassi, attached hereto as  
2 Exhibit O, at 28:5-30:20.

3 Just as the undisputed facts show that Doiron unquestionably provided those  
4 documents and disclosures, the record is similarly clear that Plaintiff did not fulfill its  
5 contractual obligations of due diligence. It waived most of the inspections of the subject  
6 property in the Purchase Agreement. It did not contact the City of Henderson to talk about  
7 zoning issues, property boundaries, or anything else. In other words, Barbara and Fred  
8 Rosenberg took it upon themselves to conduct a due diligence search, having fully read and  
9 agreed to all terms of the Purchase Agreement and its associated documents, and presumably  
10 knowing the extent of the risks of doing so. They then failed to follow through. They cannot  
11 now, years later and dissatisfied with their purchase, come before this Court to blame the  
12 Moving Defendants for something they specifically agreed, and even offered, to do. Nevada  
13 law specifically enforces contracts as written, and courts may not re-write contracts after the  
14 fact. See Kaldi v. Farmers Ins. Exch., 21 P.3d 16, 20 (Nev. 2001). All that remains is for  
15 this Court to enforce the Purchase Agreement according to its terms and the undisputed facts  
16 as testified to by the witnesses in this matter.

17 Even if the Court were not convinced of the facts and law that require summary  
18 judgment on the basis of the Purchase Agreement and its related documents, there is also  
19 another substantive problem with all of Plaintiff's claims: there is no legal right to a view  
20 easement in Nevada, let alone an easement for a "borrowed view" taken over an undeveloped  
21 parcel that may or may not be built upon in the future. Nor are Plaintiff's privacy concerns  
22 legitimate, considering that she purchased a home that fronts a golf course—a situation that  
23 necessarily leads to less privacy than a home would have otherwise. See Deposition of  
24 Barbara Rosenberg, attached hereto as Exhibit A, at 119:15-120:10.

25 Accordingly, and for all the foregoing reasons, Moving Defendants respectfully  
26 request that this Court grant summary judgment as to all claims against them in this matter.

27 ///

28 ///



II.

**STATEMENT OF UNDISPUTED FACTS**

1. On February 20, 2015, 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, at 41:14-43:1 and Letter of Intent and associated documents, attached hereto as Exhibit B. Barbara Rosenberg confirmed in her deposition that Exhibit B is a copy of the letter of intent she sent. Exhibit A 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] Buy shall purchase the property "As-Is" and "Where-Is" and "With All Faults."**

Exhibit B 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 hereto as Exhibit C.

4. Ms. Rosenberg continued to pressure Bank of America's asset managers regarding the subject property nonetheless into March of 2013. See E-mail from Barbara Rosenberg dated March 6, 2013, attached hereto as Exhibit D, and e-mail from Kelli Barrington dated March 7, 2013, attached hereto 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 hereto 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 hereto as Exhibit G, at BANA<sup>5</sup> 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 hereto 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 at 89:1-17.

9. Barbara Rosenberg admits 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. In the Purchase Agreement, the Rosenbergs waived their right to perform a survey and determine the boundary lines surrounding their property. Exhibit G at BANA 4, ¶ 7(C).

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

12. The due diligence required of the Rosenbergs 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 is satisfactory to Buyer including, but not limited to, whether the Property is insurance 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).

<sup>5</sup> This abbreviation refers to the Bates stamps on the documents produced by Bank of America.

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

3 **Buyer and Seller agree that they are not relying upon any**  
4 **representations made by Brokers or Broker's [sic] agent.**  
5 **Buyer acknowledges that at COE, the Property will be sold**  
6 **AS-IS, WHERE-IS without any representations or**  
7 **warranties, unless expressly stated herein. . . .**

8 Buyer acknowledges that any statements of acreage or square  
9 footage by brokers are simply estimates, and Buyer agrees to  
10 make such measurements. As Buyer deems necessary, to  
11 ascertain actual acreage or square footage. **Buyer waives all**  
12 **claims against Brokers or their agents for (a) defects in the**  
13 **Property; (b) inaccurate estimates of acreage or square footage;**  
14 **(c) environmental waste or hazards on the Property; (d) the fact**  
15 **that the Property may be in a flood zone; (e) the Property's**  
16 **proximity to freeways, airports, or other nuisances; (f) the**  
17 **zoning of the Property; (g) tax consequences; or (h) factors**  
18 **related to Buyer's failure to conduct walk-throughs,**  
19 **inspections and research, as Buyer deems necessary. In any**  
20 **event, Broker's liability is limited, under any and all**  
21 **circumstances, to the amount of Broker's commission/fee**  
22 **received in this transaction.**

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

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

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

29 **NOTWITHSTANDING ANY PROVISION TO THE**  
30 **CONTRARY IN THE AGREEMENT, SELLER'S**  
31 **LIABILITY AND BUYER'S SOLE AND EXCLUSIVE**  
32 **REMEDY IN ALL CIRCUMSTANCES AND FOR ALL**  
33 **CLAIMS (AS THE TERM IS DEFINED IN SECTION 26**  
34 **OF THIS ADDENDUM . . .) ARISING OUT OF OR**  
35 **RELATING IN ANY WAY TO THE AGREEMENT OR**  
36 **THE SALE OF THE PROPERTY TO BUYER**  
37 **INCLUDING, BUT NOT LIMITED TO . . . THE**  
38 **CONDITION OF THE PROPERTY, . . . THE SIZE,**  
39 **SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF**  
40 **THE PROPERTY . . . SHALL BE LIMITED TO NO MORE**  
41 **THAN**

42 **(A) A RETURN OF THE BUYER'S EARNEST MONEY**  
43 **DEPOSIT IF THE SALE TO BUYER DOES NOT CLOSE;**

1 AND

2 (B) THE LESSER OF BUYER'S ACTUAL DAMAGES OR  
3 \$5,000.00 IF THE SALE TO BUYER CLOSES.

4 Exhibit H at MHR 105, ¶ 1 (emphasis original).

5 16. The Addendum further provided:

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

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

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

18 18. Subsequent to executing the Residential Purchase Agreement and its addenda, the  
19 Rosenbergs had inquired through their real estate agent as to whether substantive changes  
20 could be made to the terms of the sale. In the words of their real estate agent, "The answer is  
21 an emphatic NO!" See E-mail from Siobhan McGill dated March 27, 2013, attached hereto  
22 as Exhibit I. The only change allowed was for Barbara and Frederic Rosenberg to place the  
23 property in the name of their trust, the Plaintiff in this matter. See Addendum No. 4, attached  
24 hereto as Exhibit J.

25 19. During the purchase process, Defendant Michael Doiron, a MacDonald Highlands  
26 Realty employee, represented the seller, Bank of America. As part of her disclosures to the  
27 Rosenbergs, she gave them a document entitled "ZONING CLASSIFICATIONS AND  
28 LAND USE DISCLOSURE," which the Rosenbergs received on April 13, 2013. See Exhibit  
K. 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.



1 Master plan designation and zoning classifications, ordinances[,]  
2 and regulations adopted pursuant to the master are subject to  
3 change. You may obtain more current information regarding  
4 the zoning and master plan information from The City of  
Henderson, Planning Department, 240 Water Street,  
Henderson, NV 89015, Te:: [sic] 565-2474.

5 See id. (emphasis original).

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

12 21. The neighboring property upon which the controversy in this action rests was sold to  
13 Defendant Malek on April 8, 2013. See Grant, Bargain, and Sale Deed, Instrument No.  
14 201306260005003, attached hereto as Exhibit R.

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

19 23. Independent of any building on Malek's parcel, the subject property's privacy was  
20 compromised as a result of its being a golf course and near a walking path. See Exhibit A, at  
21 119:15-120:10 (in which Barbara Rosenberg admits it was possible for golfers on the course  
22 to look into the home, and that it was also possible for individuals on a nearby walking path  
23 to do so as well). See also Deposition Transcript of Richard MacDonald, attached hereto as  
24 Exhibit L, at 59:22-60:4 ("The reality is you don't have any privacy when you live on a golf  
25 course, period. You have no privacy whatsoever.")

26 ///

27 ///

28 ///

### III.

#### ARGUMENT

##### A. Standard of Review

Summary judgment is required when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NEV. R. CIV. PROC. 56(c) (emphasis added); accord Wood v. Safeway, 121 P.3d 1026, 1031 (Nev. 2005). The moving party may discharge its burden by “showing” the court “that there is an absence of evidence to support the nonmoving party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). “[T]he nonmoving party may not defeat a motion for summary judgment by relying on the gossamer threads of whimsy, speculation and conjecture.” Wood, 121 P.3d at 1030 (collecting cases). The Nevada Supreme Court “has made abundantly clear, ‘[w]hen a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.’” Id. (quoting Pegasus v. Reno Newspapers, Inc., 57 P.3d 82, 87 (Nev. 2002)). “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” Id.

Plaintiff has asserted the following claims against Moving Defendants Michael Doiron and MacDonald Highlands Realty, LLC: unjust enrichment, fraudulent or intentional misrepresentation, negligent misrepresentation, statutory disclosure violations, and “easement.”<sup>6</sup> See Amended Complaint, on file herein. All of those claims arise from the allegation that, in representing the seller in the sale of the subject property, Michael Doiron knew or should have known about, and failed to disclose, that the zoning and boundary lines

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<sup>6</sup> “Easement,” though it is a term of art referring to a property interest, is not in and of itself a claim for relief under Nevada law. It appears that what Plaintiff is actually seeking is declaratory relief regarding its interest in the golf course property. See Amended Complaint, on file herein, at ¶¶ 106-10.

1 of the properties neighboring the subject property were changing to allow building across a  
2 vacant lot adjacent to the subject property. Any such building, the Plaintiff alleges, would  
3 obscure the view from the house—not of the golf course, but of a street, parking lot, and  
4 clubhouse building in the opposite direction from the golf course.<sup>7</sup> Summary judgment  
5 should be granted on these claims because the Purchase Agreement that the Rosenbergs  
6 admit they read and signed places the responsibility for discovering zoning and boundary line  
7 issues on Plaintiff and specifically takes it away from Doiron, who testifies that she did not  
8 necessarily know the most recent information about zoning<sup>8</sup> when the sale closed.

9 Undisputed Facts 6 through 14. Additionally, the undisputed evidence indicates that all  
10 required disclosures *were* made by Doiron, including one on the specific issue of zoning, and  
11 that the responsibility to get the most updated information regarding zoning and boundary  
12 lines was undertaken by Plaintiff, which had all the resources it needed to get the most  
13 updated information. Undisputed Fact 19 and Exhibit K. Even in the event that none of  
14 those facts were true, Plaintiff voluntarily waived claims and limited its remedies in this  
15 action in the Purchase Agreement itself and in an addendum. Undisputed Facts 13 through  
16 17. When the law is applied to those undisputed facts, there cannot be any conclusion but  
17 one: all of the disclosure-related claims for relief must fail as a matter of law.

18 Plaintiff's remaining claims are for declaratory relief regarding the interests in the  
19 subject property and the neighboring properties (against all Moving Defendants) and  
20 mandatory injunction ordering FHP Ventures and Paul Bykowski to enforce community  
21 Design Guidelines in a certain way favorable to Plaintiff. There is, however, no legal basis  
22 for doing so given that the disclosure-related claims fail as a matter of law. Additionally,  
23 these claims also fail because there simply is no implied easement for a view under Nevada  
24 law, and Plaintiff's privacy is already compromised to the configuration and location of the  
25 house on the subject property. Therefore not a single one of Plaintiff's claims can withstand  
26

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27 <sup>7</sup> Incidentally, *no part* of the golf course view would be obscured.

28 <sup>8</sup> See Exhibit P at 204:5-15.

1 legal scrutiny. Moving Defendants accordingly request that this Court grant the instant  
2 motion for summary judgment on all claims against them.

3 **B. Plaintiff concedes that the Rosenbergs knowingly and voluntarily signed a**  
4 **Purchase Agreement in which they volunteered to take the subject property “as-**  
5 **is” and assumed responsibility for all potential defects, including zoning and**  
6 **boundary line matters.**

7 In Nevada, real estate professionals generally make a series of disclosures to buyers of  
8 real property pursuant to state law. See, e.g., NEV. REV. STAT. § 645.252.<sup>9</sup> However,  
9 “[n]ondisclosure by the seller of adverse information concerning real property generally will  
10 not provide the basis for an action by the buyer to rescind or for damages when property is  
11 sold ‘as is.’” Mackintosh v. Jack Matthews & Co., 855 P.2d 549, 552 (Nev. 1993). While  
12 this rule does not apply where information is available solely to the seller, there will be no  
13 basis for action against a seller unless “the seller knows [1] of facts materially affecting the  
14 value or desirability of the property **which are known or accessible only to [the seller]** and  
15 **[2] also knows that such facts are not known to, or within the reach of the diligent**  
16 **attention and observation of the buyer.”** Id. (quoting Lingsch v. Savage, 29 Cal. Rptr.  
17 201, 204 (Ct. App. 1963)) (emphasis added). Only then is the seller under a duty to disclose  
18 those facts to the buyer. See id. Although Nevada does not have case law specific to off-site  
19 defects, courts that have considered the issue generally use the exact same test for off-site  
20 conditions as on-site conditions. See, e.g., Florrie Young Roberts, Off-Site Conditions and  
21 Disclosure Duties: Drawing the Line at the Property Line, 2006 BYU L. Rev. 957, 960  
22 (2006). See also Couturier v. American Invsco Corp., 10 F. Supp. 3d 1143, 1156 (D. Nev.  
23 2014) (applying the same test – that a duty to disclose when “defendant alone has knowledge  
24 of material facts which are not accessible to the plaintiff” – where there was alleged  
25 fraudulent concealment of the fact that floor coverings in condominium units caused

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26 <sup>9</sup> Doiron and MacDonald Highlands **did** make a disclosure regarding zoning and property lines,  
27 attached hereto as Exhibit K. That disclosure even provided the exact method for the Rosenbergs to  
28 obtain the most up-to-date information on the subject. See id. Moving Defendants do dispute,  
however, that the central fact of the Rosenberg’s complaint – a pending minor lot line adjustment to  
a neighboring lot – was material information that was required to be disclosed under § 645.252.

1 structural problems in a building).

2 The basis of Plaintiff's disclosure-based claims against Moving Defendants is that  
3 Doiron knew or should have known, but did not disclose, the fact that the "lot lines [of the  
4 subject property and its neighboring lot, belonging to Defendant Malek] were other than  
5 presented and had in fact been amended in such a way as to negatively impact the value of  
6 the SUBJECT PROPERTY or its use in an adverse manner." See Amended Complaint, on  
7 file herein, at ¶ 94. What this analysis fails to recognize, though, is that Plaintiff purchased  
8 the property on an "as-is" basis, specifically taking upon itself the duty to inspect the  
9 property and ensure that all aspects of it were suitable *prior* to close of escrow. Undisputed  
10 Facts 2, 6, 7, 8, 9 10, 11, and 12. See also Exhibit B (the Rosenbergs' own letter of intent,  
11 indicating that it was the "Buyer's obligation" to investigate zoning prior to the purchase),  
12 Exhibit F (confirming the Rosenbergs' desire to purchase the subject property "AS-IS"),  
13 Exhibit G at ¶ 12 (detailing Plaintiff's due diligence obligations prior to closing), and Exhibit  
14 K (advising Plaintiff to follow up with the City of Henderson for the most current lot line and  
15 zoning information applicable to and surrounding the subject property and describing how  
16 this could be done.) Documents and testimony from the City of Henderson demonstrate that,  
17 beyond a doubt, Plaintiff had access to all pertinent information regarding zoning changes  
18 prior to closing on the subject property. Undisputed Fact 20. Also notable is the fact that the  
19 Purchase Agreement specifically states that Plaintiff is "not relying on any representations"  
20 made by Doiron. Undisputed Fact 13. This fact alone destroys any chance that Plaintiff  
21 could demonstrate the "justifiable reliance" necessary for its fraud and negligent  
22 misrepresentation claims. See, e.g., Nelson v. Heer, 163 P.3d 420, 426 (Nev. 2007)  
23 (intentional misrepresentation), and Barnettler v. Reno Air, Inc., 956 P.2d 1382, 1387 (Nev.  
24 1998) (negligent misrepresentation).<sup>10</sup>

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25  
26 <sup>10</sup> Were this Court to allow Plaintiff to proceed in spite of the "as-is" provisions and facts showing  
27 Plaintiff had access to the information it claims was not disclosed, it would be violating the Nevada  
28 Supreme Court's long standing role of construction that "when a contract is clear, unambiguous and  
complete, its terms must be given their plain meaning and the context must be enforced as written . .  
." See Ringle v. Bruton, 86 P.3d 1032, 1039 (Nev. 2004).

Therefore, the undisputed facts and evidence before this Court show that it was Plaintiff that took upon itself the duty to investigate the property, including zoning and boundary-line issues, prior to the closing of the sale, and failed to fulfill that duty. Far from failing to disclose information to Plaintiff, Doiron actually gave Plaintiff's representatives information *specifically designed* to ensure that Plaintiff was made aware of the most current zoning and boundary line issues regarding the property. See Undisputed Fact 19 and Exhibit K. Using that information, Plaintiff could have discovered the most up-to-date zoning map for the surrounding properties in five minutes or less in February of 2013, and with a visit or telephone call to the City of Henderson in January of 2013. See Undisputed Fact 20 and Deposition Transcript of Michael Tassi, attached hereto as Exhibit O, at 26:14-27:5. Given testimony from the City of Henderson, there is no reasonable chance that the relevant information would not have been available to Plaintiff in March of 2013, when the subject property was being purchased. See id. at 25:2-19. The scenario, then, is this: (1) Plaintiff willingly and knowingly accepted the duty to inspect the zoning and boundaries affecting the subject property; (2) Plaintiff was given sufficient information by Doiron to do so; and (3) Plaintiff failed to perform the inspections it agreed to do. Under those undisputed facts, then, summary judgment should be granted on all disclosure-related claims for relief.

**C. Plaintiff has also waived its right to pursue these claims against the defendants and limited its remedies, in the absolute best case, to a single claim for \$5,000.00.**

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). A "party may not plead willful ignorance and escape [a] waiver." BancBoston Mortgage Corp. v. Harbor Estates P'ship,



1 768 F. Supp. 170, 172 (W.D.N.C. 1991). Waivers are enforceable to grant summary  
2 judgment against a claim where the evidence shows that the plaintiff willingly and  
3 voluntarily signed the waiver, and the waiver is clear and unambiguous as to what claims  
4 were being waived against which parties. See Cobb v. Aramark Sports & Entm't Servs.,  
5 LLC, 933 F. Supp. 2d 1295, 1298-99 (D. Nev. 2013).

6 Here, the undisputed facts indicate at least two separate waivers of all claims that  
7 strongly militate in favor of this Court granting summary judgment. Undisputed Facts 13, 14  
8 and 15. First, as discussed in Plaintiff's deposition, the Purchase Agreement that Barbara  
9 Rosenberg and her husband both signed and read very closely<sup>11</sup> specifically waived all claims  
10 against the Brokers to the sale and their agents, which includes both MacDonald Highlands  
11 and Michael Doiron. See Undisputed Fact 13 and Exhibit G at BANA 8-9, ¶ 22; see also  
12 Exhibit A at 99:10-101:5. Those waivers extended to claims for zoning-related issues as well  
13 as **"factors related to Buyer's failure to conduct walk-throughs, inspections and**  
14 **research"** related to the property. See Exhibit G at BANA 8-9, ¶ 22.

15 Because of the clear language of the waiver, which demonstrates its knowing intent,  
16 and Barbara Rosenberg's testimony that it was signed and reviewed by both her and her  
17 husband, there can be no dispute that all of the instant claims against Moving Defendants  
18 should be summarily adjudicated as a matter of law. While Plaintiff may argue, as Barbara  
19 Rosenberg did, that the waiver was limited only to construction defects,<sup>7</sup> the plain language  
20 of the waiver, set out in Undisputed Fact 13, conclusively forecloses this line of argument.

21 The Purchase Agreement also contained another waiver that was included in the Real  
22 Estate Purchase Addendum executed by Barbara and Frederic Rosenberg on March 15, 2013.  
23 See Undisputed Facts 15 and 16 and Exhibit H. Michael Doiron was also named in the  
24 addendum as the seller's agent. Exhibit H at MHR 119. Because Plaintiff's claims, which  
25 relate to the view from the subject property over a neighboring property, regard information  
26

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27 <sup>11</sup> Undisputed Fact 8.

28 <sup>7</sup> See Exhibit A at 100:18-101:5.

1 that was undisputedly in the public record before Plaintiff purchased the subject property,<sup>8</sup>  
2 the waiver of “**ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO .**  
3 **.. EASEMENTS, BOUNDARIES, . . . OR ANY OTHER MATTER THAT WOULD**  
4 **BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE**  
5 **PROPERTY OR SEARCH OF PUBLIC RECORDS”** applies to those claims and renders  
6 them unsupportable as a matter of law. Undisputed Fact 16 and Exhibit H at MHR 106-07.  
7 Summary judgment is therefore warranted.

8 In addition to the waivers discussed above, the Purchase Agreement also limits the  
9 liability of the broker on the sale to the amount of “Broker’s commission/fee received in this  
10 transaction.” Undisputed Fact 13 and Exhibit G at BANA 8-9, ¶22. The Real Estate  
11 Purchase Addendum signed by the Rosenbergs also provides a limitation on the remedies  
12 that can be obtained by Plaintiff in this action:

13 **BUYER’S SOLE AND EXCLUSIVE REMEDY IN ALL**  
14 **CIRCUMSTANCES AND FOR ALL CLAIMS . . . ARISING**  
15 **OUT OF OR RELATING IN ANY WAY TO THE**  
16 **AGREEMENT OR THE SALE OF THE PROPERTY TO**  
17 **BUYER . . . SHALL BE LIMITED TO NO MORE THAN . . .**  
18 **THE LESSER OR BUYER’S ACTUAL DAMAGES OR**  
19 **\$5,000.00 IF THE SALE TO BUYER CLOSES.**

20 Undisputed Fact 15 and Exhibit H at MHR 105, ¶ 1 (emphasis original). Accordingly, all of  
21 Plaintiff’s claims against the Moving Defendants – not merely the claims for damages – are  
22 invalid as a matter of the Purchase Agreement and Nevada law.

23 **D. Plaintiff’s non-disclosure-based claims must also fail because (1) they are still**  
24 **related to Plaintiff’s unfulfilled obligation to inspect, (2) no easement for a view**  
25 **exists as a matter of Nevada law, and (3) the parties agree that Plaintiff’s privacy**  
26 **was already compromised by its location on a golf course and near a walking**  
27 **path.**

28 Though Plaintiff’s remaining claims are not directly related to the alleged lack of  
disclosure by Doiron, they cannot exist if the obligation to discover the information was  
Plaintiff’s (it was) and Doiron did in fact make disclosures regarding zoning and property  
boundaries (she did). With those facts established beyond any dispute, there is simply no

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<sup>8</sup> See, e.g., Plaintiff original Complaint, on file herein, at ¶¶ 17-40.



1 basis for this Court to award declaratory or injunctive relief to Plaintiff.

2 Even apart from that significant problem, though, Plaintiff has one even more  
3 fundamental. Plaintiff simply cannot assert any legal right to a view over other parcels of  
4 real property. The Nevada Supreme Court has stated that claims to such “implied  
5 easements” (or as Plaintiff’s complaint refers to them, “implied restrictive covenants”)  
6 simply cannot be upheld as a matter of Nevada law and public policy:

7 ‘The reasons upon which it has been held that no grant of a right  
8 to air and light can be implied from any length of continuous  
9 enjoyment are equally strong against implying a grant of such a  
10 right from the mere conveyance of a house with windows  
11 overlooking the land of the grantor. **To imply the grant of such  
12 a right in either case, without express words, would greatly  
13 embarrass the improvement of estates, and, by reason of the  
14 very indefinite character of the right asserted, promote  
15 litigation.** The simplest rule, and that best suited to a country like  
16 ours, in which changes are taking place in the ownership and the  
17 use of lands, is that no right of this character can be acquired  
18 without express grant of an interest in, or covenant relating to, the  
19 lands over which the right is claimed.’

14 Boyd v. McDonald, 408 P.2d 717, 722 (Nev. 1965) (quoting Keats v. Hugo, 115 Mass. 204,  
15 215 (1874)) (emphasis added). See also Probasco v. City of Reno, 459 P.2d 772, 774 (Nev.  
16 1969) (acknowledging that “Nevada has expressly repudiated the doctrine of implied  
17 negative easement of light, air and view for the purpose of a private suit by one landowner  
18 against a neighbor” and “expressly repudiat[ing] the doctrine of implied negative easements  
19 in the context of eminent domain”).

20 Nowhere in the recorded rights against Plaintiff’s property or the neighboring  
21 properties does Plaintiff have an express easement for view. In fact, that would be  
22 impossible. As developer Richard MacDonald explained in his deposition, there is simply no  
23 such thing as a guaranteed view because, particularly in a community like MacDonald  
24 Highlands, property owners are constantly building new homes and other structures. See  
25 Exhibit L at 60:5-21. According to expert witness Scott Dugan, a view across a piece of  
26 unimproved property is known as a “borrowed view” that, by its nature, cannot be preserved.  
27 See Deposition Transcript of Scott Dugan, attached hereto as Exhibit M, at 12:17-22 and  
28 expert report of Scott Dugan, attached hereto as Exhibit N, at MHR 827.

1 Finally, Plaintiff makes the allegation that the privacy of the home on the subject  
2 property could somehow be compromised by Malek building on his property. According to  
3 the developer of the community, Richard MacDonald, this is impossible because when any  
4 person purchases property on a golf course, he or she has "no privacy whatsoever."  
5 Undisputed Fact 23 and Exhibit L at 59:22-60:4. Surprisingly, this assessment was more or  
6 less shared by Plaintiff's representative, Barbara Rosenberg, who testified as follows:

7 Q. Let's go back to that [Exhibit] U then. You said reduced  
8 privacy. I think you just stated because it is a golf course, right?

9 A. Yes.

10 Q. There are players on the golf course, right?

11 A. Yes.

12 Q. And the requirements don't allow you to put up a  
13 two-story-high brick wall, nor would you want to, to keep them  
14 from looking into your backyard, potentially into your home if  
15 the curtains are open, correct?

16 A. Yes.

17 Q. And so the privacy you were expecting when you purchased  
18 this was the privacy akin to someone being able to stand on the  
19 golf course and look into your property and into your home,  
20 directly into the backyard if they so desired, correct?

21 A. **It goes with the golf course that people are going to be on**  
22 **the golf course golfing and once in a while, they might look**  
23 **into the property.** This is what the golf disclosure is saying, you  
24 should expect that you would have this minimal invasion of your  
25 privacy having to do with the fact it is on a golf course. It  
26 doesn't refer to some big structure that is right in your view that  
27 somebody decided to put up that you had absolutely no  
28 knowledge that it was coming and you guys should have  
disclosed to me.

Q. That wasn't the question. **The question was you had an**  
**expectation that there would be individuals on the golf course**  
**who would look into your property and into your home?**

A. Possibly.

Q. In fact, the properties, you have Lairmont Street but you also  
have Stephanie Street, right?

A. Yes.

Q. **And right next to Stephanie Street, there is a walking**

1 path, correct?

2 A. Yes.

3 Q. And I mean, really anyone could stand on that walking  
4 path and if they really wanted to look into the Rosenbergs'  
5 home for whatever reason people want to do that kind of  
6 thing, they could take a pair of binoculars and have a pretty  
7 good view of inside your home especially if your curtains are  
8 open, correct?

9 A. Yes.

10 Exhibit A at 118:8-120:10. It is therefore undisputed that any privacy claims are effectively  
11 moot in light of two things: (1) golf course behind the home and (2) the walking path next to  
12 Stephanie Street. If Plaintiff concedes that those two elements allow both golfers and people  
13 walking on the path to look directly into her home, there is certainly no greater intrusion on  
14 privacy regardless of what Malek builds on his property. There may even be less.

15 Accordingly, even assuming that Plaintiff were able to show that (1) it could maintain  
16 an action against Moving Defendants for and (2) it had not waived that action or the  
17 requested remedies, it still could not get past the critical legal hurdle that the very things it  
18 seeks to enforce – an implied easement for a view and greater privacy – are simply not  
19 available as a matter of Nevada law and never existed in the first place, respectively.  
20 Summary judgment is therefore warranted on all claims against the Moving Defendants.

#### 21 IV.

#### 22 CONCLUSION

23 The contract that was undisputedly reviewed executed by the Rosenberg binds  
24 Plaintiff and simply does not allow this action to proceed, regardless of merit. The operation  
25 of that contract and Nevada law alone necessitates summary judgment in favor of the Moving  
26 Defendants. Even apart from that fact, the view for which Plaintiff is suing to recover  
27 damages, in addition to declarative and injunctive relief, is not recognized under Nevada law.  
28 Plaintiff's golf-course lot has and always will have a golf-course view; the existence of a  
borrowed view over another, undeveloped piece of land in the opposite direction simply is  
not protected by Nevada law. Nor can Plaintiff recover from the loss of a "privacy" that

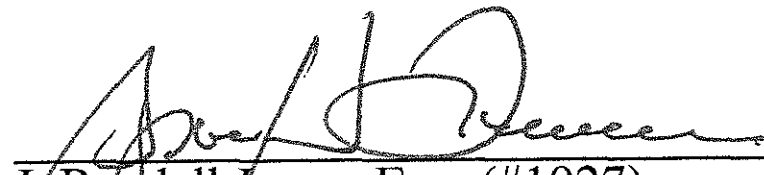
KEMP, JONES & COULTHARD, LLP  
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1 never existed in the first place due to the nature and location of the subject property.

2 Accordingly, and for all the foregoing reasons, Moving Defendants respectfully request that  
3 their instant motion for summary judgment be granted in its entirety.

4 DATED this 16<sup>th</sup> day of April, 2015.

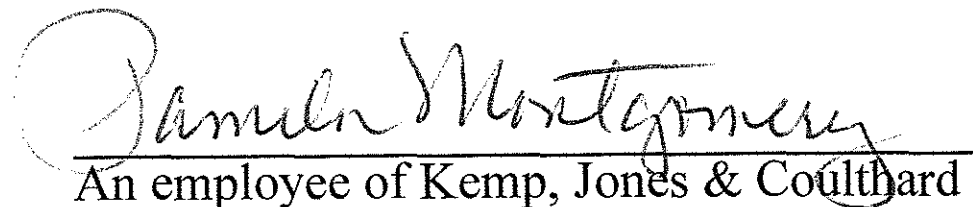
5 Respectfully submitted by:

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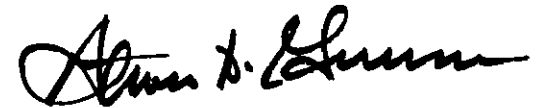
8 J. Randall Jones, Esq. (#1927)  
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13 Las Vegas, Nevada 89169  
14 *Attorneys for Defendants*  
15 *MacDonald Highlands Realty, LLC,*  
16 *Michael Doiron and FHP Ventures,*  
17 *A Nevada Limited Partnership*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 16<sup>th</sup> day of April, 2015, pursuant to NRCP 5(b), I e-  
20 served via the Eighth Judicial District Court electronic service system the foregoing  
21 **MOTION FOR SUMMARY JUDGMENT** to all parties on the e-service list.

22   
23 An employee of Kemp, Jones & Coulthard

# **TAB 21**



CLERK OF THE COURT

MSJ

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SHAHIN SHANE MALEK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

CASE NO.: A-13-689113-C  
DEPT NO.: I

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.

**DEFENDANT SHAHIN SHANE  
MALEK'S MOTION FOR SUMMARY  
JUDGMENT**

Defendant and Counterclaimant, Shahin Shane Malek ("Malek," or the "Defendant"), through his undersigned counsel of record, brings this Motion for Summary Judgment on both Plaintiff's claims against him, and his Counterclaim against Plaintiff/Counterclaim Defendant, under Nevada Rule of Civil Procedure 56(a) and (b). This Motion is supported by the points and authorities that

1 follow, the accompanying statement of material facts not genuinely in dispute, the depositions and  
2 other exhibits attached thereto, the pleadings and papers on file in this case, and any oral argument that  
3 may be present to the Court at this time of hearing.

4 DATED this 16th day of April, 2015.

5 THE FIRM, P.C.

6 BY: /s/ Jay DeVoy

7 Jay DeVoy, *of counsel*

8 Nevada Bar No. 11950

9 200 E. Charleston Blvd.

10 Las Vegas, NV 89104

11 Telephone: (702) 222-3476

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13 Attorneys for Defendant/Counterclaimant

14 SHAHIN SHANE MALEK

15 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

17 PLEASE TAKE NOTICE that the undersigned will bring the above-titled motion on for  
18 hearing on the 19 day of MAY, 2015, at 9:00A am / pm, or as soon thereafter as  
19 counsel may be heard, in Department I of the Eighth Judicial District Court, 200 South Third Street,  
20 Las Vegas, Nevada.

21 DATED this 16th day of April, 2015.

22 THE FIRM, P.C.

23 BY: /s/ Jay DeVoy

24 Jay DeVoy, *of counsel*

25 Nevada Bar No. 11950

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Attorneys for Defendant/Counterclaimant

SHAHIN SHANE MALEK

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Shane Malek's next-door neighbors are suing to stop construction of his already designed – and  
4 approved – home in the exclusive MacDonald Highlands community. In Barbara and Fredric  
5 Rosenberg's haste to buy another multi-million dollar property for their real estate portfolio, they  
6 performed no due diligence about Malek's construction plans on the lot next to their newly purchased  
7 house. Despite paying more than \$2 million for their house, the Rosenbergs never reviewed publicly  
8 available documents from the City of Henderson that showed the adjacent lots' zoning and boundaries.  
9 Upon discovering that Malek's lot extended farther back than they guessed, though, the Rosenbergs,  
10 through the trust that owns their property,<sup>1</sup> filed this suit to prevent construction of his home.

11 The Trust relies on four separate claims to hide the case's fatal flaw: Nevada law does not  
12 recognize the negative view easement they seek to enforce on Malek's property. First, the Trust  
13 claims an easement in Malek's property, despite having no legal basis to do so. Second, the Trust  
14 alleges "implied restrictive covenant," a claim that the Nevada Supreme Court has never recognized.  
15 This claim also seeks a negative view easement on Malek's property, despite Nevada law's  
16 prohibition. Third, the Trust states a claim for declaratory relief that is superfluous and duplicative of  
17 its easement and implied restrictive covenant claims. Fourth, the Trust alleges a claim for injunction,  
18 which is not a cause of action at all, but merely a remedy. None of these claims permit the Court to  
19 enjoin Malek from building his home.

20 The Trust's zeal to obstruct Malek's construction led it to wrongfully file a *lis pendens* on his  
21 property. The Trust's lawsuit never called the title or possession of Malek's property into question. In  
22 order to prevent Malek from building his home, though, the Trust recorded documents wrongly  
23 showing there was a cloud on the title to Malek's property – not once, but twice. After the Court  
24 expunged the Trust's *lis pendens* on Malek's property, the Rosenbergs had no valid explanation for  
25

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26 <sup>1</sup> Barbara and Fredric Rosenberg were the purchasers of 590 Lairmont Place in MacDonald Highlands,  
27 as their son, David Rosenberg, and his wife – its primary residents – could not qualify to purchase the  
28 property on their own. (Malek Statement of Undisputed Facts at 7). Barbara and Frederic Rosenberg  
took title to 590 Lairmont as The Fredric and Barbara Rosenberg Living Trust, the Plaintiff in this  
action. (*Id.* at 8) While Frederic and Barbara Rosenberg are the individuals driving this litigation, they  
shall collectively be referenced as the "Trust" unless otherwise noted.



1 their conduct. Similarly, the Trust has no defense to Malek’s counterclaim for slander of title. As set  
2 forth in the following memorandum, Malek is entitled to judgment in his favor on all claims – whether  
3 asserted by him or the Trust.

## 4 II. STATEMENT OF FACTS

5 Golf courses within Las Vegas’ most exclusive communities regularly sell parcels of land to  
6 the owners of adjacent land in order to reduce their geographical footprints and operating costs. (Malek  
7 Statement Of Undisputed Material Facts, or “MSOF” at 1) In recent years, Red Rock Country Club  
8 and the Southern Highlands Golf Community have seen several of these transactions. (*Id.* at 2, 3)  
9 MacDonald Highlands<sup>2</sup> has engaged in several of these transactions as well, either selling or leasing  
10 out-of-bound portions of the golf course to the owners of adjacent lots. (*Id.* at 1, 4) This lawsuit arises  
11 from one of these transactions, where DRFH Ventures LLC sold approximately 15,000 square feet of  
12 out-of-bounds land from the MacDonald Highlands golf course (Assessor Parcel Number (“APN”)  
13 178-28-520-001) (the “Golf Parcel”) to Malek. (*Id.* at 5) Among other relief, the Plaintiff does not  
14 wish for Malek to build on the Golf Parcel, which he now owns. (*Id.* at 6) The Trust seeks this  
15 outcome despite Malek paying for the Golf Parcel, re-zoning it for residential use through a lengthy  
16 process of public hearings, and planning to merge the Golf Parcel into his adjacent lot at 594 Lairmont  
17 long before Plaintiff began even looking to purchase the house next door. (*Id.* at 6, 26, 27, and 41)

### 18 A. Malek Purchases 594 Lairmont and Part of the Golf Course.

19 Malek, a resident of MacDonald Highlands since 2006, was looking for an undeveloped lot  
20 where he could build his dream home in the Summer of 2012. (*Id.* at 10, 11) Malek considered a  
21 number of communities throughout Las Vegas for this project, but ultimately selected to remain within  
22 MacDonald Highlands. (*Id.* at 11) Malek made up his mind as soon as he and his agent visited 594  
23 Lairmont Place (APN 178-27-218-002) (“594 Lairmont”). (*Id.* at 12) There, his real estate agent  
24 informed him that he could add an undeveloped, out-of-bounds portion of the golf course to the lot,  
25 increasing its size and allowing his future home to be closer to the golf course. (*Id.* at 13) Once Malek  
26

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27 <sup>2</sup> The MacDonald Highlands golf course, operated by Dragonridge Country Club, was originally  
28 owned by Dragonridge Properties LLC, which later changed its name to DRFH Ventures LLC; in  
2014, after the events alleged in this lawsuit, Pacific Links, Incorporated took over the operations of  
Dragonridge Country Club and assumed ownership of the golf course.

1 confirmed this fact with MacDonald Highlands Realty LLC and Michael Doiron, he resolved to  
2 purchase 594 Lairmont – along with the Golf Parcel – and construct his dream home. (*Id.* at 14, 15)

3 Before constructing his home, Malek needed to re-zone the Golf Parcel from public / semi-  
4 public land to residential land. This change was necessary so that Malek would be allowed to build on  
5 the Golf Parcel, and could submit his plans to the Design Review Committee (“DRC”) for approval.  
6 (*Id.* at 16) Created by the MacDonald Highlands Code of Covenants and Restrictions (CC&R’s), the  
7 DRC had to approve of all plans for new construction before building could begin. (*Id.* at 17) In  
8 fulfilling this task, the DRC relied on a set of design guidelines distributed to all property owners  
9 within MacDonald Highlands. (*Id.* at 18) The design guidelines were more restrictive than the City of  
10 Henderson’s ordinances, and were designed to preserve and enhance MacDonald Highlands’ unique  
11 character as an exclusive community in Las Vegas. (*Id.* at 19) As the design guidelines were only  
12 guidelines, rather than laws or inflexible rules, the DRC ultimately had broad discretion to approve  
13 construction plans depending on the totality of their unique circumstances – subject to the City of  
14 Henderson’s final approval. (*Id.* at 19-23) Thus, in order to build his home, Malek had to obtain the  
15 DRC’s approval of his plans, and had to re-zone the Golf Parcel from public land to a residential use to  
16 do so. (*Id.* at 24)

17 **B. MacDonald Highlands and the City of Henderson Re-Zone the Golf Parcel for**  
18 **Residential Use and its Annexation into 594 Lairmont.**

19 Malek knew that adding the Golf Parcel to 594 Lairmont would be a lengthy process and  
20 require the City of Henderson to re-zone the Golf Parcel. Malek paid MacDonald Highlands to retain  
21 B2 Development (“B2”) to shepherd the Golf Parcel through the City of Henderson’s re-zoning  
22 process, and have it re-zoned from public / semi-public land to residential use. (*Id.* at 25-27, 41)  
23 Having provided this service to several other properties in the community, MacDonald Highlands was  
24 no stranger to re-zoning portions of the golf course for residential use and merging them with adjacent  
25 lots. (*Id.* at 26)

26 MacDonald Highlands took all the steps necessary to comply with the City of Henderson’s  
27 zoning process. (*Id.* at 27) In particular, the City of Henderson requires a community meeting to occur  
28 before the re-zoning process formally begins, and further requires the applicant to send notice of the

1 community meeting to residents within a certain distance of the proposed zoning change. (*Id.* at 28,  
2 29) After that meeting, the City of Henderson's planning commission considers the re-zoning  
3 application and any community feedback from the meeting. (*Id.* at 30) Following the planning  
4 commission's approval, the proposed zoning change must be approved at two meetings of the  
5 Henderson City Council. (*Id.* at 31) Once the City Council approves the zoning change, the changes  
6 are reflected on the City of Henderson's zoning maps, with a final map recorded with Clark County  
7 once it has been signed and approved by each department within the City of Henderson. (*Id.* at 32, 33)

8 B2 mailed notices of an October 22, 2012 community meeting to discuss the Golf Parcel's  
9 zoning change well in advance of the meeting. (*Id.* at 34) During the October 22 meeting, there were  
10 no objections to MacDonald Highlands' planned re-zoning of the Golf Parcel. (*Id.* at 35) Similarly,  
11 nobody submitted any objections to the City of Henderson. (*Id.* at 36) The City of Henderson then  
12 conducted a planning commission meeting about the Golf Parcel's planned re-zoning. (*Id.* at 37)

13 On December 4, 2012, the City of Henderson's City Council passed a resolution approving the  
14 re-zoning the Golf Parcel from public / semi-public to residential use. (*Id.* at 38) This was the first of  
15 the two required meetings under the city's re-zoning procedures. The Henderson City Council  
16 approved the proposed zoning change again at its December 18, 2012 meeting. (*Id.* at 39, 40) Upon its  
17 passage, City of Henderson then recorded the ordinance with the Clark County Recorder on January 7,  
18 2013. (*Id.* at 41) However, it would not be until June of 2013 when the final map reflecting this  
19 zoning change collected its many necessary signatures from various departments in the City of  
20 Henderson and was recorded by the Clark County Recorder.<sup>3</sup> (*Id.* at 48)

21 The City of Henderson made a new map reflecting the Golf Parcel's new residential zoning  
22 available at the front desk of city hall by January 24, 2013. (*Id.* at 42-44) This map showed the Golf  
23 Parcel's new residential zoning. (*Id.* at 48) By mid-February 2013 the Golf Parcel's new residential  
24 zoning classification was reflected in the City of Henderson's interactive, Internet-based zoning map.  
25 (*Id.* at 45) The City of Henderson made this free, interactive tool available to the public so that users  
26 could see a zoning map for a specific address, as well as nearby pieces of property. (*Id.* at 46) By the

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27 <sup>3</sup> This recordation of the final map reflecting the Golf Parcel's residential zoning was a prerequisite to  
28 Malek recording his purchase of the Golf Parcel and its merger with 594 Lairmont, which was not  
recorded until June 26, 2013. (MSOF 48)

1 City of Henderson's own estimate, checking the zoning of lots near a particular address took less than  
2 five minutes. (*Id.* at 47)

3 During this time, Bank of America National Association ("BANA") owned 590 Lairmont Place  
4 (APN 178-27-218-003) ("590 Lairmont"), and received the requisite notices for Malek's re-zoning of  
5 the Golf Parcel.<sup>4</sup> (*Id.* at 49) The notice was sent to a valid address for BANA. (*Id.* at 34, 50) BANA  
6 did not respond to the notice, attend the October 22, 2012 neighborhood meeting, or take any other  
7 action after receiving the notice. (*Id.* at 51)

### 8 **C. The Rosenbergs Move to MacDonald Highlands.**

9 The Trust and its trustees, Barbara and Fredric Rosenberg, collectively own several pieces of  
10 real property. (*Id.* at 52) In addition to the trustees' 8,000 square foot, seven-bedroom primary  
11 residence in California, they also own a house in Los Alamitos, two condos in Manhattan Beach, and a  
12 house in Hermosa Beach. (*Id.*) Barbara Rosenberg has more than 25 years of experience selling  
13 residential real estate, and estimates she has sold more than 500 houses in her career. (*Id.* at 53, 54)  
14 David Rosenberg, her son and a beneficiary of the Trust, who assisted Barbara in purchasing 590  
15 Lairmont, is a licensed attorney and has lived in the Green Valley area since 2009. (*Id.* at 55)

16 In February 2013, Barbara and David Rosenberg began contacting BANA's bank-owned  
17 property services vendor, REO Management, in order to purchase 590 Lairmont before it was publicly  
18 listed for sale. (*Id.* at 56) Barbara Rosenberg sent numerous e-mails to BANA in order to purchase the  
19 property for \$1,750,000 in cash, and sent a letter of intent to buy 590 Lairmont on February 20, 2013.  
20 (*Id.* at 57) BANA declined the Rosenbergs' offer. (*Id.* at 58) After BANA listed 590 Lairmont for  
21 sale, Barbara Rosenberg ultimately made the winning bid to buy it for \$2,302,000 in cash, without any  
22 financing, and took title to the property in the Trust's name. (*Id.* at 59)

23 In its haste to buy 590 Lairmont, though, the Trust did not do any diligence on its multi-million  
24 dollar purchase. Although it would have taken less than five minutes to examine the zoning of  
25 MacDonald Highlands and the nearby Golf Parcel online, or a short visit to the front desk of  
26 Henderson's City Hall, the Trust did not do so. (*Id.* at 42-47, 60) In fact, none of Barbara, Frederic, or

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27 <sup>4</sup> BANA owned 590 Lairmont from approximately November 2, 2011, at which time it acquired the  
28 property through foreclosure, through the time it sold the property to the Trust on or about May 10,  
2013. (MSOF at 49)

1 David Rosenberg ever contacted the City of Henderson’s planning department to obtain more  
2 information about the community. (*Id.* at 60) When Barbara Rosenberg walked through 590 Lairmont  
3 for an inspection, despite waiving significant amounts of the Trust’s rights in that regard, she never  
4 even looked over to Malek’s property to see if any there were any signs of potential development. (*Id.*  
5 at 61, 62) If she had, she might have seen the stakes that had been on the Golf Parcel since December  
6 2012. (*Id.* at 63)

7 Prior to closing on 590 Lairmont, the Trust received and signed disclosures as to the  
8 diminished privacy it would experience by owning land directly on a golf course. (*Id.* at 64)  
9 Additionally, the Trust received and signed zoning disclosures that advised it, in bold type, to obtain  
10 more current zoning and master plan information from the City of Henderson. (*Id.* at 65, 66) The  
11 disclosure went on to provide the phone number and address for Henderson City Hall. (*Id.* at 66)  
12 Defendant Michael Doiron (“Doiron”), BANA’s realtor, provided these disclosures to the Trust’s  
13 representatives and advised them that the Trust had an additional five days to review the documents  
14 before finalizing 590 Lairmont’s purchase. (*Id.* at 67, 68) During that time, the Trust could still back  
15 out of the purchase. (*Id.* at 68) The Trust did nothing with this information, and its representatives  
16 signed all of the disclosures provided to them. (*Id.* at 59-68) Following these many disclosures, grace  
17 periods, and opportunities for further investigation, the Trust purchased 590 Lairmont from BANA  
18 “as-is, where-is,” and agreed to satisfy itself as to the condition of the property before closing. (*Id.* at  
19 69, 70)

20 **D. The Trust Finally Looks Into 594 Lairmont and the Golf Parcel – After Closing**  
21 **on 590 Lairmont.**

22 The Trust learned that Malek purchased the Golf Parcel “maybe a month or two” after closing  
23 on 590 Lairmont. (*Id.* at 71) Although this information was widely available before the purchase, the  
24 Trust learned about Malek’s purchase through Bob Diamond, David Rosenberg’s friend. (*Id.* at 72)  
25 Despite the Trust’s lack of research into the community before buying 590 Lairmont, Barbara and  
26 David Rosenberg immediately launched a campaign against Malek that culminated in this lawsuit.

27 When David Rosenberg met Malek for the first time, Malek hoped it would be a happy meeting  
28 between future neighbors. (*Id.* at 73) To Malek’s surprise, David Rosenberg expressed his rage and  
disbelief at Malek, threatening litigation and making it “very expensive” for Malek to build his home.

(*Id.* at 74) David Rosenberg then went to the offices for MacDonald Highlands Realty LLC (“MHR”) and began “screaming” at Doiron, accusing her of unspecified wrongs “over and over.” (*Id.* at 75) Doiron offered to meet with David Rosenberg and talk with him further. (*Id.* at 76) The Trust filed this lawsuit instead. (*Id.* at 76, 77)

#### **E. The Trust Files Suit to Keep Its Neighbor From Building His Home.**

The Trust filed this action on September 23, 2013. (*Id.* at 77) The Trust sued BANA, a national bank, on claims for breach of contract, unjust enrichment, and misrepresentation. (*Id.* at 78) The Trust also sued MHR, and a number of entities involved with the ownership and operation of the MacDonald Highlands community, on similar claims seeking money damages. (*Id.* at 79) In its amended complaint, the Trust added still another MacDonald Highlands-related entity, FHP Ventures, for related causes of action. (*Id.* at 80) Throughout the litigation, though, the Trust has sought only injunctive relief against Malek, and asked the Court to declare that he cannot use the property he owns in a manner approved by the DRC under its design guidelines. (*Id.* at 81) The Trust filed suit against Malek without even knowing what his potential plans were for the Golf Parcel. (*Id.* at 82) It even went so far as to file a *lis pendens* on his property, despite not calling the title or possession of Malek’s land into question in this action. (*Id.* at 83) The Court expunged the Trust’s *lis pendens* in January 2014, and Malek counterclaimed for slander of title. (*Id.* at 84, 85)

### **III. LEGAL STANDARD**

Motions for summary judgment are intended “to secure the just, speedy and inexpensive determination of every action.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026 (2005), quoting *Celotex Corp. v. Catrett*, 477 U.S. 316, 327 (1986). Summary judgment exists to avoid unnecessary trials where no material factual dispute exists. *N.W. Motorcycle Ass’n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9<sup>th</sup> Cir. 1994).<sup>5</sup> “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood*, 121 Nev. at 730, 121 P.3d at 1031.

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<sup>5</sup> Although this case analyzes the Federal Rules of Civil Procedure, the Nevada Rules of Civil Procedure closely track their federal counterparts, and thus federal precedent is persuasive in analyzing Nevada’s Rules. *Exec. Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 48, 53, 38 P.3d 872, 876 (2002).

1 A party opposing such a Motion for Summary Judgment must set forth specific facts showing  
2 that there is a genuine issue for trial and that it can produce evidence at the trial to support its claim.  
3 *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 894 P.2d 988 (1995). “A factual dispute is genuine  
4 when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.”  
5 *Wood*, 121 Nev. 724, 121 P.3d at 1031. “Where the record as a whole could not lead a rational trier of  
6 fact to find for the nonmoving party, there is no ‘genuine issue for trial,’” and summary judgment is  
7 appropriate. *Wood*, 121 Nev. 724, 121 P.3d 1026 n. 13.

8 Although the facts at issue must be construed in the light most favorable to the non-moving  
9 party in opposition to a motion for summary judgment, the opposing party “is not entitled to build a  
10 case on the gossamer threads of whimsy, speculation and conjecture.” *Collins v. Union Federal*  
11 *Savings and Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983); *citing Hahn v. Sargent*,  
12 523 F.2d 461, 467 (1<sup>st</sup> Cir. 1975). “[T]he non-moving party may not rest upon general allegations and  
13 conclusions” in opposing a summary judgment motion. *Wood*, 121 Nev. 724, 121 P.3d at 1030, *citing*  
14 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (2002)). Absent evidence of a genuine  
15 issue of material fact, summary judgment is appropriate. *Wood*, 121 Nev. at 731, 121 P.3d at 1030.

#### 16 IV. ARGUMENT

17 The Trust’s case against Malek rests upon a legal principle the Nevada Supreme Court has  
18 expressly rejected. In particular, the Trust wants to enjoin Malek from building on his property  
19 because doing so could affect its view and privacy. Nevada law specifically refuses to imply  
20 restrictive easements to protect those interests. The Trust next raises an identical cause of action,  
21 “implied restrictive covenant” that Nevada law has never recognized, should not recognize, and which  
22 seeks the same impermissible relief as its claim for easement. The remaining claims against Malek,  
23 seeking injunctive and declaratory relief, are merely remedies and not causes of action at all. Without  
24 an independent basis of liability, the Trust is entitled to neither. To the extent these are asserted as  
25 claims against Malek, he is entitled to judgment in his favor. Finally, the Trust’s conduct in this  
26 litigation has slandered Malek’s title to 594 Lairmont. By filing a *lis pendens* on 594 Lairmont in this  
27 action without asserting any claim for title to or possession of Malek’s property, and requiring Malek  
28 to incur attorneys’ fees to expunge the *lis pendens*, the Trust is liable for Malek’s counterclaim.

1           **A. Malek Is Entitled to Judgment in His Favor on Plaintiff’s Claim for Easement.**

2           The *sine qua non* of the Trust’s claims against Malek is that they seek a negative view  
3 easement against his use of the Golf Parcel. By acquiring BANA’s rights in 590 Lairmont, the Trust  
4 purchased its property subject to BANA’s decision not to object to MacDonald Highlands’ re-zoning  
5 of the Golf Parcel. To the extent there are any obligations running with the land in the Golf Parcel and  
6 594 Lairmont, they merely require Malek to comply with the design guidelines to construct his home,  
7 as Malek has done. The Trust’s apparent belief that property once used for a golf course – even as out-  
8 of-play areas indistinguishable from undeveloped desert land – can only be used for golf use in  
9 perpetuity, is erroneous.

10                   **1. Nevada Law Prohibits Negative View Easements to Protect View or Privacy.**

11                                   *“What we are losing possibly is privacy”*

12                                   *-Barbara Rosenberg, Trustee for Plaintiff, December 8, 2014.<sup>6</sup>*

13           The Trust’s lawsuit seeks this Court’s decree that Malek cannot build on the Golf Parcel.  
14 Moreover, the Trust seeks this remedy despite there being no written agreement, express covenant, or  
15 other restriction that would prohibit Malek from doing so. The Trust’s desired relief is nothing more  
16 than an implied restrictive covenant, and is expressly prohibited by Nevada law. *Probasco v. City of*  
17 *Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969) (noting “Nevada has expressly repudiated the  
18 doctrine of implied negative easement of light, air and view for the purpose of a private suit by one  
19 landowner against a neighbor,” and extending this holding to the realm of eminent domain), *citing*  
20 *Boyd v. McDonald*, 81 Nev. 642, 408 P.2d 717 (1965).

21           The Trust has not identified, and cannot identify, any express easement prohibiting Malek from  
22 building his home on the Golf Parcel. It instead relies on this impermissible theory of an implied  
23 negative easement in order to enjoin Malek from obstructing its view, such as it is. The Golf Parcel  
24 consists of plain desert land, replete with scrub grass and rocks. (MSOF at 86) Beyond the Golf Parcel  
25 lies Stephanie Street, with a public sidewalk, and the employee parking lot for Dragonridge County  
26 Club. (*Id.* at 87) Because of 590 Lairmont’s elevation relative to the nearby street and adjacent golf  
27 course, it already had diminished privacy, both due to passing golfers and a fishbowl effect based on

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<sup>6</sup> (MSOF at 90)



1 its preexisting location and features. (*Id.* at 64, 87, 88) When the Trust purchased 590 Lairmont, its  
2 representatives knew Malek would begin construction next door at 594 Lairmont. (*Id.* at 113) Yet, the  
3 Trust maintains that the loss of its view and privacy is so valuable as to make the property worthless, at  
4 least to the trustee.<sup>7</sup> (*Id.* at 89). The Trust also contends in its discovery responses that the loss of  
5 privacy from Malek's potential construction, even when his building plans were unknown, would harm  
6 its privacy and view. (*Id.*)

7 Simultaneously, the Trust is unable to identify any rights that would allow for an easement on  
8 the Golf Parcel. Nevada law recognizes that easements may arise expressly, common reservation, or  
9 necessity. *Jackson v. Nash*, 109 Nev. 1202, 1212, 866 P.2d 262, 269 (1993) (declining to find  
10 easement and expressing disinclination to imply easements, and holding that easements). The law  
11 disfavors recognizing implied easements, even when not prohibited by law. *Id.*, quoting *Smo v. Black*,  
12 93 Ore. App. 234, 761 P.2d 1339, 1342 (Or. Ct. App. 1988); *Probasco*, 85 Nev. at 565, 459 P.2d at  
13 774 (prohibiting implied easements to protect view, light, and privacy). The Trust's amended  
14 complaint makes no allegations that would show the existence of an easement by necessity or by its  
15 prior use; nor could it, as the Trust purchased 590 Lairmont after the City of Henderson voted to  
16 changed the Golf Parcel's zoning. *Jackson*, 109 Nev. at 1208, 866 P.2d at 267. To the extent any  
17 restrictions exist on the Golf Parcel, they merely require Malek to comply with DRC procedures and  
18 obtain its approval before building his home. Malek has fulfilled his obligations and these restrictions  
19 pose no restriction to his construction on the Golf Parcel, as explained below.

20 The Trust has not identified any interests or rights that allow the Court to impose an easement  
21 on the Golf Parcel. Although it seeks to stop Malek's construction with this litigation, it knew before  
22 buying 590 Lairmont that there would be construction on his lot (MSOF at 113). The only potential  
23 losses it has identified expressly do not permit the Court to find a negative easement under Nevada law  
24 (MSOF at 90). The Trust's claim for easement fails, and Malek is entitled to judgment in his favor for  
25 this reason alone.

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27 <sup>7</sup> This stands in contrast with the principle that development is more desirable than undeveloped land,  
28 and that developments improve views – a premise that the Trust has been unable to controvert. (MSOF  
at 91)

1                   **2. By Assuming Bank of America's Rights in the Property, the Trust Forewent**  
2                   **any Rights it May Have Ever Had to Dispute Malek's Use of the Golf Parcel.**

3                   By acquiring 590 Lairmont "as is" from BANA, the Trust acquired BANA's extant rights in  
4 the property and now stands as BANA's successor in interest to the property. *Title Ins. & Trust Co. v.*  
5 *Chicago Title Ins. Co.*, 97 Nev. 523, 526, 634 P.2d 1216, 1218 (1981) ("one who has acquired legal  
6 title by deed [...] is entitled to the status of a successor in interest"). As BANA's successor in interest,  
7 the Trust acquires the same rights BANA had in 590 Lairmont at the time of purchase. *See Home*  
8 *Builders Ass'n of Cent. Ariz. v. City of Maricopa*, 215 Ariz. 146, 151, 158 P.3d 869, 874 (Ct. App.  
9 2007) (describing successor-in-interest as having the same rights as the original owner); *Augusta Court*  
10 *Co-Owners' Ass'n v. Levin, Roth & Kasner*, 971 S.W. 119, 126 (Tex. App. 1998) (describing  
11 successor-in-interest as "stepping into the shoes" of another). As such, the Trust acquired 590  
12 Lairmont subject to BANA's waiver of the right to object to the City of Henderson's re-zoning of the  
13 Golf Parcel.

14                   During the time BANA owned 590 Lairmont, MacDonald Highlands sought to re-zone the  
15 Golf Parcel and filed applications to do so. (MSOF at 34-49) The City of Henderson approved the  
16 MacDonald Highlands applications to re-zone the Golf Parcel in January 2013, before the Trust's  
17 purchase of 590 Lairmont. (*Id.* at 41, 49, 70) While B2 sent all of the requisite notices to BANA,  
18 BANA never objected to any re-zoning of the Golf Parcel. (*Id.* at 50, 51) Despite having the ability to  
19 object to the Golf Parcel's rezoning, and notice of the actions necessary to do so, BANA did nothing.  
20 (*Id.*) BANA's election to not enforce its rights to object waived its right under Nevada law. *Nev.*  
21 *Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007) (holding  
22 that waiver can be found where a party engages in conduct "so inconsistent with an intent to enforce  
23 [a] right as to induce a reasonable belief that the right has been relinquished"). Where BANA had a  
24 right to object to a proposed change to the Golf Parcel's zoning while it owned 590 Lairmont, it  
25 refused to exercise that right, and its waiver is apparent as a matter of law. *Id.*

26                   Even if the Trust could have somehow repudiated BANA's waiver, it failed to do so. The  
27 Trust should saw stakes that were in the Golf Parcel before buying 590 Lairmont. Even if the Trust  
28 knew of the stakes' existence, it never thought to ask anyone about what they might mean. Nor did the  
Trust deem it necessary to seek publicly available information from the City of Henderson about the

1 Golf Parcel's potential use. (MSOF at 60) Prior to the Trust purchasing 590 Lairmont, it could have  
2 seen the zoning for surrounding lots on the City of Henderson's website in under five minutes. (*Id.* at  
3 45-47) MacDonald Highlands Realty and BANA provided the Trust with express, written notice of  
4 the opportunity to conduct due diligence, notice of the availability of up-to-date zoning information  
5 from the City of Henderson, and up to 5 days to do so before spending more than two million dollars  
6 on the trustees' "dream home." (*Id.* at 61-68, 92) The Trust did nothing. (*Id.* at 60) This conduct, like  
7 BANA's when it had notice of its right to object to the City of Henderson's re-zoning of the Golf  
8 Parcel, shows that the Trust affirmatively chose not to exercise its right to research the property  
9 surrounding 590 Lairmont. *Nev. Yellow Cab*, 123 Nev. at 49, 152 P.3d at 740. Even if BANA  
10 somehow did not waive the right to dispute Malek's planned use or re-zoning of the Golf Parcel, the  
11 Trust's conduct waived it for itself.

### 12 **3. The Golf Course and Construction Deed Restrictions Do not Prohibit Malek** 13 **from Building on the Golf Parcel.**

14 To the extent there are any restrictions on Malek's development of the Golf Parcel, they subject  
15 it to the DRC's authority to approve any plans for construction upon it (MSOF at 93, 94). Neither the  
16 DRC's guidelines, nor any other restriction on the Golf Parcel, prohibit Malek from building on the  
17 Golf Parcel. Instead, the guidelines only require Malek to take the same steps to obtain approval of his  
18 planned home construction that any homeowner in MacDonald Highlands must take. Malek fulfilled  
19 these obligations.

20 Malek submitted numerous versions of his plans to the DRC. (MSOF 95) The DRC advised  
21 Malek about how to bring his plans into compliance with the DRC's expectations. (*Id.* at 24, 96) Once  
22 he did so, the DRC approved Malek's construction plans and authorized him to progress with  
23 construction. (*Id.* at 97)

24 The DRC has broad discretion in applying its design guidelines when approving Malek's plans.  
25 *Miami Lakes Civic Ass'n v. Encinosa*, 699 So. 2d 271, 272 (Fla. 3d DCA 1997) (finding architectural  
26 review committee's decisions valid unless "arbitrary and unreasonable"), *quoting Coral Gables Invs.,*  
27 *Inc. v. Graham Cos.*, 528 So. 2d 989, 990 (Fla. 3d DCA 1988); *see also Tierra Ranchos Homeowners*  
28 *Ass'n v. Kitchukov*, 216 Ariz. 195, 201, 165 P.3d 173, 179 (Ct. App. 2007) (adopting Restatement

1 (Third) of Property approach to architectural review committee conduct, requiring them to discharge  
2 their duties reasonably). Within MacDonald Highlands, “[t]here is an ability within the [design]  
3 guidelines to have some leeway depending on the overall quality of the project or what they are trying  
4 to do architecturally,” or if there are site-specific issues. (MSOF at 21) Here, the DRC discharged this  
5 obligation, as evinced by the revisions the DRC required of Malek before approving his plans. (*Id.* at  
6 95-97) The DRC’s obligation was not to enforce any statutes, regulations, or rules, but merely to  
7 apply the design guidelines. (*Id.* at 17-21) As the design guidelines’ very name suggests, these are  
8 guidelines, and may be liberally construed to fulfill their aim of cultivating a unique, exclusive, and  
9 aesthetically pleasing community. (*Id.* at 20-21) The design guidelines provide, in part, as follows:

10 MacDonald Highlands is planned as one of the premier luxury communities in the  
11 United States.

12 [...]

13 The [house] design must fully analyze the physical characteristics of the lot, including  
topography, slope, view, drainage, vegetation, and access.

14 [...]

15 The siting of individual structures on the lot should consider the following three primary  
factors: 1) Solar Orientation; 2) View Orientation; and 3) Relationship to adjacent lots  
and the overall community. The Design Review Committee will consider each lot  
independently, and will give extensive consideration to [these factors]. (*Id.* at 119-121)

16  
17 While the design guidelines place conditions on Malek and other property owners who wish to  
18 build on their land, they do not impose an absolute barrier to construction on the Golf Parcel. The  
19 design guidelines do not create an easement barring Malek’s construction on the Golf Parcel. (*Id.* at  
20 94, 97) If they did, the DRC would not have approved Malek’s construction on the Golf Parcel, in  
21 addition to the annexation of several other parts of the golf course to other properties. (*Id.* at 26, 97)  
22 The Trust’s theory fails to establish an easement by which the Trust can recruit this Court to stop its  
23 neighbor from building his house.

#### 24 **4. The Golf Parcel Specifically – and Golf Course Property in General – Is Not** 25 **Subject to Easements Prohibiting Construction.**

26 As part of Malek’s re-zoning of the Golf Parcel, B2 applied for the City of Henderson to vacate  
27 any easements that may have been present on it. (MSOF at 25, 98) While the City of Henderson  
28 initially accepted B2’s vacation application, it ultimately took no action on it because there were no

1 easements on the Golf Parcel to vacate. (*Id.* at 99) As there were no easements on the Golf Parcel for  
2 the City of Henderson to vacate, there cannot now be easements in the Golf Parcel for the Trust to  
3 enforce against Malek and enjoin his construction.

4 This absence of golf-specific easements is hardly surprising, and has allowed MacDonald  
5 Highlands and other golf communities to sell their golf course land to adjacent landowners for years.  
6 (*Id.* at 1, 4, and 26). MacDonald Highlands sold, leased, or is in the process of selling portions of the  
7 golf course to nearly a half-dozen other homeowners adjacent to the golf course (*Id.* at 1, 26). In  
8 MacDonald Highlands alone, the re-zoning of golf course land for sale or lease to property owners, has  
9 occurred for years. (*Id.*) This pattern of selling, re-zoning, and annexing golf course property into  
10 residential lots is inimical to a pattern of development that prohibits golf course land from ever being  
11 used for any other purpose.<sup>8</sup> *Glenbrook Club v. Match Point Props., LLC*, Case No. 49955, 2011 Nev.  
12 *Unpub. LEXIS 68* at \*9-10 (2011) (finding that there are no use restrictions on a tennis court area  
13 repurposed for a different use). MacDonald Highlands' conduct is not unique: Other exclusive golf  
14 communities have sold portions of their golf courses to adjacent homeowners. (*Id.* at 1)

15 If the Trust's contention that there is an easement against residential use inherent in any  
16 property that used to be part of a golf course has merit, the consequences will be felt far beyond this  
17 case. For the Court to recognize such an easement will invite litigation from dozens of other  
18 homeowners who wish to control their neighbors' land, even without the existence of an express  
19 easement as Nevada law requires. Other homeowners who, like Malek, followed the rules in obtaining  
20 and using their golf property will be faced with months of crushingly expensive litigation by neighbors  
21 who want to control the use of property they do not even own. Nevada law has, thus far, prevented  
22 this outcome. Any change to it, whether real or perceived, will invite others to test its limits and turn  
23 neighbors into defendants, to be released only when their land use satisfies the plaintiff's demands.

24 **B. Plaintiff's Claim for Implied Restrictive Covenant Must Fail.**

25 The Trust next makes a claim for implied restrictive covenant, a novel theory of liability not  
26 previously recognized in Nevada, in order to keep Malek from building his home. The Trust's  
27

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28 <sup>8</sup> Additionally, such conduct is unnecessary to reach the same conclusion. *See Glenbrook*, 2011 Nev.  
*Unpub. LEXIS 68* at \*9-10.

1 proposed cause of action conflicts with existing Nevada law, and Nevada’s Supreme Court would not  
2 recognize the new claim. Even if the Trust’s claim for implied restrictive covenant was legally  
3 recognizable, and not wholly duplicative of its claim for easement, it would fail in this case.

4 **1. Nevada Law Does Not Recognize a Claim for Implied Restrictive Covenant.**

5 Nevada has never recognized a cause of action for implied restrictive covenant. Nevertheless,  
6 the Trust brings this claim in an attempt to perform an end-run around *Probasco* and Nevada’s  
7 prohibition of negative view easements. Nevada law disfavors the Court recognizing this new cause of  
8 action. Additionally, it would contradict existing precedent for this Court to credit it.

9 **i. Nevada’s Legal Tradition Disfavors Recognizing New Causes of Action.**

10 The Trust’s second cause of action against Malek assumes that Nevada law recognizes a cause  
11 of action for implied restrictive covenant. (MSOF 100) It does not, and it will not. Nevada’s Supreme  
12 Court holds that altering common law rights, creating causes of action, and fashioning new remedies to  
13 legal wrongs is a task for the legislature - not the courts. *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16  
14 P.3d 435, 440 (2001) (declining to recognize cause of action for “medical monitoring” under Nevada  
15 law), *citing Nat’l R.R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers*, 414 U.S. 453, 457-58  
16 (1974) (endorsing the maxim *expression unius est exclusio alterius* in analyzing the availability of  
17 legal claims, which prohibits theories of liability not expressly authorized). Although Nevada’s  
18 Supreme Court may recognize new causes of action, it “construe[s] such power narrowly and  
19 exercise[s] it cautiously.” *Badillo*, 117 Nev. at 42, 16 P.3d at 440.

20 Nevada’s Supreme Court has closely guarded its power to recognize new causes of action.  
21 Even if a cause of action exists in a foreign jurisdiction, Nevada’s Supreme Court is under no  
22 obligation to adopt it, and in the past has expressly prohibited claims recognized by other courts.  
23 *Badillo*, 117 Nev. at 39-40, 16 P.3d at 438-40 (expressly declining to recognize claim for “medical  
24 monitoring” under Nevada law despite more than a dozen state and federal courts recognizing the  
25 claim under other states’ laws). The Nevada Supreme Court has also refused to recognize causes of  
26 action raised in the alternative to a primary theory of liability, much as the Trust hopes to use its claim  
27 of implied restrictive covenant as an alternative means to an impermissible end if its easement claim  
28 fails. In *Greco v. United States*, a case involving the birth of a child where doctors failed to timely

1 diagnose significant fetal defects, the plaintiff proposed a novel claim of “wrongful life” in an effort to  
2 recover damages for the child’s care as an adult if they were otherwise prohibited. 111 Nev. 405, 408-  
3 09, 893 P.2d 345, 347-48 (1995). The Court declined to recognize the claim, finding the question of  
4 whether it was better to not be born at all than to face a life of disfigurement to be “more properly left  
5 to the philosophers and theologians,” and one that courts could not resolve as a matter of law. *Greco*,  
6 111 Nev. at 409, 893 P.2d at 348, *quoting Becker v. Schwartz*, 46 N.Y.2d 401, 411 (N.Y. 1978), and  
7 *citing Gleitman v. Cosgrove*, 49 N.J. 22, 28 (N.J. 1967).

8 More recently, Nevada declined to recognize a cause of action for “medical monitoring,” which  
9 was intended to compensate cigarette smokers for ongoing medical costs arising from their tobacco  
10 use. *Badillo*, 117 Nev. at 44. Nevada’s Supreme Court considered three factors in declining to  
11 recognize the cause of action, even where other states had. First, the questions of causality and proof  
12 regarding the harms caused by long-term exposure to cigarette smoke, and attribution to defendants,  
13 did not lend themselves to formulating a provable tort. *Id.* at 43. Second, the Nevada Supreme Court  
14 recognized that states recognizing medical monitoring claims had inconsistent elements, indicating that  
15 there was no clear standard for Nevada to adopt. *Id.* These jurisdictions also disagreed as to whether  
16 physical injury was required to prove a claim for medical monitoring; some jurisdictions required  
17 proof of a physical injury, while others did not. *Id.* at 43-44. Finally, facing an uncertain patchwork of  
18 standards to prove a medical monitoring claim – many of which contradicted one another – the Nevada  
19 Supreme Court declined to recognize it as a cause of action. *Id.* at 44. As explained below, the same is  
20 true of the Trust’s claim for implied restrictive covenant.

21 **ii. Nevada Law Will Not Recognize The Trust’s Implied Restrictive**  
22 **Covenant Claim, as it Embraces the Concerns Articulated in *Badillo***  
23 **and Calls on the Court to Make Speculative, Subjective Decisions.**

24 All of the factors the Nevada Supreme Court relied on in declining to recognize a medical  
25 monitoring cause of action in *Badillo* are present here. Few states have recognized a claim of implied  
26 restrictive covenant, and their scant case law on the claim is inconclusive and disjointed. Finally, the  
27 question of whether a court may impose an implied restrictive covenant depends on subjective,  
28 difficult-to-prove analysis that led the Nevada Supreme Court to decline recognizing other causes of  
action in the past. *Badillo*, 117 Nev. at 43; *Greco*, 111 Nev. at 409.

1       The few states to recognize and speak on causes of action for implied restrictive covenants  
2 have disparate standards for imposing them. Under Tennessee law, implied restrictive covenants are  
3 disfavored and may only be imposed if a purchaser has notice of the restrictions, but may arise 1) by  
4 necessity; 2) by conveying property with restrictions under a general plan or scheme of development;  
5 or 3) by reference to a plat, so long as the purchaser has notice of the restrictions. *Arthur v. Lake Tansi*  
6 *Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979) (holding there was no implied negative easement  
7 preventing the relocation of golf holes and construction of a marina to protect the plaintiffs' view and  
8 privacy), *citing Waller v. Thomas*, 545 S.W. 2d 745, 747 (Tenn. App. 1976). In contrast, Texas law  
9 allows a claim for implied restrictive covenant where 1) the grantor intended to adopt a scheme or plan  
10 of development that encompassed both the property conveyed and the property retained; 2) the grantor  
11 subdivided the property lots and included in the deeds of the properties conveyed substantially uniform  
12 restrictions designed to further the scheme or plan; and 3) the subsequent purchaser had actual or  
13 constructive notice of the restrictions' existence. *Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990),  
14 *citing Minner v. City of Lynchburg*, 204 Va. 180, 188, 129 S.E.2d 673, 679 (1963); *Davis v. Johnston*,  
15 Case No. 03-10-00712-CV, 2012 Tex. App. LEXIS 5249 at \*89 (Tex. Ct. App. June 28, 2012). Finally,  
16 Georgia's courts have declined to articulate a crisp standard for claiming an implied restrictive  
17 covenant, but acknowledge that one may exist where restrictions are created by deed, by plat or  
18 common subdivision plan, or by other specific representations as to particular areas of land. *Knotts*  
19 *Landing Corp. v. Lathem*, 256 Ga. 321, 323, 348 S.E.2d 651, 653 (1986); *Peck v. Lanier Golf Club,*  
20 *Inc.*, 315 Ga. App. 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012).

21       None of these standards align to articulate a consistent standard for a claim of implied  
22 restrictive covenant. In Georgia's case, there is not even a set standard; rather, there is a loose general  
23 guide for its courts to determine, on a fact-specific basis, whether an implied restrictive covenant  
24 exists. *See Peck*, 315 Ga. App. at 178-79, 726 S.E. at 445. Tennessee allows an implied restrictive  
25 covenant by under circumstances where Texas does not; in contrast, Texas has more specific standards  
26 for a common scheme of development that would give rise to an implied restrictive covenant.  
27 *Compare Evans*, 796 S.W.2d at 466 and *Arthur*, 590 S.W.2d at 927. This inconsistency weighs  
28 against Nevada law recognizing a cause of action for implied restrictive covenant – a position other



1 courts have adopted when facing this claim. *Chase v. Burrell*, 474 A.2d 180, 182 (Me. 1984); *Olson v.*  
2 *Albert*, Case No. CV-86-61, 1986 Me. Super. LEXIS 155 at \*4 (Me. Super. Ct., July 15, 1986).

3 Finally, the nature of the Trust's claim for implied restrictive covenant underscores the dangers  
4 of subjective claims for relief the Nevada Supreme Court warned of in declining prior requests to  
5 recognize new causes of action. *Badillo*, 117 Nev. at 43; *Greco*, 111 Nev. at 409. The Trust claims its  
6 view of undeveloped desert land, a road, and a parking lot will be obstructed and cause it irreparable  
7 harm without injunctive relief.<sup>9</sup> (MSOF 86-88, 90) While the Trust views this as an unspeakable  
8 wrong, the general consensus of real estate developers is that construction improves views over  
9 undeveloped land – including on the Golf Parcel. (*Id.* at 91) This question's subjective nature<sup>10</sup> makes  
10 it unfit for judicial resolution under Nevada law, and entitles Malek to judgment in his favor. *See*  
11 *Greco*, 111 Nev. at 409.

12 **2. Even if Nevada Recognized a Claim for Implied Restrictive Covenant, The**  
13 **Trust's Use of it Impermissibly Circumvents Nevada's Prohibition of Negative**  
14 **View Easements.**

15 While Nevada has not recognized a claim for implied restrictive covenant, jurisdictions that  
16 allow the claim have issued grave warnings against its use:

17 [T]he doctrine should be used and applied with extreme caution, for it involves difficulty  
18 and lodges discretionary power in a court of equity to deprive a man of his property, to a  
19 degree, by imposing a servitude of implication.

20 *Davis v. Johnston*, Case No. 03-10-00712-CV, 2012 Tex. App. LEXIS 5249 at \*89 (Tex. Ct. App. June  
21 28, 2012), citing *Harbor Ventures Inc. v. Dalton*, Case No. 3-10-00690-CV, 2012 Tex. App. LEXIS at  
22 \*11 (Tex. Ct. App. May 18, 2012) (quoting *Saccomanno v. Farb*, 492 S.W. 2d 709, 713 (Tex. 1973));  
23 see also *Waller v. Thomas*, 545 S.W. 2d 745, 747 (Tenn. App. 1976) (“restrictive covenants are to be  
24 strictly construed and will not be extended by implication and any ambiguity in the restriction will be  
25 resolved against the restriction”). Utah's Supreme Court has generally observed that “restrictive

26 <sup>9</sup> Even if the Court credits the Trust's concerns, they are not valid bases for an implied easement in  
27 Malek's property, as set forth in *Probasco*, 85 Nev. at at 565, 459 P.2d at 774.

28 <sup>10</sup> This consideration likely influenced the Nevada Supreme Court's prior decision to prohibit implied  
negative easements for view, light, air, and privacy, as each of these considerations were – and are –  
highly individualized and specific. (*See* MSOF 86-91)

1 covenants are not favored in the law and are strictly construed in favor of the free and unrestricted use  
2 of property,” and an implied restrictive covenant must be “plain and unmistakable,” or necessary by  
3 law. *St. Benedict’s Dev. Co. v. St. Benedict’s Hosp.*, 811 P.2d 194, 198 (Utah 1991). An implied  
4 restrictive covenant is inappropriate in this case, though, because it is merely a prohibited negative  
5 view easement in disguise.

6 The Trust claims “an implied restrictive covenant running with the land requires the Golf  
7 Parcel to be used as part of the 18-hole golf course and for no other purpose.” (MSOF at 101) The  
8 Amended Complaint alleges that the implied restrictive covenant binds Malek and forbids him from  
9 building on the Golf Parcel. (*Id.* at 102) By bringing this claim, the Trust seeks the same negative  
10 view easement as its cause of action for easement: To keep Malek from building on his property.

11 As Barbara Rosenberg explained, Malek’s hypothetical construction would impair the Trust’s  
12 secondary, borrowed view from 590 Lairmont. (*Id.* at 103) This type of view is neither permanent nor  
13 guaranteed. (*Id.* at 104). To interpret the Trust’s desired implied restrictive covenant on Malek’s use  
14 of the Golf Parcel as anything but a negative view easement would improperly exalt form over  
15 substance. *Brad Assocs. v. Nev. Fed. Fin. Corp.*, 109 Nev. 145, 149, 848 P.2d 1064, 1067 (1993)  
16 (holding that allowing Nevada’s fictitious firm name statute to dismiss an action by partners whose  
17 identities were known to the defendant during their course of dealing would “be a classic case of form  
18 over substance”); *see Neponsit Property Owners’ Ass’n v. Emigrant Industrial Sav. Bank*, 278 N.Y.  
19 248, 260 (N.Y. 1938) (“any distinction or definition which would exclude [a particular easement] from  
20 the classification of covenants which ‘touch’ or ‘concern’ the land would be based on form and not on  
21 substance.”) Just as the Trust’s claim for easement seeks prohibited relief, its claim for implied  
22 restrictive covenant fails for the same reason.

### 23 **3. Under the Standards of Foreign Jurisdictions, Plaintiff Still Cannot Obtain an** 24 **Implied Restrictive Covenant over Malek’s Use of the Golf Parcel.**

25 Even if Nevada recognized a claim for implied restrictive covenant, and this Court found that  
26 the Trust’s claim under that theory sought some remedy other than a negative view easement  
27 prohibited under *Probasco*, Malek still would be entitled to judgment in his favor. While the standards  
28 established in Tennessee, Texas, and Georgia all differ, all consider the property deed or plat

1 restrictions – if any – on the property supposedly subject to a use restriction. *Compare Arthur*, 590  
2 S.W.2d at 927, *Davis*, 2012 Tex. App. LEXIS 5249 at \*88, and *Peck*, 315 Ga. App. at 178-79, 726 S.E.  
3 at 445. To that end, the Trust’s claim for implied restrictive covenant is duplicative of its claim for  
4 easement, and fails for the same reasons stated above.

5 **i. The Trust’s Claims Fail Under Tennessee Law.**

6 Tennessee law will recognize an implied restrictive covenant under limited circumstances, and  
7 expresses great reservation in doing so. *Waller*, 545 S.W. 2d at 747 (cautioning against the imposition  
8 of implied restrictive covenants). When a transferee has notice of a restricted use, an implied  
9 restrictive covenant may arise 1) by necessity; 2) by conveying property with restrictions under a  
10 general plan or scheme of development; or 3) by reference to a plat. *Arthur*, 590 S.W.2d at 927. As  
11 explained in the preceding sections, none of these factors are present or even alleged in this case. The  
12 Trust cannot produce any evidence showing it could have an implied easement in the Golf Parcel by  
13 necessity. This fact is so obvious to the Trust that it did not even allege necessity as a basis for an  
14 easement or implied restrictive covenant in its amended complaint. (MSOF at 105) As to the  
15 remaining two categories, the only restrictions that exist on Malek’s property require him to obtain  
16 DRC approval for his planned construction – which he has done. (*Id.* 21, 24, 94-97) In light of  
17 MacDonald Highlands’ prior sales of golf course property to surrounding landowners (*Id.* at 26, 27),  
18 there is no basis for the Court to find that a general scheme or development or plat reference exists that  
19 requires golf course property remain part of a golf course indefinitely.

20 **ii. The Trust’s Claim Also Fails Under Texas Law.**

21 The Trust’s cause of action for implied restrictive covenant cannot succeed under Texas’  
22 standard for this claim. Texas law will find a negative implied restrictive covenant where a plaintiff  
23 proves: three elements 1) the grantor intended to adopt a scheme or plan of development that  
24 encompassed both the property conveyed and retained; 2) the grantor subdivided the property into lots  
25 and included in the deeds of the properties conveyed substantially uniform restrictions designed to  
26 further the scheme or plan; and 3) the purchaser against whom an easement is sought had subsequent  
27 actual or constructive notice of the existence of the restrictions on the other properties in the scheme or  
28 development. *Davis*, 2012 Tex. App. LEXIS 5249 at \*88; *Harbor Ventures*, 2012 Tex. App. LEXIS at

1 \*11. The evidence prevents the Trust from succeeding on this claim, and renders it unable to satisfy  
2 these elements.

3 MacDonald Highlands never intended to adopt a scheme or development that prohibited  
4 development on land previously part of the golf parcel. It sold the Golf Parcel to Malek, and  
5 contemplated selling it to 594 Lairmont's prior owner, with the understanding that it would increase  
6 his lot size and allow him to build his home closer to the golf course. (MSOF at 13-15) This belies  
7 the Trust's argument that the Golf Parcel was never intended or permitted for any use other than a golf  
8 course. For years, MacDonald Highlands has sold portions of its golf course to homeowners in order to  
9 increase their lot sizes (*Id.* at 26, 27). MacDonald Highlands did impose conditions onto its properties  
10 by requiring them to follow the DRC's design guidelines, but did not include any such restrictions on  
11 use of parts of the golf course. (*Id.* at 93, 94) The commonality of this practice within MacDonald  
12 Highlands and other golf communities compels the opposite conclusion, that there are no restrictive  
13 covenants limiting the use of golf course property for that purpose alone. (*Id.* at 26-27)

14 **iii. Finally, the Trust's Claim Fails Under Georgia Law As Well.**

15 Georgia has not articulated a standard for finding an implied restrictive covenant as sharply as  
16 Tennessee or Texas. Georgia law recognizes that an implied restrictive covenant can arise from a  
17 common recorded plat containing easements and restrictions, or by relying on express assurances that  
18 a property feature would remain unchanged. *Peck*, 315 Ga. App. at 178-79, 726 S.E. at 445, *citing*  
19 *Knotts Landing*, 256 Ga. at 323-324, 348 S.E. at 653. Even when articulating and applying this  
20 standard, the *Peck* court found there was no implied restrictive covenant for plaintiffs to enforce. 315  
21 Ga. App. at 181-82, 726 S.E. at 447. The *Peck* court specifically determined there was no evidence  
22 that the plaintiff had acquired any rights in the use or preservation of the golf course, and did not even  
23 seek – let alone rely on – any assurances that the golf course would remain in place. *Id.*

24 The same facts that led the Georgia Court of Appeals to conclude that the *Peck* plaintiffs could  
25 not obtain an implied restrictive covenant against the defendants are present here. There is no plat or  
26 common scheme filing requiring the golf course to remain a golf course in perpetuity, as MacDonald  
27 Highlands has regularly sold portions of it to other landowners. (MSOF at 1, 26, 27) To the extent  
28 there are covenants running with the land, these too do not restrain Malek from building on the Golf

1 Parcel, just as they have not restricted others in MacDonald Highlands from developing their parcels of  
2 land derived from the golf course. (*Id.* at 93, 94) The Trust, like the plaintiff in *Peck*, also did not seek  
3 any information about the golf course's permanence. (*Id.* at 59-70) To the contrary, the Trust's  
4 trustees and beneficiary deliberately ignored evidence that the Golf Parcel's use would change,  
5 including stakes identifying the Golf Parcel's boundaries. (*Id.* at 60-63) Although there is no reason  
6 for this Court to adopt the Georgia standard for evaluating the Trust's claim for implied restrictive  
7 covenant, Malek would be entitled to judgment in his favor even if it did.

8 **C. The Trust's Declaratory Relief Claim is Duplicative of Its Other Claims, and**  
9 **Judgment in Malek's Favor is Appropriate.**

10 The Trust's cause of action for declaratory relief is superfluous and seeks nothing other than  
11 the same prohibited negative view easement sought in its claims for easement and implied restrictive  
12 covenant. Courts regularly dismiss claims for declaratory relief that merely duplicate another cause of  
13 action in the case. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007); *Ozawa v. Bank of N.Y.*  
14 *Mellon*, Case No. 2:12-cv-00494-JCM-RJJ, 2012 U.S. Dist. LEXIS 120354 at \*9 (D. Nev. Aug. 24,  
15 2012) (holding that declaratory relief claim fails where it asserted the same facts as a prior claim). The  
16 United States District Court for the District of Nevada previously held that declaratory relief is not  
17 intended to give a plaintiff a second bite at the apple for adjudicating an issue addressed by a separate  
18 claim. *Josephson v. EMC Mortg. Corp.*, Case No. 2:10-cv-00336-JCM-PAC, 2010 U.S. Dist. LEXIS  
19 128053 at \*8 (D. Nev. Nov. 19, 2010).

20 The Court should enter judgment in Malek's favor on this claim, as the Trust seeks declaratory  
21 relief that is entirely coextensive with its claims for easement and implied restrictive covenant.  
22 (MSOF at 114 (seeking "a declaration from this Court regarding the respective property rights."))  
23 Declaratory relief is merely a form of relief, rather than a claim in and of itself. *Ozawa*, 2012 U.S. Dist.  
24 LEXIS 120354 at \*8; *Josephson*, 2010 U.S. Dist. LEXIS 128053 at \*8. The Trust's declaratory relief  
25 claim does not stand on its own, but merely cries "me too" to its causes of action for easement and  
26 implied restrictive covenant. It must fail for the same reasons those claims do.

27 ..

28 ..

1           **D. The Trust Is Not Entitled to an Injunction Against Malek’s Use of the Golf Parcel.**

2           Plaintiff’s final cause of action against Malek is for a “mandatory injunction” – something the  
3 United States Supreme Court has recognized as “an equitable remedy,” rather than a cause of action.  
4 *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982). (MSOF at 115) Nevada similarly  
5 disapproves of injunctive relief as a cause of action. *Ozawa*, 2012 U.S. Dist. LEXIS 120354 at \*8 (D.  
6 Nev. Aug. 24, 2012), citing *In re Wal-Mart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d  
7 1091, 1130 (D. Nev. 2007) (noting that injunctive relief is a remedy, rather than a cause of action).

8           Other courts reinforce Nevada’s view. “An injunction is an equitable remedy, not a cause of  
9 action.” *Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999) (collecting citations for  
10 same). “A permanent injunction is merely a remedy for a proven cause of action. It may not be issued  
11 if the underlying cause of action is not established.” *Art Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640,  
12 646-47 (Cal. Ct. App. 1992); *Zepeda v. OneWest Bank FSB*, Case No. 5:CV 11-00777, 2011 U.S. Dist.  
13 LEXIS 143298 at \*8 (N.D. Cal. Dec. 13, 2011).

14           The Trust has not asserted a claim against Malek here, but merely stated a form of relief it  
15 seeks. The Court should enter judgment in Malek’s favor on the Amended Complaint’s ninth cause of  
16 action. Even if injunctive relief were proper in this case, it the Court may only impose it where the  
17 Trust prevails on an underlying cause of action. Malek is entitled to judgment on all of Plaintiff’s  
18 claims as set forth above, though, mooted the Trust’s request for injunctive relief.

19           **E. The Trust is Liable to Malek for its Slander of Title on Malek’s Property.**

20           The Trust filed a Notice of *Lis Pendens* and an Amended Notice of *Lis Pendens* on Malek’s  
21 property without legal justification for doing so. Barbara Rosenberg freely admitted that the Trust  
22 filed its *lis pendens* “to try to stop [Malek] from building on the new piece of property.” (MSOF at  
23 116) By taking these actions, the falsely Trust called into question Malek’s possession of, and title to,  
24 his property. While Nevada law allows the filing of a *lis pendens* in actions “affecting the title” of real  
25 property, the Trust’s complaint did not contain a single allegation challenging Malek’s title to 594  
26 Lairmont or the Golf Parcel. NRS 14.010; (*Id.* at 107) Malek moved to expunge the Trust’s *lis*  
27 *pendens* on this basis. The Court agreed with Malek and ordered the Trust’s *lis pendens* expunged.

28           Slander of title exists where a person makes a false and harmful statement about one’s title to  
property with malice, and causes the property owner special damages. *Executive Mgmt*, 114 Nev. at

1 963 P.2d at 478. The element of malice does not carry the literary meaning of the word, but rather  
2 refers back to the “actual malice” standard the United States Supreme Court articulated in *Sullivan v.*  
3 *New York Times Corporation*, requiring a statement to be made with knowledge of its falsity or a  
4 reckless disregard for the truth. 376 U.S. 254, 280 (1964); *see Pond Place Partners v. Poole*, 567  
5 S.E.2d 881, 892 (S.C. Ct. App. 2002) (applying the *Sullivan* standard to malice element in slander of  
6 title claim). Thus, this element is satisfied by showing the speaker knew that the communication was  
7 false or acted in reckless disregard of its truth or falsity. *See Rowland v. Lepire*, 99 Nev. 308, 662 P.2d  
8 1332, 1335 (1983).

9 **1. The Trust Repeatedly and Falsely States that 594 Lairmont’s Title Is Disputed.**

10 The Trust filed suit against Malek on September 23, 2013, and seven days later filed a *lis*  
11 *pendens* on the Golf Parcel as APN 178-28-520-001 – land that was Malek’s property, and part of 594  
12 Lairmont. (MSOF at 77, 83) The Trust amended its notice of *lis pendens* on October 24, 2013 to  
13 further specify the exact Golf Parcel’s exact boundaries, and to reflect the fact that it had been added to  
14 594 Lairmont under APN 178-27-218-002. (*Id.* at 106) This amended notice of *lis pendens* remained  
15 in effect until the Court entered its order expunging it on January 9, 2014, preventing Malek from  
16 developing or otherwise using his property during that time. (*Id.* at 84)

17 The Trust’s filing of these *lis pendens* on Malek’s property falsely told the world that the Trust  
18 had a claim to its title or possession. The Nevada Supreme Court recently clarified that a *lis pendens* is  
19 properly filed only in “actions involving ‘the foreclosure of a mortgage upon real property, or title or  
20 possession of real property.’” *Weddell v. H2O, Inc.*, 128 Nev. Adv. Rep. 9, 271 P.3d 743, 751 (2012)  
21 (holding that *lis pendens* was improperly filed in action to enforce an option contract), *quoting Thomas*  
22 *v. Nevans*, 67 Nev. 122, 130, 215 P.2d 244, 247-48 (1950); *see Coury v. Tran*, 111 Nev. 652, 656, 895  
23 P.2d 650, 652 (1995) (holding that a *lis pendens* is only properly filed in cases “affecting the title or  
24 possession of real property”). The face of the Trust’s complaint, however, makes no claim to title or  
25 possession of 594 Lairmont or the Golf Parcel. (MSOF at 107) The Trust improperly filed its *lis*  
26 *pendens* and falsely communicated to the world that it had a claim to the title or possession of Malek’s  
27 property, defying the very allegations contained in its complaint.  
28

1 This Court expunged the *lis pendens* upon finding that the Trust had not met its burden under  
2 NRS 14.015(3).<sup>11</sup> (*Id.* at 83) Malek’s property was then released from the Trust’s improper *lis*  
3 *pendens*. (*Id.*) Malek’s property never should have been subjected to the *lis pendens* in the first place,  
4 though, as nothing in the Trust’s complaint supported an argument that the Trust sought title or  
5 possession to any of Malek’s property.

## 6 **2. The Trust Has No Justification For Its Falsehoods.**

7 The Trust knew that it had no basis to file a *lis pendens* on Malek’s property. Its original  
8 complaint sought only an easement and declaration of unspecified rights against Malek, amongst a  
9 series of contract and tort claims against other defendants. (MSOF at 108) Although the Trust believes  
10 BANA and the MacDonald Highlands entities owe it legal damages, this did not stop it from seeking  
11 to fulfill its true objective: Preventing Malek from building on his property.

12 There is no innocent explanation for the Trust’s conduct. One of its trustees, Barbara  
13 Rosenberg, is a licensed real estate professional with more than 25 years of experience selling  
14 residential real estate, and estimates that she has sold more than 500 houses. (*Id.* at 53, 54) She knew  
15 what a *lis pendens* was, and what the consequences for Malek would be if the Trust filed one. (*Id.* at  
16 117) David Rosenberg, a beneficiary of the trust, is a licensed attorney. (*Id.* at 55) Between the  
17 trustee and beneficiary, the Trust knew there was no justification to put the Court and the world on  
18 notice that there was a dispute to the title of Malek’s property. The Trust filed one anyway, though,  
19 specifically to keep Malek from building on the Golf Parcel. (*Id.* at 116)

20 The Trust’s notices of *lis pendens* were just two tactics used to further this litigation’s goal of  
21 stopping Malek from building on his property. (*Id.*) Before the Trust commenced this litigation, David  
22 Rosenberg accosted Malek, and threatened that he would make it “very expensive” to build his home.  
23 (*Id.* at 74) David Rosenberg stormed the offices of defendant MacDonald Highlands Realty to express  
24 their outrage that Malek may build on his property. (*Id.* at 75) Doiron attempted to calm them, but  
25 Barbara and David Rosenberg were inconsolable. (*Id.* at 76) Later, Barbara Rosenberg testified that

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27 <sup>11</sup> NRS 14.015(3) requires that a party filing a *lis pendens* must prove to the Court that it is likely to  
28 prevail in the action, or that it has a fair chance of success on the merits, and that the defendant’s harm  
from the notice is less than the plaintiff’s prejudice if the property is transferred. The Trust failed to  
satisfy either test in opposing Malek’s motion to expunge its *lis pendens*. (MSOF at 84)



1 she hoped Malek would not build on his property, and that the Trust filed the *lis pendens* to prevent  
2 him from doing so. (*Id.* at 110, 116) The Trust's obsession with Malek's building plans became this  
3 litigation's *leitmotif*, with the Trust exploring the topic with anyone who may know about it. (*Id.* at  
4 111) This conduct belies any other justification for why the Trust filed its original and amended *lis*  
5 *pendens* on Malek's property.

### 6 **3. Malek Suffers Damages as a Result of the Trust's False Statements.**

7 Malek was forced to retain counsel to expunge the Trust's wrongfully filed *lis pendens* and  
8 consequently suffered financial damages in the form of legal fees and costs. Nevada recognizes that  
9 attorneys' fees and costs incurred in removing the slander of title from property are compensable as  
10 damages. *Horgan v. Felton*, 123 Nev. 577, 584-85, 170 P.3d 982, 987 (2007) ("The clear majority  
11 rule is that attorney fees incurred in removing spurious clouds from a title qualify as special damages  
12 in an action for slander of title"). Malek has incurred attorneys' fees and disclosed them in this action.  
13 (MSOF at 112) He continues, however, to incur attorneys' fees by litigating this action to its  
14 conclusion, and to secure judgment in his favor in this action, wherein the Trust slandered his title to  
15 594 Lairmont.

16 Damages are necessary to show the Trust is liable for slander of title, but need not be fully  
17 calculated at this time. It is sufficient for Malek to have incurred attorneys' fees to show he has been  
18 damaged, and the exact measure of those damages need not be determined upon this motion. *See*  
19 *Horgan*, 123 Nev. at 584-85, 170 P.3d at 987. Thus, upon finding the Trust liable for slander of title as  
20 a matter of law, Malek asks that the Court allow him to file a fee affidavit and have the measure of his  
21 damages determined on that basis.

## 22 **V. CONCLUSION**

23 Malek is entitled to summary judgment on all of the Trust's claims. The Trust's claim for  
24 easement is premised on protections for its view, privacy and light – all concerns the Nevada Supreme  
25 Court expressly prohibited as bases for implied negative easements. None of the evidence in this case  
26 supports the Trust having an easement in Malek's property on any other ground. Similarly, the Trust's  
27 claim for an implied restrictive covenant, a cause of action the Nevada Supreme Court has never  
28 recognized, fails for identical reasons – to the extent this Court gives it any countenance at all. If the

1 Court holds otherwise, it welcomes a tide of litigation between squabbling neighbors seeking to use an  
2 inversion of Nevada law against one another.

3 The Trust's secondary claims fare no better. As explained in the foregoing, the Trust's claims  
4 for a mandatory injunction and declaratory relief are not causes of action at all, but are only remedies.  
5 Consequently, they are superfluous and should be resolved in Malek's favor. To the extent these  
6 remedies are premised on the Trust prevailing on its easement and implied restrictive covenant claims,  
7 judgment in Malek's favor is necessary, as he prevails on those claims for the reasons set forth above.

8 Finally, Malek is entitled to judgment on his counterclaim. By filing a *lis pendens* on his  
9 property, the Trust called its ownership, salability, and marketability into question. The Trust had no  
10 credible basis for doing so, and took this action only with the intent of preventing Malek from building  
11 his home. Malek incurred attorneys' fees and costs in order to remove the Trust's slander of 594  
12 Lairmont's title, has suffered damages, and continues to suffer harm as a result of the Trust's  
13 falsehoods. On that basis, the Court should enter judgment in Malek's favor, finding the Trust liable  
14 for slander of title, and allowing Malek to submit affidavits of his attorneys' fees and costs in this  
15 matter to calculate the full extent of his damages.

16  
17 DATED this 16th day of April, 2015.

18 THE FIRM, P.C.

19  
20 BY: /s/ Jay DeVoy

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26 SHAHIN SHANE MALEK

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that one this 16<sup>th</sup> day of April, 2015, pursuant to NRCP 5(b), I served via the Eighth  
3 Judicial District Court electronic service system and to be placed in the United States Mail, with first  
4 class postage prepaid thereon, and addressed the foregoing **MOTION FOR SUMMARY**  
5 **JUDGMENT** to the following parties:

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**Case No. 69399 c/w 70478**

IN THE SUPREME COURT OF NEVADA

FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,  
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS  
REALTY, LLC, a Nevada Limited  
Liability Company; MICHAEL  
DOIRON, an Individual; and FHP  
VENTURES, a Nevada Limited  
Partnership,  
Respondent/Cross-Appellants.

Electronically Filed  
Oct 12 2016 11:48 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,  
Appellant,

vs.

SHAHIN SHANE MALEK,  
Respondent.

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable KENNETH CORY, District Judge  
District Court Case No. District Court Case No. A-13-689113-C

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**JOINT APPENDIX VOLUME 1**

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Respectfully submitted by:

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1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
4/5/6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215

7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
8/9/10/11	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
12/13	47	9/2/15	Motion for Attorney's Fees and Costs	JA_2526
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784

13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
13	54	12/9/15	Notice of Appeal	JA_2801
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
13	57	1/20/16	Notice of Entry of Order	JA_2817
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	62	5/23/16	Notice of Appeal	JA_2854
13/14	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048



# **TAB 1**

## CIVIL COVER SHEET

- Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

A - 13 - 689113 - C

**I. Party Information**

Plaintiff(s) (name/address/phone): THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST

Defendant(s) (name/address/phone): BANK OF AMERICA, N.A.; BAC HOME LOANS SERVING, LP et al.

Attorney (name/address/phone): Lisa J. Zastrow, Kaempfer Crowll, NSB 9727 -- 8345 W. Sunset Rd., Ste. 250, Las Vegas, NV 89113

Attorney (name/address/phone): n/a

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<b>Negligence</b> <input type="checkbox"/> Negligence -- Auto <input type="checkbox"/> Negligence -- Medical/Dental <input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence -- Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input checked="" type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input checked="" type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment -- Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

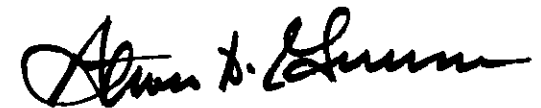
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

9-23-13

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**  
PETER C. BERNHARD  
2 Nevada Bar No. 0734  
LISA J. ZASTROW  
3 Nevada Bar No. 9727  
KAEMPFER CROWELL  
4 8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
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7 *Attorneys for Plaintiff The Fredric and*  
*Barbara Rosenberg Living Trust*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.;  
15 BAC HOME LOANS SERVICING, LP, a  
foreign limited partnership;  
16 DRAGONRIDGE PROPERTIES, LLC;  
DRAGONRIDGE GOLF CLUB, INC. is a  
17 Nevada corporation;  
MACDONALD PROPERTIES, LTD., a  
18 Nevada corporation;  
MACDONALD HIGHLANDS REALTY,  
19 LLC, a Nevada limited liability company;  
MICHAEL DOIRON, an individual;  
20 SHAHIN SHANE MALEK, an individual;  
REAL PROPERTIES MANAGEMENT  
21 GROUP, INC., a Nevada corporation;  
DOES I through X, inclusive; and ROE  
22 BUSINESS ENTITY I through XX, inclusive,

23 Defendants.  
24

Case No.:  
Dept. No.:

A- 13- 689113- C

COMPLAINT

(ARBITRATION EXEMPTION  
CLAIMED: ACTION CONCERNING  
TITLE TO REAL PROPERTY AND  
INJUNCTIVE RELIEF SOUGHT)

1 COME NOW Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING  
2 TRUST, by and through its counsel of record, KAEMPFER CROWELL, and for causes of action  
3 against the Defendants, and each of them, complains and alleges as follows:

4 I.

5 THE PARTIES

6 1. FREDRIC ROSENBERG and BARBARA ROSENBERG, are, and at all times  
7 relevant to this action were, Trustees of THE FREDRIC ROSENBERG AND BARBARA  
8 ROSENBERG LIVING TRUST ("Plaintiff").

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

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

16 4. Plaintiff is informed and believes, and therefore alleges, that Defendant  
17 DRAGONRIDGE PROPERTIES, LLC is, and at all times relevant to this action was, the  
18 owner of certain real property in Clark County, Nevada and generally described as Assessor  
19 Parcel Number 178-28-520-001, part of the golf course at Dragonridge Country Club in the  
20 MacDonald Highlands community.

21 5. Plaintiff is informed and believes, and therefore alleges, that Defendant  
22 DRAGONRIDGE GOLF CLUB, INC. is, and at all times relevant to this action was, a  
23 Nevada corporation conducting business in Clark County, Nevada.  
24

1           6. Plaintiff is informed and believes, and therefore alleges, that Defendant  
2           MACDONALD PROPERTIES, LTD is, and at all times relevant to this action was, a  
3           Nevada corporation, conducting business in Clark County, Nevada.

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

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

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

17          10. Plaintiff is informed and believes, and therefore alleges, that Defendant REAL  
18          PROPERTIES MANAGEMENT GROUP, INC. is, and at all times relevant to this action  
19          was, a Nevada corporation conducting property management business in Clark County,  
20          Nevada as the registered master association for the MacDonald Highlands community.

21          11. Plaintiff does not presently know the true names and/or capacities of the  
22          individuals, corporations, partnerships and entities sued and identified herein in fictitious  
23          names DOES, I through XX, inclusive and ROE BUSINESS ENTITY I through XX,  
24          inclusive. Plaintiff alleges said DOES and ROE BUSINESS ENTITIES, and each of them,

1 are liable and legally responsible to Plaintiff under the claims for relief set forth below.  
2 Plaintiff requests leave of this Court to amend this Complaint with appropriate allegations  
3 when the true names of said Defendants are known to Plaintiff.

## 4 II.

### 5 GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

6 12. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
7 through 11, inclusive, of this Complaint, as though fully set forth herein, and incorporates the  
8 same by reference and further allege as follows:

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

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

16 15. On or about August 8, 2012, Defendant SHAHIN SHANE MALEK ("MALEK")  
17 purchased certain residential real property in Clark County, Nevada, generally described as  
18 594 Lairmont Place, Henderson, Nevada, 89012, and more particularly described as Assessor  
19 Parcel Number: 178-27-218-002 (hereinafter "MALEK PROPERTY").

20 16. The MALEK PROPERTY sits adjacent to the SUBJECT PROPERTY.

21 17. On or about October 30, 2012, DRAGONRIDGE PROPERTIES, LLC  
22 ("DRAGONRIDGE PROPERTIES") was the owner of certain real property in Clark County,  
23 Nevada, generally described as the Dragonridge golf course located in Henderson, Nevada,  
24 89012 situated in the MacDonald Highlands community and including, but not limited to, a

1 certain .34-acre portion of Assessor Parcel Number 178-28-520-001 generally described as  
2 MacDonald Highlands Golf Hole #9 in the NW4 of Section 27, Township 22 South, Range  
3 62 East, M.D.M. in the MacDonald Ranch Planning Area and located northwest of  
4 MacDonald Ranch Drive and Stephanie Street (hereinafter the "GOLF PARCEL").

5 18. Situated on the GOLF PARCEL were certain easements.

6 19. On or about October 30, 2012, Paul Bykowski, on behalf of MACDONALD  
7 PROPERTIES, LTD. and DRAGONRIDGE PROPERTIES submitted a Vacation  
8 Application to the City of Henderson along with supporting documentation requesting to  
9 vacate existing "blanket easements" of the GOLF PARCEL (hereinafter the "VACATION  
10 APPLICATION").

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

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

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

22 23. The MACDONALD APPLICATIONS sought to amend Ordinance No. 2869, the  
23 zoning map, to reclassify certain real property within the city limits of the city, described as a  
24 portion of section 27, township 22 south, range 62 east, M.D. & M., Clark County, Nevada,

1 located within the MacDonald Highlands Master Plan, off MacDonald Ranch Drive and  
2 Stephanie Street from PS-MP-H (public/semipublic with master plan and hillside overlays)  
3 TO RS-2-MP-H (low-density residential with master plan and hillside overlays), and other  
4 matters relating thereto.

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

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

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

20 27. The MACDONALD APPLICATIONS asserted that the amendment to the GOLF  
21 PARCEL area was "minor".

22 28. The MACDONALD APPLICATIONS asserted that the amendment to the GOLF  
23 PARCEL area would have "little or no impact on the adjacent properties".  
24



1           29.     The MACDONALD APPLICATIONS asserted that the amendment to the GOLF  
2 PARCEL area would not “conflict with any portion of the goals of the plan”.

3           30.     The MACDONALD APPLICATIONS asserted that the impact of the amendment  
4 to the GOLF PARCEL would “not adversely impact the general area or portion of the City as  
5 to traffic, public facilities, and environmentally sensitive areas or resources.”

6           31.     On or about December 3, 2012, notice of the public hearing regarding the  
7 VACATION APPLICATION was published.

8           32.     On or about December 3, 2012, notice of the public hearing regarding the  
9 VACATION APPLICATION was mailed to the adjacent properties and all registered HOAs  
10 or MHPs within the buffer area.

11           33.     On or about December 3, 2012, notice of the public hearing regarding the  
12 VACATION APPLICATION was mailed to the owners of property adjacent to the GOLF  
13 PARCEL.

14           34.     On or about December 3, 2012, notice of the public hearing regarding the  
15 VACATION APPLICATION was mailed to REAL PROPERTIES MANAGEMENT  
16 GROUP, INC. (“RPMG”).

17           35.     MALEK received notices of the public hearing regarding the VACATION  
18 APPLICATION.

19           36.     BANK OF AMERICA received notices of the public hearing regarding the  
20 VACATION APPLICATION.

21           37.     DRAGONRIDGE PROPERTIES received notices of the public hearing regarding  
22 the VACATION APPLICATION.

23           38.     RPMG received notices of the public hearing regarding the VACATION  
24 APPLICATION.

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

3           40.     The changes and amendments to the MALEK PROPERTY lot lines resulting  
4     from the approval of the MACDONALD APPLICATIONS materially effect the value of the  
5     adjacent SUBJECT PROPERTY or its use in an adverse manner.

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

10          42.     SELLER's AGENTS marketed the SUBJECT PROPERTY as a "Tuscan-inspired  
11     estate" sitting on the ninth hole of DragonRidge Country Club, a five bedroom two-story  
12     custom home, on a golf course lot of .660 acres with golf and mountain views, more than  
13     10,000 square feet of living area, a six car garage with amenities including a home theatre, a  
14     library/office, gym, game room, elevator, backyard patio with fireplace and resort-style pool  
15     and spa with infinity edge.

16          43.     On or about March 13, 2013, Plaintiff, as Buyer, offered to purchase the  
17     SUBJECT PROPERTY for the purchase price of \$2,160,000.00.

18          44.     On or about, March 14, 2013, Plaintiff, as Buyer, executed Addendum No. 1 to  
19     the Purchase Agreement whereby Plaintiff acknowledged and agreed to enter into a side  
20     agreement with the Master Developer for an extension of the construction clock to complete  
21     requirements of the exterior of the property

22          45.     On or about March 19, 2013, Plaintiff, as Buyer, executed Addendum No. 2 to the  
23     Purchase Agreement amending the purchase price to \$2,302,000.00, an increase of  
24     \$142,000.00 from the original agreed upon price.

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

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

6       48.    On or about March, 21, 2013, BANK OF AMERICA, as Seller, agreed to sell the  
7    SUBJECT PROPERTY to Plaintiff.

8       49.    Plaintiff was represented in the purchase of the SUBJECT PROPERTY and the  
9    related negotiations by licensed Real Estate Agent Siobahn McGill and licensed Real Estate  
10   Broker Kathryn Bovard of Realty One Group.

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

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

16       52.    On or about May 15, 2013, escrow closed and the title to the SUBJECT  
17   PROPERTY transferred from BANK OF AMERICA to Plaintiff.

18       53.    At no time did BANK OF AMERICA, as the SELLER, disclose to Plaintiff that  
19   the adjacent MALEK PROPERTY lot lines were other than presented and had, in fact, been  
20   amended in such a way as to materially effect the value of the SUBJECT PROPERTY or its  
21   use in an adverse manner.

22       54.    At no time did MICHAEL DOIRON, Seller's representative, disclose to Plaintiff  
23   that the adjacent MALEK PROPERTY lot lines were other than as presented and had been  
24

1 amended in such a way as to materially effect the value of the SUBJECT PROPERTY or its  
2 use in an adverse manner.

3 55. MICHAEL DOIRON, Seller's representative, knew, or should have known, that  
4 the adjacent MALEK PROPERTY lot lines were other than as presented to Plaintiff and had  
5 been amended in such a way as to materially effect the value of the SUBJECT PROPERTY  
6 or its use in an adverse manner.

7 56. BANK OF AMERICA, as Seller, knew, or should have known, that the adjacent  
8 MALEK PROPERTY lot lines were other than as presented to Plaintiff and had been  
9 amended in such a way as to materially effect the value of the SUBJECT PROPERTY or its  
10 use in an adverse manner.

11 57. MICHAEL DOIRON failed to disclose to Plaintiff that the adjacent MALEK  
12 PROPERTY lot lines had been amended in such a way as to materially effect the value of the  
13 SUBJECT PROPERTY or its use in an adverse manner.

14 58. BANK OF AMERICA failed to disclose to Plaintiff that the adjacent MALEK  
15 PROPERTY lot lines had been amended in such a way as to materially effect the value of the  
16 SUBJECT PROPERTY or its use in an adverse manner.

17 59. Sometime subsequent to the May 15, 2013 transfer of title to PLAINTIFF,  
18 PLAINTIFF became aware that the lot lines presented at the time of PLAINTIFF's  
19 negotiations and purchase of the SUBJECT PROPERTY were not accurate and that in fact  
20 the lot lines of the MALEK PROPERTY, as amended, materially effect the value of the  
21 SUBJECT PROPERTY or its use in an adverse manner.

22 60. Upon information and belief, MALEK plans to begin construction on the  
23 MALEK PROPERTY imminently.  
24

1           61. While the transfer of title in and of itself adversely effects PLAINTIFF, and likely  
2 other residents in the area, should MALEK begin construction according to MALEK's plans,  
3 the SUBJECT PROPERTY will be even more grossly effected given the view at the  
4 SUBJECT PROPERTY will be substantially altered.

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

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

11                           **FIRST CLAIM FOR RELIEF**  
12                           **(Breach of Contract against BANK OF AMERICA)**

13           64. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
14 through 63, inclusive, and incorporates the same as though fully set forth herein.

15           65. Plaintiff entered into the Purchase Agreement with Defendant BANK OF  
16 AMERICA.

17           66. BANK OF AMERICA made express representations and warranties in the  
18 Purchase Agreement.

19           67. BANK OF AMERICA materially breached the Contract as detailed in paragraphs  
20 1 through 63 herein.

21           68. Plaintiff incurred significant damages in an amount which cannot easily be  
22 ascertained, but without question in excess of ten thousand dollars, as a direct result from the  
23 breach.  
24

1           69. Plaintiff was required to retain the services of Kaempfer Crowell in order to  
2 prosecute this action and is entitled to recover reasonable attorneys' fees and costs of suit  
3 incurred herein.

4                                   **SECOND CLAIM FOR RELIEF**  
5                                   **(Breach of the Implied Covenant of Good Faith and Fair Dealing**  
6                                   **against BANK OF AMERICA)**

7           70. Plaintiff repeats and reallege each and every allegation contained in paragraphs 1  
8 through 69, inclusive, and incorporates the same as though fully set forth herein.

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

11           72. Plaintiff and Defendant BANK OF AMERICA were parties to a valid and  
12 enforceable contract.

13           73. Defendant BANK OF AMERICA wed a duty of good faith and fair dealing under  
14 the Contract.

15           74. BANK OF AMERICA breached the implied covenant of good faith and fair  
16 dealing.

17           75. Plaintiffs were justified in their expectations under the Contract and, as a result of  
18 the breach, those expectations were denied.

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

21           77. Plaintiff has been required to retain the services of Kaempfer Crowell in order to  
22 prosecute this action and is entitled to recover reasonable attorneys' fees and costs of suit  
23 incurred herein.

24           /./././

**THIRD CLAIM FOR RELIEF**

(Unjust Enrichment against BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)

78. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 77, inclusive, and incorporates the same as though fully set forth herein.

79. As a result of Defendant BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC actions, as fully alleged herein, each has been unjustly enriched.

80. As a result of Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC actions, Plaintiff has been required to retain the services of Kaempfer Crowell to prosecute this action, and therefore is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

**FOURTH CLAIM FOR RELIEF**

(Fraudulent or Intentional Misrepresentation – BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)

81. Plaintiff repeats and reallege each and every allegation contained in paragraphs 1 through 80, inclusive, and incorporates the same as though fully set forth herein.

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

4        83. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP,  
5 DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC,  
6 MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC,  
7 MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC knowingly  
8 made false representations and/or willful omissions to Plaintiff over the course of their  
9 involvement with Plaintiff, including but not limited to, failing to disclose to PLAINTIFF  
10 that the adjacent MALEK PROPERTY lot lines were other than presented and had in fact  
11 been amended in such a way as to materially effect the value of the SUBJECT PROPERTY  
12 or its use in an adverse manner.

13        84. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP,  
14 DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC,  
15 MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC,  
16 MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC. willful  
17 omitted significant information in order to deceive Plaintiff and secure the Purchase and Sale  
18 of the Subject Property.

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

22        86. As a result of Defendants, BANK OF AMERICA, BAC HOME LOANS  
23 SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB,  
24 INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY,



1 LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC  
2 actions, Plaintiff has been required to retain the services of Kaempfer Crowell to prosecute  
3 this action, and therefore is entitled to recover an award of reasonable attorneys' fees and  
4 costs of suit incurred herein.

5 **FIFTH CLAIM FOR RELIEF**

6 (Negligent Misrepresentation – BANK OF AMERICA, BAC HOME LOANS  
7 SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF  
8 CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS  
9 REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT  
10 GROUP, INC.)

11 87. Plaintiff repeats and reallege each and every allegation contained in paragraphs 1  
12 through 86, inclusive, and incorporates the same as though fully set forth herein.

13 88. Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP,  
14 DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC,  
15 MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC,  
16 MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC made false  
17 representations and/or willful omissions to Plaintiff over the course of their involvement with  
18 Plaintiff, including but not limited to, failing to disclose to PLAINTIFF that the adjacent  
19 MALEK PROPERTY lot lines were other than presented and had in fact been amended in  
20 such a way as to materially effect the value of the SUBJECT PROPERTY or its use in an  
21 adverse manner.

22 89. Plaintiff justifiably relied upon the representations of BANK OF AMERICA,  
23 BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC,  
24 DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD,  
MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL  
PROPERTY MANAGEMENT GROUP, INC.

90. As a result, Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC actions, Plaintiff has been required to retain the services of Kaempfer Crowell to prosecute this action, and therefore is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

**SIXTH CLAIM FOR RELIEF**  
(Real Estate Brokers Violations of NRS 645 Against  
**MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON**  
**and REAL PROPERTY MANAGEMENT GROUP, INC.)**

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

92. Defendants MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC owed duties and obligations to Plaintiff pursuant to NRS Chapter 645, specifically, but not limited to, NRS 645.252.

93. Defendants MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC 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 materially effect the value of the SUBJECT PROPERTY or its use in an adverse manner.

94. As a result of Defendants, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC actions,

1 Plaintiff has been required to retain the services of Kaempfer Crowell to prosecute this  
2 action, and therefore is entitled to recover an award of reasonable attorneys' fees and costs of  
3 suit incurred herein, as well as damages pursuant to NRS 645.257, and any other damages  
4 appropriate under NRS Chapter 645.

5 **SEVENTH CLAIM FOR RELIEF**  
6 **(Easement - DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB,**  
7 **INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY,**  
8 **LLC, MICHAEL DOIRON, REAL PROPERTY MANAGEMENT GROUP, INC. and**  
9 **MALEK)**

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

12 96. Defendants' DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF  
13 CLUB, INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS  
14 REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP,  
15 INC. acted in contravention of Plaintiffs' easement in the common area surrounding the golf  
16 course.

17 97. Defendants' are estopped to deny Plaintiffs grant of the easement by express and  
18 implied agreement.

19 98. Plaintiff is entitled to an easement in an extent to be determined by the Court; said  
20 easement may adversely effect the rights of Defendant MALEK.

21 99. As a result, Defendants, BANK OF AMERICA, BAC HOME LOANS  
22 SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB,  
23 INC, MACDONALDS PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY,  
24 LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC  
actions, Plaintiff has been required to retain the services of Kaempfer Crowell to prosecute

1 this action, and therefore is entitled to recover an award of reasonable attorneys' fees and  
2 costs of suit incurred herein.

3 **EIGHTH CLAIM FOR RELIEF**  
4 **(Declaratory Relief – ALL DEFENDANTS)**

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

7 101. Plaintiff and Defendants, including MALEK, have adverse interests and a  
8 judicable controversy exists between them.

9 102. Plaintiff has a legally protectable interest in this controversy as fully alleged  
10 herein.

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

14 104. Pursuant to Nevada's Uniform Declaratory Judgment Act, NRS 30.010 to NRS  
15 30.160, inclusive, Plaintiff seeks a declaration from this Court regarding the respective  
16 property rights.

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

20 **PRAYER FOR RELIEF**

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

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



# **TAB 2**



CLERK OF THE COURT

1 **AOS**  
2 PETER C. BERNHARD  
3 Nevada Bar No. 0734  
4 LISA J. ZASTROW  
5 Nevada Bar No. 9727  
6 KAEMPFER CROWELL  
7 8345 West Sunset Road, Suite 250  
8 Las Vegas, Nevada 89113  
9 Telephone: (702) 792-7000  
10 Fax: (702) 796-7181  
11 pbernhard@kcnvlaw.com  
12 lzastrow@kcnvlaw.com  
13 *Attorneys for Plaintiff The Fredric and*  
14 *Barbara Rosenberg Living Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
12 ROSENBERG LIVING TRUST,

Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.;  
15 BAC HOME LOANS SERVICING, LP, a  
16 foreign limited partnership;  
17 DRAGONRIDGE PROPERTIES, LLC;  
18 DRAGONRIDGE GOLF CLUB, INC. is a  
19 Nevada corporation;  
20 MACDONALD PROPERTIES, LTD., a  
21 Nevada corporation;  
22 MACDONALD HIGHLANDS REALTY,  
23 LLC, a Nevada limited liability company;  
24 MICHAEL DOIRON, an individual;  
SHAHIN SHANE MALEK, an individual;  
REAL PROPERTIES MANAGEMENT  
GROUP, INC., a Nevada corporation;  
DOES I through X, inclusive; and ROE  
BUSINESS ENTITY I through XX, inclusive,

Defendants.

Case No.: A-13-689113-C

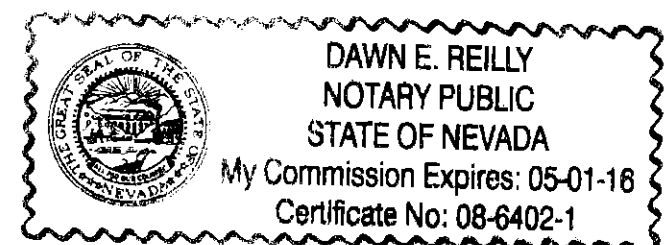
Dept. No.: I

**AFFIDAVIT OF SERVICE OF  
SUMMONS AND COMPLAINT UPON  
BAC HOME LOANS SERVICING, LP**

////

Attorney or Party without Attorney: PETER C. BERNHARD NBN 734 KAEMPFER CROWELL RENSHAW GRONAUER et al. 8345 W. SUNSET RD. #250 LAS VEGAS, NV 89113 Telephone No: 702-792-7000				For Court Use Only	
Attorney for: Plaintiff					
Ref. No. or File No.:					
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST Defendant: BANK OF AMERICA, N.A.					
<b>AFFIDAVIT OF SERVICE SUMMONS</b>		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-689113-C

1. At the time of service I was at least 18 years of age and not a party to this action.
  2. I served copies of the SUMMONS-CIVIL; COMPLAINT
  3. a. Party served: BAC HOME LOANS SERVICING, LP  
 b. Person served: ALENA DUGGAN, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
  4. Address where the party was served: THE CORPORATION TRUST COMPANY OF NEVADA  
 311 S. DIVISION STREET  
 CARSON CITY, NV 89703
  5. I served the party:
    - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Fri., Oct. 11, 2013 (2) at: 10:15AM
  6. The "Notice to the Person Served" (on the Summons) was completed as follows:
    - a. as an individual defendant
  7. Person Who Served Papers:
    - a. TONI RUCKMAN
    - b. **FIRST LEGAL INVESTIGATIONS, PI/PS #1452**  
 REGISTRATION #R-052005  
 704 SOUTH 6TH ST.  
 LAS VEGAS, NV 89101
    - c. (702) 671-4002
- Fee for Service:  
 I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.
- 15 Oct 13      Toni L Ruckman  
 (Date)                      (Signature)



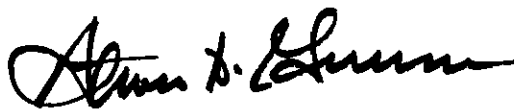
8. STATE OF NEVADA, COUNTY OF \_\_\_\_\_  
 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_ by TONI RUCKMAN  
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE  
SUMMONS

(Notary Signature) 8689160 .kaecro.565250



# **TAB 3**



CLERK OF THE COURT

AOS  
PETER C. BERNHARD  
Nevada Bar No. 0734  
LISA J. ZASTROW  
Nevada Bar No. 9727  
KAEMPFER CROWELL  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
Telephone: (702) 792-7000  
Fax: (702) 796-7181  
[pbernhard@kcnvlaw.com](mailto:pbernhard@kcnvlaw.com)  
[lzastrow@kcnvlaw.com](mailto:lzastrow@kcnvlaw.com)  
*Attorneys for Plaintiff The Fredric and  
Barbara Rosenberg Living Trust*

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; and ROE  
BUSINESS ENTITY I through XX, inclusive,

Defendants.

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

**AFFIDAVIT OF SERVICE OF  
SUMMONS AND COMPLAINT UPON  
SHAHIN SHANE MALEK**

////

KAEMPFER CROWELL  
8345 West Sunset Road  
Suite 250  
Las Vegas, Nevada 89113

Attorney or Party without Attorney: PETER C. BERNHARD NBN 734 KAEMPFER CROWELL RENSHAW GRONAUER et al. 8345 W. SUNSET RD. #250 LAS VEGAS, NV 89113 Telephone No: 702-792-7000				For Court Use Only	
Attorney for: Plaintiff			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST Defendant: BANK OF AMERICA, N.A.					
<b>AFFIDAVIT OF SERVICE SUMMONS</b>		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-689113-C

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS-CIVIL; COMPLAINT
3. a. Party served: SHAHIN SHANE MALEK  
 b. Person served: SHAHIN SHANE MALEK
4. Address where the party was served: 544 REGENTS GATE DRIVE  
 HENDERSON, NV 89012
5. I served the party:  
 a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Sat., Oct. 12, 2013 (2) at: 10:28AM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:  
 a. as an individual defendant

**7. Person Who Served Papers:**

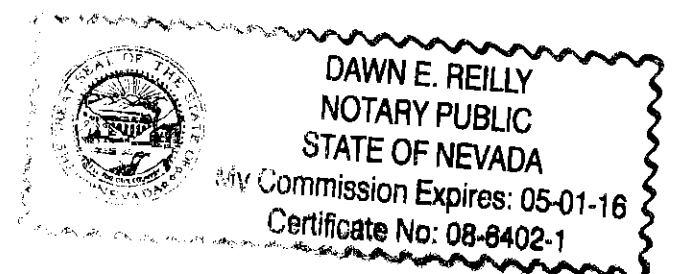
- a. LEIDY PAOLA SERNA
- b. **First Legal Investigations, PI/PS #1452**  
 Registration# R-029907  
 704 S. Sixth Street  
 LAS VEGAS, NV 89101
- c. 702-671-4002

**Fee for Service:**

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

10.15.13  
(Date)

[Signature]  
(Signature)

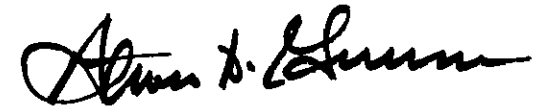


8. STATE OF NEVADA, COUNTY OF Clark 15 day of OCT-13 by LEIDY PAOLA SERNA  
 Subscribed and sworn to (or affirmed) before me on this 15 day of OCT-13 by LEIDY PAOLA SERNA  
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE  
SUMMONS

(Notary Signature) [Signature]  
 8689162 .kaecro.565114

# **TAB 4**



CLERK OF THE COURT

1 **AOS**  
PETER C. BERNHARD  
2 Nevada Bar No. 0734  
LISA J. ZASTROW  
3 Nevada Bar No. 9727  
KAEMPFER CROWELL  
4 8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
5 Telephone: (702) 792-7000  
Fax: (702) 796-7181  
6 [pbernhard@kcnvlaw.com](mailto:pbernhard@kcnvlaw.com)  
[lzastrow@kcnvlaw.com](mailto:lzastrow@kcnvlaw.com)  
7 ***Attorneys for Plaintiff The Fredric and***  
***Barbara Rosenberg Living Trust***

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Case No.: A-13-689113-C

Dept. No.: I

12 Plaintiff,

13 vs.

**AFFIDAVIT OF SERVICE OF  
SUMMONS AND COMPLAINT UPON  
REAL PROPERTIES MANAGEMENT  
GROUP, INC.**

14 BANK OF AMERICA, N.A.;  
15 BAC HOME LOANS SERVICING, LP, a  
foreign limited partnership;  
16 DRAGONRIDGE PROPERTIES, LLC;  
DRAGONRIDGE GOLF CLUB, INC. is a  
17 Nevada corporation;  
MACDONALD PROPERTIES, LTD., a  
18 Nevada corporation;  
MACDONALD HIGHLANDS REALTY,  
19 LLC, a Nevada limited liability company;  
MICHAEL DOIRON, an individual;  
20 SHAHIN SHANE MALEK, an individual;  
REAL PROPERTIES MANAGEMENT  
21 GROUP, INC., a Nevada corporation;  
DOES I through X, inclusive; and ROE  
22 BUSINESS ENTITY I through XX, inclusive,

23 Defendants.

24 ////

Attorney or Party without Attorney: PETER C. BERNHARD NBN 734 KAEMPFER CROWELL RENSHAW GRONAUER et al. 8345 W. SUNSET RD. #250 LAS VEGAS, NV 89113 Telephone No: 702-792-7000				For Court Use Only	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST Defendant: BANK OF AMERICA, N.A.					
<b>AFFIDAVIT OF SERVICE SUMMONS</b>		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-689113-C

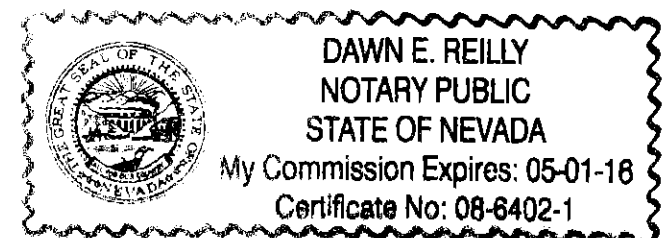
1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS-CIVIL; COMPLAINT
3. a. Party served: REAL PROPERTIES MANAGEMENT GROUP, INC.  
 b. Person served: LAURA LOCKHART, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Address where the party was served: c/o REAL PROPERTIES MANAGEMENT GROUP, INC  
 (REGISTERED AGENT)  
 3283 E. WARM SPRINGS RD. #300  
 LAS VEGAS, NV 89120
5. I served the party:
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue., Oct. 15, 2013 (2) at: 10:35AM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
  - a. as an individual defendant
7. Person Who Served Papers:
  - a. LEIDY PAOLA SERNA
  - b. First Legal Investigations, PI/PS #1452  
 Registration# R-029907  
 704 S. Sixth Street  
 LAS VEGAS, NV 89101
  - c. 702-671-4002

*Fee for Service:*

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

10.16.13  
(Date)

[Signature]  
(Signature)

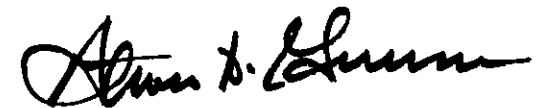


8. STATE OF NEVADA, COUNTY OF Clark 16 day of Oct 13 by LEIDY PAOLA SERNA  
 Subscribed and sworn to (or affirmed) before me on this 16 day of Oct 13 by LEIDY PAOLA SERNA  
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE  
SUMMONS

(Notary Signature) [Signature]  
8689141 .kaecro.565447

# **TAB 5**



CLERK OF THE COURT

1 **AOS**  
2 PETER C. BERNHARD  
3 Nevada Bar No. 0734  
4 LISA J. ZASTROW  
5 Nevada Bar No. 9727  
6 KAEMPFFER CROWELL  
7 8345 West Sunset Road, Suite 250  
8 Las Vegas, Nevada 89113  
9 Telephone: (702) 792-7000  
10 Fax: (702) 796-7181  
11 pbernhard@kcnvlaw.com  
12 lzastrow@kcnvlaw.com  
13 ***Attorneys for Plaintiff The Fredric and***  
14 ***Barbara Rosenberg Living Trust***

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
12 ROSENBERG LIVING TRUST,

Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.;  
15 BAC HOME LOANS SERVICING, LP, a  
16 foreign limited partnership;  
17 DRAGONRIDGE PROPERTIES, LLC;  
18 DRAGONRIDGE GOLF CLUB, INC. is a  
19 Nevada corporation;  
20 MACDONALD PROPERTIES, LTD., a  
21 Nevada corporation;  
22 MACDONALD HIGHLANDS REALTY,  
23 LLC, a Nevada limited liability company;  
24 MICHAEL DOIRON, an individual;  
SHAHIN SHANE MALEK, an individual;  
REAL PROPERTIES MANAGEMENT  
GROUP, INC., a Nevada corporation;  
DOES I through X, inclusive; and ROE  
BUSINESS ENTITY I through XX, inclusive,

Defendants.

Case No.: A-13-689113-C

Dept. No.: I

**AFFIDAVIT OF SERVICE OF  
SUMMONS AND COMPLAINT UPON  
MICHAEL DOIRON**

////



Attorney or Party without Attorney: PETER C. BERNHARD NBN 734 KAEMPFER CROWELL RENSHAW GRONAUER et al. 8345 W. SUNSET RD. #250 LAS VEGAS, NV 89113 Telephone No: 702-792-7000				For Court Use Only	
Attorney for: Plaintiff					
Ref. No. or File No.:					
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST Defendant: BANK OF AMERICA, N.A.					
<b>AFFIDAVIT OF SERVICE SUMMONS</b>		Hearing Date:	Time:	Dept/Div:	Case Number: A-13-689113-C

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the SUMMONS-CIVIL; COMPLAINT
- a. Party served: MICHAEL DOIRON  
 b. Person served: MICHAEL DOIRON
- Address where the party was served: 552 S. STEPHANIE STREET  
HENDERSON, NV 89012
- I served the party:
  - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu., Oct. 24, 2013 (2) at: 10:30AM
- The "Notice to the Person Served" (on the Summons) was completed as follows:
  - as an individual defendant

**7. Person Who Served Papers:**

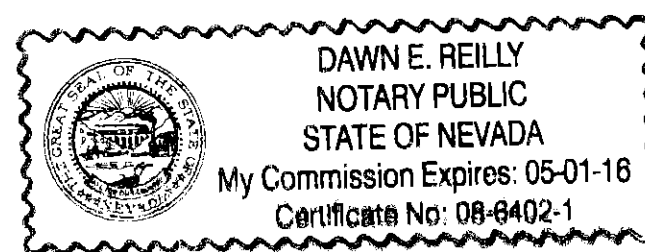
- LEIDY PAOLA SERNA
- First Legal Investigations, PI/PS #1452**  
 Registration# R-029907  
 704 S. Sixth Street  
 LAS VEGAS, NV 89101  
 c. 702-671-4002

**Fee for Service:**

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

10.25.13  
(Date)

[Signature]  
(Signature)

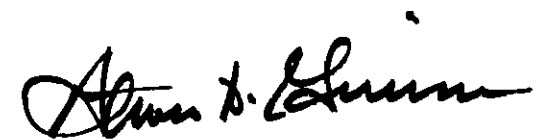


8. STATE OF NEVADA, COUNTY OF Clark 25 day of Oct 13 by LEIDY PAOLA SERNA  
 Subscribed and sworn to (or affirmed) before me on this 25 day of Oct 13 by LEIDY PAOLA SERNA  
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE  
SUMMONS

(Notary Signature) [Signature]  
8689164 .kaecro.567827

# **TAB 6**



CLERK OF THE COURT

1 ANSC  
2 DARREN T. BRENNER, ESQ.  
3 Nevada Bar No. 8386  
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13 *Attorneys for Bank of America, N.A., for*  
14 *itself and as successor by merger to*  
15 *BAC Home Loans Servicing, LP*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 THE FREDRIC AND BARBARA  
19 ROSENBERG LIVING TRUST,

20 Plaintiff,

21 v.

22 BANK OF AMERICA, N.A.; BAC HOME  
23 LOANS SERVICING, LP, a foreign limited  
24 partnership; DRAGONRIDGE PROPERTIES,  
25 LLC; DRAGONRIDGE GOLF CLUB, INC., is  
26 a Nevada corporation; MACDONALD  
27 PROPERTIES, LTD., a Nevada corporation;  
28 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  
ROE BUSINESS ENTITY I through XX,  
inclusive,

Defendants.

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

**BANK OF AMERICA, N.A.'S ANSWER**  
**TO PLAINTIFF'S COMPLAINT**

For its answer to plaintiff's complaint, Bank of America, N.A., for itself and as successor to  
BAC Home Loans Servicing, LP (**Bank of America**), answers as follows:

///

///

{27657917;1}

JA\_0035

1     **I.     The Parties.**

2             1.       Answering paragraph 1 of the complaint, Bank of America is without knowledge or  
3 information sufficient to form a belief as to the truth of the allegations contained in paragraph 1, and  
4 therefore denies the same.

5             2.       Bank of America admits the allegations in paragraph 2 of the complaint.

6             3.       Bank of America denies the allegations in paragraph 3 of the complaint.

7             4.       Answering paragraph 4 of the complaint, Bank of America is without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, and  
9 therefore denies the same.

10            5.       Answering paragraph 5 of the complaint, Bank of America is without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and  
12 therefore denies the same.

13            6.       Answering paragraph 6 of the complaint, Bank of America is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations contained in paragraph 6, and  
15 therefore denies the same.

16            7.       Answering paragraph 7 of the complaint, Bank of America is without knowledge or  
17 information sufficient to form a belief as to the truth of the allegations contained in paragraph 7, and  
18 therefore denies the same.

19            8.       Answering paragraph 8 of the complaint, Bank of America is without knowledge or  
20 information sufficient to form a belief as to the truth of the allegations contained in paragraph 8, and  
21 therefore denies the same.

22            9.       Answering paragraph 9 of the complaint, Bank of America is without knowledge or  
23 information sufficient to form a belief as to the truth of the allegations contained in paragraph 9, and  
24 therefore denies the same.

25            10.      Answering paragraph 10 of the complaint, Bank of America is without knowledge or  
26 information sufficient to form a belief as to the truth of the allegations contained in paragraph 10,  
27 and therefore denies the same.

28     ///

11. To the extent DOES I through XX or ROE BUSINESS ENTITIES I through XX are affiliated with Bank of America, Bank of America denies the allegations contained in paragraph 11 of the complaint. Bank of America is without sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 11, and therefore denies each remaining allegation.

**II. General Allegations.**

12. Answering paragraph 12, Bank of America repeats and incorporates its responses to paragraphs 1 through 11 of the complaint as if fully set forth herein.

13. Bank of America admits the allegations in paragraph 13 of the complaint.

14. Bank of America admits the subject property is located on the ninth hole of the golf course of the Dragonridge Country Club within the MacDonald Highlands community. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14, and therefore denies the same.

15. Answering paragraph 15 of the complaint, Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, and therefore denies the same.

16. Bank of America admits the allegations in paragraph 16 of the complaint.

17. Answering paragraph 17 of the complaint, Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17, and therefore denies the same.

18. Answering paragraph 18 of the complaint, Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18, and therefore denies the same.

19. Answering paragraph 19 of the complaint, Bank of America has no record of the vacation application, as defined in paragraph 19. Bank of America is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19, and therefore denies the same.

///

1           20.     Answering paragraph 20 of the complaint, Bank of America has no record of the  
2 Macdonald application, as defined in paragraph 20. Bank of America is therefore without  
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in  
4 paragraph 20, and therefore denies the same.

5           21.     Answering paragraph 21 of the complaint, Bank of America is without knowledge or  
6 information sufficient to form a belief as to the truth of the allegations contained in paragraph 21,  
7 and therefore denies the same.

8           22.     Answering paragraph 22 of the complaint, Bank of America is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations contained in paragraph 22,  
10 and therefore denies the same.

11          23.     Answering paragraph 23 of the complaint, Bank of America is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations contained in paragraph 23,  
13 and therefore denies the same.

14          24.     Answering paragraph 24 of the complaint, Bank of America is without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations contained in paragraph 24,  
16 and therefore denies the same.

17          25.     Answering paragraph 25 of the complaint, Bank of America is without knowledge or  
18 information sufficient to form a belief as to the truth of the allegations contained in paragraph 25,  
19 and therefore denies the same.

20          26.     Answering paragraph 26 of the complaint, Bank of America is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations contained in paragraph 26,  
22 and therefore denies the same.

23          27.     Answering paragraph 27 of the complaint, Bank of America is without knowledge or  
24 information sufficient to form a belief as to the truth of the allegations contained in paragraph 27,  
25 and therefore denies the same.

26          28.     Answering paragraph 28 of the complaint, Bank of America is without knowledge or  
27 information sufficient to form a belief as to the truth of the allegations contained in paragraph 28,  
28 and therefore denies the same.

1           29.     Answering paragraph 29 of the complaint, Bank of America is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations contained in paragraph 29,  
3 and therefore denies the same.

4           30.     Answering paragraph 30 of the complaint, Bank of America is without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations contained in paragraph 30,  
6 and therefore denies the same.

7           31.     Answering paragraph 31 of the complaint, Bank of America is without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations contained in paragraph 31,  
9 and therefore denies the same.

10          32.     Answering paragraph 32 of the complaint, Bank of America is without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations contained in paragraph 32,  
12 and therefore denies the same.

13          33.     Answering paragraph 33 of the complaint, Bank of America is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations contained in paragraph 33,  
15 and therefore denies the same.

16          34.     Answering paragraph 34 of the complaint, Bank of America is without knowledge or  
17 information sufficient to form a belief as to the truth of the allegations contained in paragraph 34,  
18 and therefore denies the same.

19          35.     Answering paragraph 35 of the complaint, Bank of America is without knowledge or  
20 information sufficient to form a belief as to the truth of the allegations contained in paragraph 35,  
21 and therefore denies the same.

22          36.     Answering paragraph 36 of the complaint, Bank of America is without knowledge or  
23 information sufficient to form a belief as to the truth of the allegations contained in paragraph 36,  
24 and therefore denies the same.

25          37.     Answering paragraph 37 of the complaint, Bank of America is without knowledge or  
26 information sufficient to form a belief as to the truth of the allegations contained in paragraph 37,  
27 and therefore denies the same.

28     ///

1           38.     Answering paragraph 38 of the complaint, Bank of America is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations contained in paragraph 38,  
3 and therefore denies the same.

4           39.     Answering paragraph 39 of the complaint, Bank of America is without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations contained in paragraph 39,  
6 and therefore denies the same.

7           40.     Bank of America denies the allegations contained in paragraph 40 of the complaint.

8           41.     Bank of America admits the allegations contained in paragraph 41 of the complaint to  
9 the extent that Bank of America, through real estate agent/broker Michael Doiron, listed the property  
10 for sale in the Multiple Listing Service (the **MLS listing**). Bank of America denies the remaining  
11 allegations contained in paragraph 41.

12           42.     Bank of America states that the MLS listing speaks for itself, and denies any  
13 allegation in paragraph 42 inconsistent with the MLS listing. Bank of America denies the remaining  
14 allegations contained in paragraph 42.

15           43.     Bank of America states that the residential purchase agreement speaks for itself, and  
16 denies any allegation in paragraph 43 inconsistent with the agreement.

17           44.     Bank of America states that addendum no. 1 speaks for itself, and denies any  
18 allegation in paragraph 44 inconsistent with the addendum.

19           45.     Bank of America states that addendum no. 2 speaks for itself, and denies any  
20 allegation in paragraph 45 inconsistent with the addendum.

21           46.     Bank of America states that addendum no. 1 speaks for itself, and denies any  
22 allegation in paragraph 46 inconsistent with the addendum.

23           47.     Bank of America states that addendum no. 2 speaks for itself, and denies any  
24 allegation in paragraph 47 inconsistent with the addendum.

25           48.     Bank of America admits the allegations in paragraph 48 of the complaint.

26           49.     Bank of America admits the allegations in paragraph 49 of the complaint.

27     ///

28     ///



1           50.     Bank of America admits that Michael Doiron of MacDonald Highlands Realty, LLC  
2 was its real estate agent/broker for the sale of the property, as alleged in paragraph 50 of the  
3 complaint. Bank of America denies the remaining allegations in paragraph 50 of the complaint.

4           51.     Bank of America admits that Michael Doiron of MacDonald Highlands Realty, LLC  
5 was its real estate agent/broker for the sale of the property. Bank of America denies the remaining  
6 allegations in paragraph 51 of the complaint.

7           52.     Bank of America admits the allegations in paragraph 52 of the complaint.

8           53.     Bank of America denies that the adjacent lot lines were amended in such a way as to  
9 materially affect the value of the subject property or its use in an adverse manner, as alleged in  
10 paragraph 53 of the complaint. Bank of America is without knowledge or information sufficient to  
11 form a belief as to the truth of the remaining allegations contained in paragraph 53, and therefore  
12 denies the same.

13           54.     Answering paragraph 54 of the complaint, Bank of America is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations contained in paragraph 54,  
15 and therefore denies the same.

16           55.     Answering paragraph 55 of the complaint, Bank of America is without knowledge or  
17 information sufficient to form a belief as to the truth of the allegations contained in paragraph 55,  
18 and therefore denies the same.

19           56.     Bank of America denies that the adjacent lot lines were amended in such a way as to  
20 materially affect the value of the subject property or its use in an adverse manner, as alleged in  
21 paragraph 56 of the complaint. Bank of America is without knowledge or information sufficient to  
22 form a belief as to the truth of the remaining allegations contained in paragraph 56, and therefore  
23 denies the same.

24           57.     Bank of America denies that the adjacent lot lines were amended in such a way as to  
25 materially affect the value of the subject property or its use in an adverse manner, as alleged in  
26 paragraph 57 of the complaint. Bank of America is without knowledge or information sufficient to  
27 form a belief as to the truth of the remaining allegations contained in paragraph 57, and therefore  
28 denies the same.

1           58. Bank of America denies that the adjacent lot lines were amended in such a way as to  
2 materially affect the value of the subject property or its use in an adverse manner, as alleged in  
3 paragraph 58 of the complaint. Bank of America is without knowledge or information sufficient to  
4 form a belief as to the truth of the remaining allegations contained in paragraph 58, and therefore  
5 denies the same.

6           59. Bank of America denies that the adjacent lot lines were amended in such a way as to  
7 materially affect the value of the subject property or its use in an adverse manner, as alleged in  
8 paragraph 59 of the complaint. Bank of America is without knowledge or information sufficient to  
9 form a belief as to the truth of the remaining allegations contained in paragraph 59, and therefore  
10 denies the same.

11           60. Answering paragraph 60 of the complaint, Bank of America is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations contained in paragraph 60,  
13 and therefore denies the same.

14           61. Answering paragraph 61 of the complaint, Bank of America is without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations contained in paragraph 61,  
16 and therefore denies the same.

17           62. Answering paragraph 62, Bank of America denies the allegations as they pertain to it.  
18 Bank of America is without knowledge or information sufficient to form a belief as to the truth of  
19 the remaining allegations contained in paragraph 62, and therefore denies the same.

20           63. To the extent paragraph 63 references Bank of America, Bank of America denies the  
21 allegations in the complaint. Bank of America is without knowledge or information sufficient to  
22 form a belief as to the truth of the remaining allegations contained in paragraph 63, and therefore  
23 denies the same.

#### 24                                   **FIRST CLAIM FOR RELIEF**

#### 25                                   **(Breach of Contract against Bank of America, N.A.)**

26           64. Answering paragraph 64, Bank of America, N.A. repeats and incorporates its  
27 responses to paragraphs 1 through 63 of the complaint as if fully set forth herein.

28           65. Bank of America, N.A. admits the allegations in paragraph 65 of the complaint.

1           66.     Bank of America, N.A. states the residential purchase agreement, referenced in  
2 paragraph 66 as the "Purchase Agreement" speaks for itself, and denies any allegations inconsistent  
3 with the agreement.

4           67.     Bank of America, N.A. denies the allegations in paragraph 67 of the complaint.

5           68.     Bank of America, N.A. denies the allegations in paragraph 68 of the complaint.

6           69.     Bank of America, N.A. denies the allegations in paragraph 69 of the complaint.

7                           **SECOND CLAIM FOR RELIEF**

8                   **(Breach of the Implied Covenant of Good Faith and Fair Dealing against Bank of America,**  
9   **N.A.)**

10           70.     Answering paragraph 70, Bank of America, N.A. repeats and incorporates its  
11 responses to paragraphs 1 through 69 of the complaint as if fully set forth herein.

12           71.     Paragraph 71 of the complaint contains a legal conclusion to which no response is  
13 reasonably required. To the extent a response is nonetheless required, Bank of America, N.A.  
14 admits that Nevada law has a reciprocal covenant of good faith and fair dealing, but denies that  
15 paragraph 71 is a full and/or accurate expression of the law as it pertains to the covenant of good  
16 faith and fair dealing, or that it is applicable to the allegations of this case.

17           72.     Bank of America, N.A. admits the allegations in paragraph 72 of the complaint.

18           73.     The allegations contained in paragraph 73 are too vague to frame a response. To the  
19 extent a response is required, Bank of America, N.A. denies that it breached the covenant of good  
20 faith and fair dealing.

21           74.     Bank of America, N.A. denies the allegations in paragraph 74 of the complaint.

22           75.     Bank of America, N.A. denies the allegations in paragraph 75 of the complaint.

23           76.     Bank of America, N.A. denies the allegations in paragraph 76 of the complaint.

24           77.     Bank of America, N.A. denies the allegations in paragraph 77 of the complaint.

25                           **THIRD CLAIM FOR RELIEF**

26                   **(Unjust Enrichment against, *inter alia*, Bank of America)**

27           78.     Answering paragraph 78, Bank of America repeats and incorporates its responses to  
28 paragraphs 1 through 77 of the complaint as if fully set forth herein.

80. To the extent paragraph 80 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 80, and therefore denies the same.

**(Fraudulent or Intentional Misrepresentation against, *inter alia*, Bank of America)**

82. Paragraph 82 of the complaint contains a legal conclusion to which no response is reasonably required. To the extent a response is nonetheless required, Bank of America admits that common law fraud is a recognized cause of action in Nevada, but denies that paragraph 82 is a full or accurate expression of the law.

84. To the extent paragraph 84 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 84, and therefore denies the same.

85. To the extent paragraph 85 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 85, and therefore denies the same.

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1           93.     The allegations contained in paragraph 93 are directed at other defendants, and not  
2 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
3 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
4 denies the same.

5           94.     The allegations contained in paragraph 94 are directed at other defendants, and not  
6 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
8 denies the same.

9                                   **SEVENTH CLAIM FOR RELIEF**

10                           **(Easement against Other Defendants)**

11           95.     Answering paragraph 95, Bank of America repeats and incorporates its responses to  
12 paragraphs 1 through 94 of the complaint as if fully set forth herein.

13           96.     The allegations contained in paragraph 96 are directed at other defendants, and not  
14 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
15 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
16 denies the same.

17           97.     The allegations contained in paragraph 97 are directed at other defendants, and not  
18 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
20 denies the same.

21           98.     The allegations contained in paragraph 98 are directed at other defendants, and not  
22 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
23 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
24 denies the same.

25           99.     The allegations contained in paragraph 99 are directed at other defendants, and not  
26 Bank of America. To the extent a response is nonetheless required, Bank of America is without  
27 knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore  
28 denies the same.

**EIGHTH CLAIM FOR RELIEF****(Declaratory Relief against All Defendants)**

100. Answering paragraph 100, Bank of America repeats and incorporates its responses to paragraphs 1 through 99 of the complaint as if fully set forth herein.

101. To the extent paragraph 101 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 101, and therefore denies the same.

102. Bank of America denies the allegations in paragraph 102 of the complaint.

103. To the extent paragraph 103 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 103, and therefore denies the same.

104. Paragraph 104 of the complaint does not make any allegation; therefore, a response is not required. To the extent a response is nonetheless required, Bank of America denies the allegations contained in paragraph 104.

105. To the extent paragraph 105 references Bank of America, Bank of America denies the allegations in the complaint. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 105, and therefore denies the same.

106. Every allegation in the complaint that is not expressly admitted above is hereby denied.

**AFFIRMATIVE DEFENSES****FIRST AFFIRMATIVE DEFENSE****(Failure to State a Claim)**

Bank of America alleges plaintiff failed to state facts sufficient to constitute any cause of action against Bank of America.

///

**SECOND AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

Bank of America alleges plaintiff's claims are barred in whole or in part because of plaintiff's failure to take reasonable steps to mitigate its damages, if any.

**THIRD AFFIRMATIVE DEFENSE****(Statute of Limitations)**

Plaintiff's claims are barred by the doctrine of laches, unclean hands and failure to do equity.

**FOURTH AFFIRMATIVE DEFENSE****(Privilege)**

Plaintiff's claims are barred, in whole or in part, on the ground that Bank of America's conduct as alleged in plaintiff's complaint was privileged.

**FIFTH AFFIRMATIVE DEFENSE****(Plaintiff's Own Negligence)**

Plaintiff is barred from recovery, or said recovery, if any, must be proportionately reduced, as any injury or damage allegedly suffered by plaintiff occurred as a proximate result of the negligence on its own part, in that plaintiff failed to exercise ordinary care on its own behalf at the time and place alleged.

**SIXTH AFFIRMATIVE DEFENSE****(Comparative Fault)**

Plaintiff was careless and negligent with respect to all matters alleged in the complaint, and thus were comparatively at fault and proximately caused its own damages. Accordingly, any damages otherwise recoverable by plaintiff, if any, should be reduced in proportion to its own negligence.

**SEVENTH AFFIRMATIVE DEFENSE****(Third-Party Fault)**

Bank of America alleges that the damages complained of, if there were any, were proximately contributed to or caused by the carelessness, negligence, fault or defects resulting from



1 acts/omissions of other persons unknown to Bank of America at this time, and were not caused in  
2 any way by Bank of America or by persons for whom Bank of America is legally responsible.

### 3 **EIGHTH AFFIRMATIVE DEFENSE**

#### 4 **(Reduction of Damages Based on Third Party Fault)**

5 Bank of America is entitled to have any award against it reduced or eliminated to the extent  
6 that the negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of  
7 other persons that contributed to the plaintiff's damages, if any.

### 8 **NINTH AFFIRMATIVE DEFENSE**

#### 9 **(Causation)**

10 The acts and omissions of Bank of America alleged in plaintiff's claims for relief were not a  
11 proximate cause of the loss or damage for which plaintiff seeks recovery.

### 12 **TENTH AFFIRMATIVE DEFENSE**

#### 13 **(Suffered No Damages)**

14 Plaintiff's claims are barred because plaintiff suffered no damages as a result of the  
15 allegations in the complaint.

### 16 **ELEVENTH AFFIRMATIVE DEFENSE**

#### 17 **(Wrongful Conduct of Another)**

18 Plaintiff's damages, if any, were proximately and concurrently caused or contributed to by  
19 the fraud, deceit, or other wrongful conduct of persons or entities for which Bank of America is not  
20 responsible.

### 21 **TWELFTH AFFIRMATIVE DEFENSE**

#### 22 **(Intervening/Superseding Cause)**

23 The injuries and damages which plaintiff alleges, if any, were proximately caused and  
24 contributed to by the acts, omissions or breaches of other defendants, cross-defendants, third-party  
25 defendants, persons, and entities, and said acts, omissions or breaches were intervening and  
26 superseding causes of injuries and damages, if any, of which plaintiff complains, thus barring  
27 plaintiff from any recovery from Bank of America.

28 ///

**THIRTEENTH AFFIRMATIVE DEFENSE****(Plaintiff's Acts/Omissions)**

Bank of America alleges that, by reason of its own acts and omissions, plaintiff has waived its rights to assert the claims it has asserted against Bank of America.

**FOURTEENTH AFFIRMATIVE DEFENSE****(Additional Defenses)**

Pursuant to NRCP 11, Bank of America reserves its right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

DATED this 30th day of December, 2013.

**AKERMAN LLP**

/s/ Natalie L. Winslow

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A., for  
itself and as successor by merger to  
BAC Home Loans Servicing, LP*

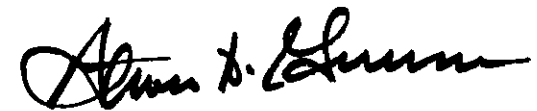
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/s/ Eloisa Nuñez

---

An employee of AKERMAN LLP

# **TAB 7**



CLERK OF THE COURT

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

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME  
15 LOANS SERVICING, LP, a foreign limited  
partnership; DRAGONRIDGE PROPERTIES,  
16 LLC; DRAGONRIDGE GOLF CLUB, INC. is  
a Nevada corporation; MACDONALD  
17 PROPERTIES, LTD., a Nevada corporation;  
MACDONALD HIGHLANDS REALTY,  
18 LLC, a Nevada limited liability company;  
MICHAEL DOIRON, an individual; SHAHIN  
19 SHANE MALEK, an individual; REAL  
PROPERTIES MANAGEMENT GROUP,  
20 INC., a Nevada corporation; DOES I through  
X, inclusive; ROE BUSINESS ENTITY I  
21 through XX, inclusive,

22 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**

23  
24 Defendants DRFH Ventures, LLC, formerly known and incorrectly identified as Dragonridge  
25 Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands  
26 Realty, LLC; and Michael Doiron (collectively "Defendants"), by and through their counsel,  
27 Spencer H. Gunnerson, Esq. of the law firm Kemp, Jones & Coulthard, LLP; and Plaintiff The  
28 Fredric and Barbara Rosenberg Living Trust, by and through its counsel, James E. Smythe, Esq. of

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
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1 the law firm of Kaempfer Crowell, appeared before this Court on December 19, 2013, at 10:00 a.m.  
2 for the hearing on Defendants' Joinder to Bank of America, N.A.'s Motion to Dismiss Plaintiff's  
3 Complaint and on Defendants' Motion to Dismiss. The Court having reviewed the pleadings and  
4 papers on file herein and heard the arguments of counsel made at the hearing, and other good cause  
5 appearing therefor,

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


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

14 DATED this 7 day of December, 2013.

15  
16   
DISTRICT COURT JUDGE JB

18 Respectfully Submitted by:

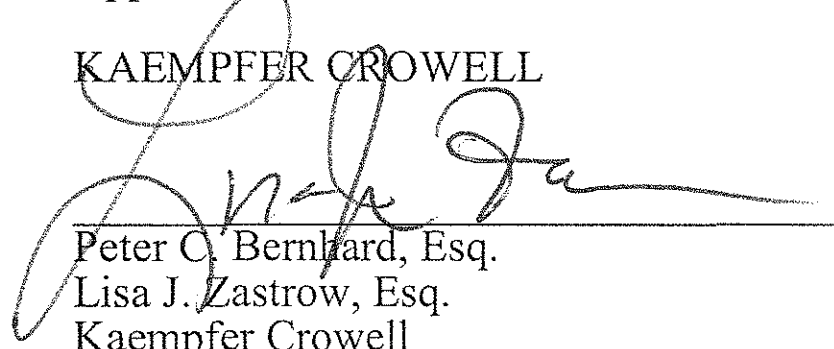
19 KEMP, JONES & COULTHARD, LLP

20  
21   
J. Randall Jones, Esq.  
22 Spencer H. Gunnerson, Esq.  
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23 Seventeenth Floor  
Las Vegas, Nevada 89169

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

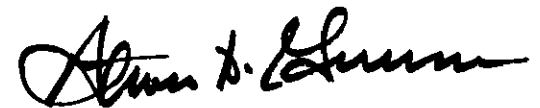
Approved as to form and content:

KAEMPFER CROWELL

27  
28   
Peter C. Bernhard, Esq.  
Lisa J. Zastrow, Esq.  
Kaempfer Crowell  
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*Attorneys for Plaintiffs*

# **TAB 8**



CLERK OF THE COURT

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5 *DragonRidge Properties, LLC, Dragonridge Golf Club, Inc.,*  
*MacDonald Properties, Ltd., MacDonald Highlands Realty, LLC,*  
6 *and Michael Doiron*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE FREDRIC AND BARBARA  
10 ROSENBERG LIVING TRUST,

11 Plaintiff,

12 vs.

13 BANK OF AMERICA, N.A.; BAC HOME  
14 LOANS SERVICING, LP, a foreign limited  
15 partnership; DRAGONRIDGE PROPERTIES,  
16 LLC; DRAGONRIDGE GOLF CLUB, INC. is  
17 a Nevada corporation; MACDONALD  
18 PROPERTIES, LTD., a Nevada corporation;  
19 MACDONALD HIGHLANDS REALTY,  
20 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,

21 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**

22 TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD:

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

25 DATED this 10<sup>th</sup> day of January, 2014.

26 KEMP, JONES & COULTHARD

27   
J. Randall Jones, Esq., NV Bar No. 1927  
28 Spencer H. Gunnerson, Esq., NV Bar No. 8810  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
Attorneys for Plaintiff

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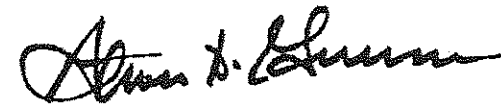
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**CERTIFICATE OF MAILING**

I hereby certify that on the 13<sup>th</sup> 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*

  
An employee of Kemp, Jones & Coulthard



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign limited  
15 partnership; DRAGONRIDGE PROPERTIES,  
LLC; DRAGONRIDGE GOLF CLUB, INC. is  
16 a Nevada corporation; MACDONALD  
PROPERTIES, LTD., a Nevada corporation;  
17 MACDONALD HIGHLANDS REALTY,  
LLC, a Nevada limited liability company;  
18 MICHAEL DOIRON, an individual; SHAHIN  
SHANE MALEK, an individual; REAL  
19 PROPERTIES MANAGEMENT GROUP,  
INC., a Nevada corporation; DOES I through  
20 X, inclusive; ROE BUSINESS ENTITY I  
21 through XX, inclusive,

22 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**

24 Defendants DRFH Ventures, LLC, formerly known and incorrectly identified as Dragonridge  
25 Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands  
26 Realty, LLC; and Michael Doiron (collectively "Defendants"), by and through their counsel,  
27 Spencer H. Gunnerson, Esq. of the law firm Kemp, Jones & Coulthard, LLP; and Plaintiff The  
28 Fredric and Barbara Rosenberg Living Trust, by and through its counsel, James E. Smythe, Esq. of

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

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


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

14 DATED this 7 day of December, 2013.

15  
16   
DISTRICT COURT JUDGE JS

18 Respectfully Submitted by:

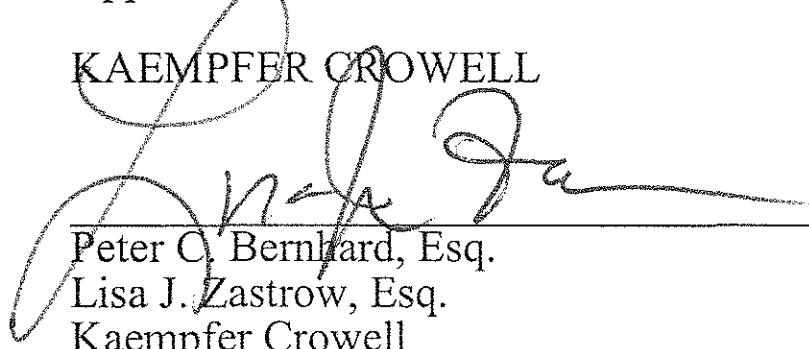
19 KEMP, JONES & COULTHARD, LLP

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J. Randall Jones, Esq.  
22 Spencer H. Gunnerson, Esq.  
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23 Seventeenth Floor  
Las Vegas, Nevada 89169

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

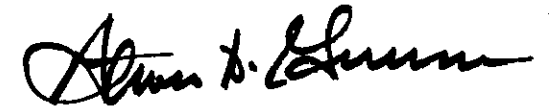
Approved as to form and content:

KAEMPFER CROWELL

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*Attorneys for Plaintiffs*

# **TAB 9**



CLERK OF THE COURT

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Telephone: (702) 385-6000  
5 Facsimile: (702) 385-6001  
*Attorneys for Defendants MacDonald Highlands Realty, LLC,*  
6 *and Michael Doiron*

7  
8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Case No.: A689113  
Dept. No.: I

11 Plaintiff,

12 **ANSWER TO PLAINTIFF'S COMPLAINT**

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME  
15 LOANS SERVICING, LP, a foreign limited  
16 partnership; DRAGONRIDGE PROPERTIES,  
17 LLC; DRAGONRIDGE GOLF CLUB, INC. is  
18 a Nevada corporation; MACDONALD  
19 PROPERTIES, LTD., a Nevada corporation;  
20 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,

21 Defendants.

22  
23 COME NOW Defendants MACDONALD HIGHLANDS REALTY ("MHR"), a Nevada  
24 limited liability company, and MICHAEL DOIRON ("Doiron"), an individual, by and through their  
25 attorneys of record J. Randall Jones, Esq. and Spencer H. Gunnerson, Esq. of KEMP, JONES &  
26 COULTHARD, LLP, and hereby answers Plaintiff's Complaint as follows:

27 ///

28 ///

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

I.

THE PARTIES

1. Answering Paragraphs 1, 2, 3, 4, 5, and 6, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, denies the allegations contained therein.

2. Answering Paragraph 7, Defendants MHR and Doiron admit the allegations contained therein.

3. Answering Paragraph 8, Defendants MHR and Doiron deny that Doiron was a Real Estate Salesperson, but admit the remaining allegations therein.

4. Answering Paragraphs 9, 10, and 11, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

II.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

5. Answering Paragraph 12, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

6. Answering Paragraphs 13, 14, and 15, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, denies the allegations contained therein.

7. Answering Paragraph 16, Defendants MHR and Doiron admit the allegations contained therein.

8. Answering Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, denies the allegations contained therein.

9. Answering Paragraph 40, Defendants MHR and Doiron deny any and all allegations contained therein.

1           10.     Answering Paragraphs 41, 42, and 43, Defendants MHR and Doiron admit the  
2 allegations contained therein.

3           11.     Answering Paragraph 44, Defendants MHR and Doiron are without information and  
4 belief sufficient to allow them to respond to the allegation that Plaintiff executed Addendum No.1,  
5 and on that basis, deny that allegation. Defendants MHR and Doiron admit the remaining allegations  
6 contained therein.

7           12.     Answering Paragraph 45, Defendants MHR and Doiron are without information and  
8 belief sufficient to allow them to respond to the allegation that Plaintiff executed Addendum No.2,  
9 and on that basis, deny that allegation. Defendants MHR and Doiron admit the remaining allegations  
10 contained therein.

11           13.     Answering Paragraphs 46, 47, and 48, Defendants MHR and Doiron admit the  
12 allegations contained therein.

13           14.     Answering Paragraph 49, Defendants MHR and Doiron are without information and  
14 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
15 contained therein.

16           15.     Answering Paragraphs 50 and 51, Defendants MHR and Doiron admit the allegations  
17 contained therein.

18           16.     Answering Paragraph 52, Defendants MHR and Doiron admit that escrow closed on  
19 or about May 15, 2013, but are without information and belief sufficient to allow them to respond to  
20 the remaining allegations, and on that basis, deny the remaining allegations contained therein.

21           17.     Answering Paragraph 53, Defendants MHR and Doiron are without information and  
22 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
23 contained therein.

24           18.     Answering Paragraph 54, Defendant MHR is without information and belief  
25 sufficient to allow it to respond to the same, and on that basis, denies the allegations contained  
26 therein. Defendant Doiron admits she did not discuss the neighbor's lot lines with Plaintiff, but  
27 denies any and all remaining allegations contained therein.

28           19.     Answering Paragraph 55, Defendants MHR and Doiron deny any and all allegations

1 contained therein.

2 20. Answering Paragraph 56, Defendants MHR and Doiron are without information and  
3 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
4 contained therein.

5 21. Answering Paragraph 57, Defendants MHR is without information and belief  
6 sufficient to allow it to respond to the same, and on that basis, denies the allegations contained  
7 therein. Defendant Doiron admits she did not discuss the neighbor's lot lines with Plaintiff, but  
8 denies any and all remaining allegations contained therein.

9 22. Answering Paragraphs 58, 59, 60, and 61, Defendants MHR and Doiron are without  
10 information and belief sufficient to allow them to respond to the same, and on that basis, deny the  
11 allegations contained therein.

12 23. Answering Paragraph 62, Defendants MHR and Doiron deny any and all allegations  
13 contained therein, but are without information and belief sufficient to respond as to all defendants,  
14 and on that basis, deny the same.

15 24. Answering Paragraph 63, Defendants MHR and Doiron are without information and  
16 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
17 contained therein.

18 **FIRST CLAIM FOR RELIEF**  
19 **(Breach of Contract against BANK OF AMERICA)**

20 25. Answering Paragraph 64, Defendants MHR and Doiron repeat and re-allege each and  
21 every admission, denial and allegation contained herein and incorporates the same as though fully  
22 set forth in this paragraph.

23 26. Answering Paragraphs 65, 66, 67, 68, and 69, the paragraphs do not assert any  
24 claim or allegation against these Defendants and, therefore, no response is necessary. To the extent a  
25 response is deemed necessary, Defendants MHR and Doiron are without information and belief  
26 sufficient to allow them to respond to the same, and on that basis, deny the allegations contained  
27 therein.

28 ///



**SECOND CLAIM FOR RELIEF**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing against BANK OF AMERICA)**

27. Answering Paragraph 70, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

28. Answering Paragraphs 71, 72, 73, 74, 75, 76, and 77, the paragraphs do not assert any claim or allegation against these Defendants and, therefore, no response is necessary. To the extent a response is deemed necessary, Defendants MHR and Doiron are without information and belief sufficient to allow them to respond to the same, and on that basis, deny the allegations contained therein.

**THIRD CLAIM FOR RELIEF**  
**(Unjust Enrichment against BANK OF AMERICA, BAC HOME LOAN SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALD PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)**

29. Answering Paragraph 78, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

30. Answering Paragraph 79 and 80, Defendants MHR and Doiron deny any and all allegations contained therein as they pertain to them, and are without information and belief sufficient to respond as to any other defendants, and on that basis, deny the same.

**FOURTH CLAIM FOR RELIEF**  
**(Fraudulent or Intentional Misrepresentation - BANK OF AMERICA, BAC HOME LOAN SERVICING, LP, DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC, MACDONALD PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)**

31. Answering Paragraph 81, Defendants MHR and Doiron repeat and re-allege each and every admission, denial and allegation contained herein and incorporates the same as though fully set forth in this paragraph.

32. Answering Paragraph 82, the allegations contained therein constitute legal conclusions to which no response is required. To the extent an answer is required, Defendants MHR and Doiron deny each and every allegation contained therein.

1           33.     Answering Paragraphs 83 and 84, Defendants MHR and Doiron deny any and all  
2 allegations contained therein as they pertain to them, and are without information and belief  
3 sufficient to respond as to any other defendants, and on that basis, deny the same.

4           34.     Answering Paragraph 85, Defendants MHR and Doiron are without information and  
5 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
6 contained therein.

7           35.     Answering Paragraph 86, Defendants MHR and Doiron deny any and all  
8 allegations contained therein as they pertain to them, and are without information and belief  
9 sufficient to respond as to any other defendants, and on that basis, deny the same.

10                               **FIFTH CLAIM FOR RELIEF**  
11           **(Negligent Misrepresentation - BANK OF AMERICA, BAC HOME LOAN SERVICING, LP,**  
12           **DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC,**  
13           **MACDONALD PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC,**  
14           **MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)**

15           36.     Answering Paragraph 87, Defendants MHR and Doiron repeat and re-allege each and  
16 every admission, denial and allegation contained herein and incorporates the same as though fully  
17 set forth in this paragraph.

18           37.     Answering Paragraph 88, Defendants MHR and Doiron deny any and all  
19 allegations contained therein as they pertain to them, and are without information and belief  
20 sufficient to respond as to any other defendants, and on that basis, deny the same.

21           38.     Answering Paragraph 89, Defendants MHR and Doiron are without information and  
22 belief sufficient to allow them to respond to the same, and on that basis, deny the allegations  
23 contained therein.

24           39.     Answering Paragraph 90, Defendants MHR and Doiron deny any and all allegations  
25 contained therein, and are without information and belief sufficient to respond as to any other  
26 defendants, and on that basis, deny the same.

27                               **SIXTH CLAIM FOR RELIEF**  
28           **(Real Estate Brokers Violations of NRS 645 Against MACDONALD HIGHLANDS REALTY,**  
29           **LLC, MICHAEL DOIRON and REAL PROPERTY MANAGEMENT GROUP, INC.)**

30           40.     Answering Paragraph 91, Defendants MHR and Doiron repeat and re-allege each and  
31 every admission, denial and allegation contained herein and incorporates the same as though fully

1 set forth in this paragraph.

2 41. Answering Paragraph 92, the allegations contained therein constitute legal  
3 conclusions to which no response is required. To the extent an answer is required, Defendants MHR  
4 and Doiron deny each and every allegation contained therein.

5 42. Answering Paragraphs 93 and 94, Defendants MHR and Doiron deny any and all  
6 allegations contained therein, and are without information and belief sufficient to respond as to any  
7 other defendants, and on that basis, deny the same.

8 **SEVENTH CLAIM FOR RELIEF**  
9 **(Easement - DRAGONRIDGE PROPERTIES, LLC, DRAGONRIDGE GOLF CLUB, INC,**  
10 **MACDONALD PROPERTIES, LTD, MACDONALD HIGHLANDS REALTY, LLC,**  
11 **MICHAEL DOIRON, REAL PROPERTY MANAGEMENT GROUP, INC. and MALEK)**

12 43. Answering Paragraph 95, Defendants MHR and Doiron repeat and re-allege each and  
13 every admission, denial and allegation contained herein and incorporates the same as though fully  
14 set forth in this paragraph.

15 44. Answering Paragraph 96, Defendants MHR and Doiron deny any and all allegations  
16 contained therein as they pertain to them, and are without information and belief sufficient to  
17 respond as to any other defendants, and on that basis, deny the same.

18 45. Answering Paragraphs 97 and 98, Defendants MHR and Doiron are without  
19 information and belief sufficient to allow them to respond to the same, and on that basis, deny the  
20 allegations contained therein.

21 46. Answering Paragraph 99, Defendants MHR and Doiron deny any and all allegations  
22 contained therein as they pertain to them, and are without information and belief sufficient to  
23 respond as to any other defendants, and on that basis, deny the same.

24 **EIGHTH CLAIM FOR RELIEF**  
25 **(Declaratory Relief - ALL DEFENDANTS)**

26 47. Answering Paragraph 100, Defendants MHR and Doiron repeat and re-allege each  
27 and every admission, denial and allegation contained herein and incorporates the same as though  
28 fully set forth in this paragraph.

48. Answering Paragraph 101, Defendants MHR and Doiron deny any and all allegations  
contained therein, and are without information and belief sufficient to respond as to any other

1 defendants, and on that basis, deny the same.

2 49. Answering Paragraph 102, Defendants MHR and Doiron state this paragraph calls for  
3 a legal conclusion for which no answer is required. To the extent an answer is required, Defendants  
4 MHR and Doiron deny each and every allegation contained therein.

5 50. Answering Paragraphs 103 and 104, Defendants MHR and Doiron are without  
6 information and belief sufficient to allow them to respond to the same, and on that basis, deny the  
7 allegations contained therein.

8 51. Answering Paragraph 105, Defendants MHR and Doiron deny any and all allegations  
9 contained therein.

10 **AFFIRMATIVE DEFENSES**

11 1. Plaintiff has failed to state a claim for which relief may be granted.

12 2. Plaintiff's claims are barred by the doctrine of estoppel.

13 3. Plaintiff is guilty of unclean hands and therefore is not entitled to any relief from  
14 Defendants MHR and Doiron.

15 4. Any damages which Plaintiff may have sustained were proximately caused by the  
16 acts of persons other than Defendants MHR and Doiron, and therefore, Plaintiff is not entitled to any  
17 relief from Defendants MHR and Doiron.

18 5. Plaintiff's damages, if any, resulted from the acts or omissions of third parties over  
19 whom Defendants MHR and Doiron have no control. The acts of such third parties constitute  
20 intervening or superseding causes of the harm, if any, suffered by Plaintiff.

21 6. Alternatively, should Defendants MHR and Doiron be found liable, the fault of all  
22 parties, joined and non-joined, including that of Plaintiff, must be evaluated and liability apportioned  
23 among all persons and entities appropriate to respective fault.

24 7. Plaintiff's claims should be dismissed for failure to join indispensable parties.

25 8. Plaintiff has expressly and/or impliedly waived its rights to assert the claims alleged  
26 in its Complaint.

27 9. If Plaintiff relied on the representations, if any, of Defendants MHR and Doiron, such  
28 reliance was unreasonable.

1           10.     Plaintiff has failed to do equity toward Defendants MHR and Doiron and therefore is  
2 not entitled to any relief.

3           11.     Plaintiff's claims are not well grounded in fact and are not warranted by existing law  
4 or a good faith argument for the extension or modification of existing law, but are initiated only for  
5 purposes of harassment and the occurrence of needless costs of litigation to Defendants MHR and  
6 Doiron.

7           12.     Any injuries Plaintiff claims to have suffered was not proximately or materially  
8 caused by Defendants MHR's and/or Doiron's alleged acts, conduct, or omissions, and Plaintiff is  
9 therefore barred from recovery.

10          13.     By reason of its own acts, Plaintiff has released and discharged Defendants MHR and  
11 Doiron from the claims alleged in Plaintiff's Complaint and from any and all claims of Plaintiff  
12 against Defendants MHR and Doiron.

13          14.     Plaintiff was on notice of the change in the lot lines of its neighbor's property when it  
14 acquired the property.

15          15.     Defendants MHR and Doiron hereby adopt and incorporate by this reference any and  
16 all other defenses asserted or to be asserted by any other Defendant in this proceeding to the extent  
17 that Answering Defendants may share in such defenses.

18          16.     Any change in lot lines of the neighbor's property was not a material issue or defect  
19 and did not require disclosure by Defendants MHR and Doiron.

20          Pursuant to N.R.C.P. Rule 11, as amended, all possible affirmative defenses may not have  
21 been alleged herein insofar as sufficient facts were not available – after reasonable inquiry – upon  
22 the filing of the Answering Defendants' Answer and as such, Answering Defendants reserve the  
23 right to amend their Answer to add additional affirmative defenses if subsequent investigation  
24 warrants such an action.

25 ///

26 ///

27 ///

28 ///

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


**PRAYER FOR RELIEF**

WHEREFORE, Defendants MHR and Doiron pray for judgment as follows:

1. Plaintiff take nothing and the Complaint be dismissed with prejudice;
2. Defendants MHR and Doiron be awarded their fees and costs; and
3. For such other and further relief as this Court may deem just and proper.

DATED this 28 day of January, 2014.

Respectfully submitted by:

  
J. Randall Jones, Esq. (#1927)  
Spencer H. Gunnerson, Esq. (#8810)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
*Attorneys for Defendants MacDonald Highlands  
Realty, LLC, and Michael Doiron*

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Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2014, the foregoing **ANSWER TO**  
**PLAINTIFF'S COMPLAINT** was served on the following persons by mailing a copy thereof, to:

Howard C. Kim, Esq.  
Kim & Associates  
1055 Whitney Ranch Drive, #110  
Henderson, NV 89014

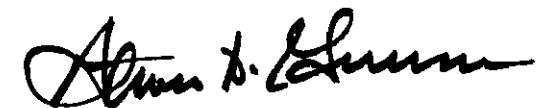
Ariel Stern, Esq.  
Akerman, LLP  
1160 Town Center Drive, Ste. 330  
Las Vegas, NV 89144

Patrick Byrne, Esq.  
Snell & Wilmer  
3883 Howard Hughes Parkway, Ste. 1100  
Las Vegas, NV 89169

  
An employee of Kemp, Jones & Coulthard

# **TAB 10**





CLERK OF THE COURT

Patrick G. Byrne (Nevada Bar #7636)  
Justin A. Shiroff (Nevada Bar #12869)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
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Facsimile: 702.784.5252  
Email: pbyrne@swlaw.com  
jshiroff@swlaw.com

*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.

Snell & Wilmer

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702)784-5200

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

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.

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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**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.

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.

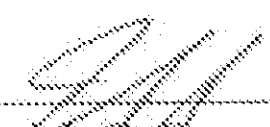
15. Counterclaimant has suffered and continues to suffer damages in excess of \$10,000 as a result of Plaintiff's actions.

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 LLP.

  
Patrick G. Byrne (Nevada Bar #7636)  
Justin A. Shiroff (Nevada Bar #12869)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

*Attorneys for Defendant Shahin  
Shane Malek*


Snell & Wilmer

LAW OFFICES  
3885 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702)784-6200

CERTIFICATE OF SERVICE

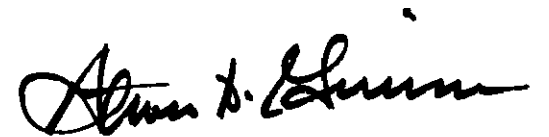
As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing  
**DEFENDANT SHAHIN SHANE MALEK'S ANSWER AND COUNTERCLAIM**  
on the 20<sup>th</sup> day of February, 2014, via United States Postal Service, postage prepaid, and  
facsimile to the following:

Peter C. Bernhard, Esq.  
Lisa J. Zastrow, Esq.  
Kaempfer Crowell  
8345 West Sunset Road, Suite 250  
Las Vegas, NV 89113  
Telephone No. 702.792.7000  
Fax. No. 702.796.7181

  
An employee of Snell & Wilmer L.L.P.



# **TAB 11**



CLERK OF THE COURT

**CCAN**

HOWARD C. KIM, 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; 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

**THE FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST'S  
ANSWER TO DEFENDANT SHAHIN  
SHANE MALEK'S COUNTERCLAIM**

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST ("Rosenberg  
Trust" or "Counter-Defendant"), by and through its counsel, hereby answers Defendant  
SHAHIN SHANE MALEK's ("Malek" or "Counterclaimant") Counterclaim as follows:

**GENERAL ALLEGATIONS**

1. Rosenberg Trust admits the allegations contained in paragraph 1, 2 and 3 of the counterclaim.

2. Rosenberg Trust admits, upon information and belief, the allegations in paragraph 4, except that Rosenberg Trust denies the hearing was properly noticed.

3. Rosenberg Trust is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 5 of the counterclaim, and therefore denies said allegations.

4. Answering paragraph 6, Rosenberg Trust admits that escrow for the property located at 590 Lairmont Place closed on May 15, 2013.

5. Rosenberg Trust admits the allegations contained in paragraph 7.

6. Answering the allegations in paragraph 8, Rosenberg Trust admits it filed a notice of lis pendens with the Court on September 30, 2013 and recorded a lis pendens against real property identified in the lis pendens. Rosenberg Trust further states that the document referenced in paragraph 8 speaks for itself and denies any allegations inconsistent with said document.

7. Answering the allegations in paragraph 9, Rosenberg Trust admits it recorded a release of lis pendens on October 24, 2013. It further admits that it filed an amended notice of lis pendens with the Court, but denies that it was filed on October 24, 2013. Rosenberg Trust further states that the documents referenced in paragraph 9 speak for themselves and Rosenberg Trust denies any allegations inconsistent with said documents.

8. Answering the allegations in paragraph 10, Rosenberg Trust admits the lis pendens was expunged by Court order. Rosenberg Trust further states that the document referenced in paragraph 10 speaks for itself and denies any allegations inconsistent with said document.

**FIRST CAUSE OF ACTION**  
**(Slander of Title)**

9. Rosenberg Trust repeats and realleges its answers to paragraphs 1 through 10 of the counterclaim as though fully set forth herein.

10. Rosenberg Trust denies the allegations contained in paragraph 12, 13, 14 and 15 of the counterclaim.

**AFFIRMATIVE DEFENSES**

1. Malek fails to state a claim upon which relief may be granted.

2. Malek is not entitled to relief from or against Rosenberg Trust, as Malek has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by Rosenberg Trust.

3. The occurrence referred to in the counterclaim, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Malek.

4. The occurrence referred to in the counterclaim, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom Rosenberg Trust had no control.

5. Rosenberg Trust did not breach any statutory or common law duties allegedly owed to Malek.

6. Rosenberg Trust acted in good faith at all times and did not act with malice.

7. Malek's claims are barred because Rosenberg Trust complied with applicable statutes and with the requirements and regulations of the State of Nevada.

8. Malek's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

9. Malek is not entitled to equitable relief because he has an adequate remedy at law.

10. Malek's cause of action is barred in whole or in part by the doctrine of unclean hands. Malek's wrongful conduct precludes him from seeking relief.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, Rosenberg Trust reserves the

///

///

///

**HOWARD KIM & ASSOCIATES**

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 right to amend this Answer to assert any affirmative defenses if subsequent investigation  
2 warrants.

3 DATED March 14th, 2014.

**HOWARD KIM & ASSOCIATES**

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

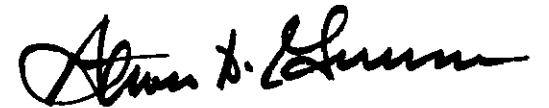
Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

*Attorneys for The Frederic and Barbara  
Rosenberg Living Trust*

# **TAB 12**



CLERK OF THE COURT

NVD

HOWARD C. KIM, ESQ.  
Nevada Bar No. 10386  
E-mail: howard@hkimlaw.com  
DIANA S. CLINE, ESQ.  
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Nevada Bar No. 10593  
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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; 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'**

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

10 (emphasis added).

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

13 DATED April 29th, 2014.

14 **HOWARD KIM & ASSOCIATES**

15 /s/ Diana S. Cline  
16 HOWARD C. KIM, ESQ.  
17 Nevada Bar No. 10386  
18 DIANA S. CLINE, ESQ.  
19 Nevada Bar No. 10580  
20 JACQUELINE A. GILBERT, ESQ.  
21 Nevada Bar No. 10593  
22 1055 Whitney Ranch Drive, Suite 110  
23 Henderson, Nevada 89014  
24 Phone: (702) 485-3300  
25 Fax: (702) 485-3301  
26 Attorneys for Plaintiffs  
27  
28



# **TAB 13**

  
CLERK OF THE COURT

**ACOM**

HOWARD C. KIM, ESQ.  
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Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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

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.

**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:

1 I.

2 THE PARTIES

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

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

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

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

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

19 6. Plaintiff is informed and believes and therefore alleges that Defendant SHAHIN  
20 SHANE MALEK, an individual, is and at all times relevant to this action was, the owner of certain  
21 real property in Clark County, Nevada generally described as 594 Lairmont Place, Henderson, Nevada  
22 89012, Assessor Parcel Number 178-27-218-002, located in the MacDonald Highlands community.

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

28 ///

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 BUSINESS 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

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

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

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

11 17. Situated on the GOLF PARCEL were certain easements.

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

16 19. The VACATION APPLICATION was submitted in conjunction with associated  
17 applications for Comprehensive Plan Amendment (CCPA-2012500313), Zone Change (CZCA-201  
18 250031 4) and Tentative Map (CTMA-201 2500316) (collectively hereinafter “MACDONALD  
19 APPLICATIONS”).

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

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

25 22. The MACDONALD APPLICATIONS sought to amend Ordinance No. 2869, the  
26 zoning map, to reclassify certain real property within the city limits of the city, described as a portion  
27 of section 27, township 22 south, range 62 east, M.D. & M., Clark County, Nevada, located within the  
28 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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1           31.     Upon information and belief, on or about November 5, 2012, notice of the public  
2 hearing regarding the VACATION APPLICATION was mailed to all properties within the  
3 MacDonald Highlands community.

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

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

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

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

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

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

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

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

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

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

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

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

8 43 On or about March, 21, 2013, BANK OF AMERCIA, as Seller, executed Addendum  
9 No. 2 to the Purchase Agreement amending the purchase price to \$2,302,000.00, an increase of  
10 \$142,000.00 from the original agreed upon price.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20          66.     Applications for construction are reviewed and decided by the Design Review  
21 Committee (“DRC”).

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

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

25          69.     The Design Guidelines are adopted by the DRC.

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

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

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

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

8 73. All Defendants, and each of them, are, in some manner, legally responsible and liable to  
9 Plaintiff for the harm and injury to Plaintiff and the damages incurred by Plaintiff as the result of said  
10 harm and injury which damages are in an amount in excess of Ten Thousand and No/100 Dollars  
11 (\$10,000.00), to be proven at time of trial.

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

14  
15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract against BANK OF AMERICA)**

17  
18 75. Plaintiff repeats and realleges each and every allegation as contained above and  
19 incorporates them by reference as if fully set forth herein.

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

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

23 78. BANK OF AMERICA materially breached the Contract as detailed in paragraphs 1  
24 through 73 herein.

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

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

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

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

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

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.

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

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

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

3 **FIFTH CLAIM FOR RELIEF**

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

6  
7 98. Plaintiff repeats and realleges each and every allegation as contained above and  
8 incorporates them by reference as if fully set forth herein.

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

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

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

22  
23 **SIXTH CLAIM FOR RELIEF**

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

26  
27 102. Plaintiff herein re-alleges each and every allegation as contained above and  
28 incorporates them by reference as if fully set forth herein.

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

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

9           105. As a result of Defendants, MACDONALD HIGHLANDS REALTY, LLC, and  
10 MICHAEL DOIRON actions, Plaintiff has been required to engage the services of an attorney to  
11 prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore,  
12 as well as damages pursuant to NRS 645.257, and any other damages appropriate under NRS Chapter  
13 645.

14                                   **SEVENTH CLAIM FOR RELIEF**

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

17  
18           106. Plaintiff herein re-alleges each and every allegation as contained above and  
19 incorporates them by reference as if fully set forth herein.

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

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

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

26           110. As a result, Defendants, BANK OF AMERICA, BAC HOME LOANS SERVICING,  
27 LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON actions, Plaintiff has  
28

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

3  
4 **EIGHTH CLAIM FOR RELIEF**

5 **(Declaratory Relief – ALL DEFENDANTS)**

6  
7 111. Plaintiff herein re-alleges each and every allegation as contained above and  
8 incorporates them by reference as if fully set forth herein.

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **(Mandatory Injunction - MALEK)**

22  
23 117. Plaintiff repeats and realleges each and every allegation as contained above and  
24 Incorporates them by reference as if fully set forth herein.

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

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



1 Golf Course Deed Restriction and the Construction Deed Restriction.

2  
3 **TENTH CLAIM FOR RELIEF**

4 **(Implied Restrictive Covenant - MALEK)**

5  
6 120. Plaintiff repeats and realleges each and every allegation as contained above and  
7 Incorporates them by reference as if fully set forth herein.

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

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

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

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

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

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

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

22 128. The implied restrictive covenant binds MALEK.

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

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

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

1 **ELEVENTH CLAIM FOR RELIEF**

2 **(Mandatory Injunction - The Foothills at MacDonald Ranch Master Association, The Foothills**  
3 **Partners, LP and Paul Bykowski in his capacity as member of the The Foothills at MacDonald**  
4 **Ranch Master Association, member of the The Foothills at MacDonald Ranch Master**  
5 **Association Design Review Committee and agent for The Foothills Partners, LP)**  
6

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

9 133. MALEK's construction plans for the MALEK PROPERTY were approved by THE  
10 FOOTHILLS at MACDONALD RANCH MASTER ASSOCIATION'S DRC on or about March 28,  
11 2014.

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

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

16 136. Plaintiff is entitled to a mandatory injunction, ordering The Foothills at MacDonald  
17 Ranch Master Association, The Foothills Partners, LP and Paul Bykowski in his capacity as member  
18 of the The Foothills at MacDonald Ranch Master Association, member of the The Foothills at  
19 MacDonald Ranch Master Association Design Review Committee and agent for The Foothills  
20 Partners, LP to comply with the Design Guidelines and disapprove MALEK's construction plans.  
21

22 **PRAYER FOR RELIEF**

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

- 24 a) For judgment against Defendants, and each of them, an amount in excess of \$10,000.00,  
25 which amount shall be proven at trial;
- 26 b) For judgment against Defendants, and each of them, for an award of pre-judgment and  
27 post-judgment interest on all amounts due and owing to Plaintiff;
- 28 c) For judgment against Defendants, and each of them, for attorney's fees and costs; and

- 1 d) For Declaratory Judgment;  
2 e) For Injunctive Relief; and  
3 f) For such other further relief as deemed appropriate by this Court.

4 DATED this 2nd day of January, 2015.

5 Respectfully submitted by:  
6 HOWARD KIM & ASSOCIATES

7 /s/ Melissa Barishman  
8 Howard C. Kim, Esq.  
9 Nevada Bar No. 10386  
10 Diana S. Cline, Esq.  
11 Nevada Bar No. 10580  
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20 *Attorneys for Plaintiff,*  
21 *The Fredric and Barbara Rosenberg Living Trust*  
22  
23  
24  
25  
26  
27  
28

## 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:

### Akerman

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