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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-689113-C

Dept. No. I

PLAINTIFF'S OPPOSITION TO DEFENDANT MALEK'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its counsel of record, HOWARD KIM & ASSOCIATES, hereby opposes Defendant, Shahin Shane Malek's Motion for Summary Judgment.

Malek's Motion must be denied because it is based on a fundamental flaw: that Nevada does

not recognize implied restrictive covenants. In reality, Nevada does recognize implied restrictive covenants; it has done so since 1913. Because Nevada does recognize implied restrictive covenants, and issues of material fact exist regarding whether an implied restrictive covenant exists over the golf course land sold to Malek, Malek's Motion must be denied.

This Opposition is based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the Declaration of Karen L. Hanks attached hereto as Exhibit A, and any exhibits attached thereto, and any oral argument the Court permits at the hearing of this matter.

DATED this 4th day of May, 2015.

Respectfully submitted by:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

The Rosenberg Trust does not seek an easement to light and air. The Rosenberg Trust seeks to preserve the use of land adjacent to its property. Specifically, the 1/3 acre of golf course land sold to Malek must remain golf course land in terms of its use. This concept of restricting/preserving land use has been recognized by Nevada since 1913. *See* Shearer v. City of Reno, 36 Nev. 443, 136 P. 705 (1913) (recognizing the concept of dedication or restrictive covenant). Nevada then recognized this concept again in 1965. *See* Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1965) (recognizing the concept of implied easement). *See also*, Meredith v. Washoe Cnty. Sch. Dist., 84 Nev. 15, 17, 435 P.2d

750, 752 (1968) (stating a restrictive covenant is an easement or a servitude in the nature of an easement). The Restatement Third defines "restrictive covenant" as "a negative covenant that limits permissible uses of land." Restatement (Third) of Property, Servitudes, § 1.3(3) (2000).

Regardless of the terminology used, i.e. dedication, equitable easement, implied easement, equitable servitude or implied restrictive covenant, the concept of restricting or limiting the use of land is a principal that is long-embedded in Nevada law. To state otherwise is to fall victim to the "tyranny of labels."[1] Most importantly, while the principal of "an implied easement[/covenant] arises by operation of law, the existence of an implied easement[/covenant] is generally a question of fact." Jackson v. Nash, 109 Nev. 1202, 1208, 866 P.2d 262, 267 (1993).

Here, genuine issues of material fact exist regarding whether an implied restrictive covenant exists over the golf course land sold to Malek. If anything, the facts are overwhelmingly in favor of the existence of an implied restrictive covenant. Specifically, the Rosenberg Trust paid a premium of $2.3 million for its property, 590 Lairmont Place, because of its location on the 9th hole of the Dragon Ridge Golf Course in the premier community of MacDonald Highlands. Dragon Ridge Golf Course is the center piece of MacDonald Highlands, and was in operation years before any of the parcels abutting Dragon Ridge Golf Course, including Lairmont Place, were even plotted, let alone sold. In fact, all parcels within MacDonald Highlands that abut Dragon Ridge Golf Course were plotted to maximize the mountain, golf course and city views.

Dragon Ridge Golf Course is the identity of MacDonald Highlands; one does not exist without the other. From its inception, the developer of MacDonald Highlands always intended the community to be a golf course community. MacDonald Highlands was and still is advertised as a golf course community. Dragon Ridge Golf Course is such an integral part of MacDonald Highlands that both the CC&Rs and the Design Guidelines reference the Golf Course and place restrictions on golf course parcels to preserve the views from those parcels. Finally, the plat maps show Dragon Ridge Golf Course at the heart of MacDonald Highlands, and at no time has any portion been sold or severed, until this case.

It is these facts that support the existence of an implied restrictive covenant, a concept long recognized by Nevada law. Once again, this is not a case about a claim to air and light; it is a case about a

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[1] Justice Anthony M. Kennedy.

general scheme (here a golf course) that benefits all persons who purchase and/or purchased property in MacDonald Highlands, that served and still serves as an inducement to purchase property in MacDonald Highlands, such that the law recognizes the land use as a mutual covenant which runs with the land. Hall v. Gulledge, 145 So.2d 794, 798 (Ala. 1962) (explaining that equitable easements arise when an owner of property adopts a general scheme, which benefits all purchasers, it serves as an inducement to purchase of the property, and becomes a mutual covenant which runs with the land); *see also*, Shearer, *supra,* (recognizing this very concept in favor of the City of Reno).

Because Nevada recognizes implied restrictive covenants, and issues of material fact exist regarding whether an implied restrictive covenant exists over the golf course land sold to Malek, Malek's Motion for Summary Judgment must be denied.

II. STATEMENT OF RELEVANT, UNDISPUTED FACTS[2]

1. DRFH Ventures, LLC, the owner of Dragon Ridge Golf Course in 2012 and 2013, sold off 1/3 acre of the golf course to Malek.[3]

2. The manager of DRFH Ventures is Richard MacDonald.[4]

3. Richard MacDonald is also the manager of The Foothills Development Company, which is the general partner for FHP Ventures, LLC.[5]

4. FHP Ventures is the developer of MacDonald Highlands.[6]

5. Dragon Ridge Golf Course was open for play in 2000.[7]

6. The portion of golf course property sold to Malek was part of the in-bound play for the 9th hole, and consisted of a desert palate approved by MacDonald Highlands.[8]

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[2] The Statement of Relevant, Undisputed Facts is supported by the Declaration of Karen L. Hanks (Hanks Decl.), attached hereto as **Exhibit A.** Because Defendant Malek numerically identified his exhibits even though numeric is typically reserved for Plaintiff, Plaintiff uses alphabetical exhibit identifiers to avoid confusion.

[3] *See* Grant, Bargain, Sale Deed, attached as **Exhibit A-1** to Hanks Decl.

[4] *See* Secretary of State page, attached as **Exhibit A-2** to Hanks Decl.

[5] *See* Secretary of State page, attached as **Exhibit A-3** to Hanks Decl.

[6] *See* excerpts from Paul Bykowski's January Deposition, 17:6-9, attached as **Exhibit A-4** to Hanks Decl.

[7] *See* excerpts from Richard MacDonald's Deposition, 16:8, attached as **Exhibit A-5** to Hanks Decl.

[8] Exhibit A-5, 30:7-8; 61:16-25; 62:8-13.

7. MacDonald Highlands was advertised as a golf course community,[9] and when the golf course was sold in 2014, Richard MacDonald testified that it would remain a golf course because "[t]hat's the condition of the community master plan."[10]

8. Richard MacDonald testified that the developer always intended the golf course to be an amenity of MacDonald Highlands.[11]

9. Dragon Ridge Golf Course is such an integral part of MacDonald Highlands that both the CC&Rs and the Design Guidelines reference the Golf Course and place restrictions on golf course parcels to preserve the views from those parcels.[12]

10. The Design Guidelines which govern undeveloped lots in MacDonald Highlands state:

> The community identity is further enhanced by an 18-hole championship golf course and destination resort. The golf course fairways meander throughout the neighborhoods within MacDonald Highlands, with many of the individual homesites featuring direct frontage on the course. In addition, significant view corridors to the golf course are provided at key locations along the community street system.[13]

11. The Design Review Committee is tasked with the authority "to protect and enhance owner value," and "preserve the natural character of the desert environment."[14]

12. The CC&Rs, in addition to referencing the Golf Course, also burden all properties abutting the Golf Course with an easement for golf balls and golfers to enter the properties.[15]

13. The Rosenberg Trust paid a premium of $2.3 million for its property, 590 Lairmont Place, because of its location on the 9th hole of the Dragon Ridge Golf Course in the premier community of MacDonald Highlands.[16]

14. Bank of America has denied receiving notice of the application for zoning changes.[17]

15. The Informational Meeting document makes no reference to Dragon Ridge Golf Course or Hole #9, and characterizes the boundary modification as a "minor boundary adjustment."[18]

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[9] Exhibit A-4, 20:11-13.
[10] Exhibit A-4, 18:9-15; Exhibit A-5, 12:8-19.
[11] Exhibit A-5, 17:18-22.
[12] *See* excerpts from Design Guidelines and CC&Rs, attached as **Exhibit A-6 and A-7** respectively to Hanks Decl.
[13] Exhibit A-6, p. 1.1-1.2.
[14] Exhibit A-6, p. 1.1.
[15] Exhibit A-7, Section 13.6.
[16] See Purchase Agreement attached as **Exhibit A-8** to Hanks Decl.
[17] *See* Bank of America, N.A.'s Answers to Plaintiff's Interrogatories, No. 15, attached as **Exhibit A-9** to Hanks Decl.
[18] *See* Informational Meeting, attached as **Exhibit A-10** to Hanks Decl.

16. The findings made by the City of Henderson indicate that the application misrepresented the facts of the proposed change.[19]

17. The City of Henderson found that the "proposal is consistent with the Comprehensive Plan."[20]

18. The City of Henderson found that "[t]the planned unit development is necessary to address a unique situation…"[21]

19. The first severance of the Golf Course was in planning area 15 and 16, which occurred in 2013 or 2014, and involved an out-of-play area located on a hill.[22]

20. Planning area 15 and 16 is Richard MacDonald's property, and he testified, "I had an area of the golf course that I basically moved into, moved into with my yard so to speak. It was technically part of the golf course, but I haven't bothered to subdivide it, move it in…"[23]

20. Mr. Bykowski testified that there are "no changes proposed for the area."[24]

21. The second severance took place in 2004 or 2005, and involved a hill-like area that was blocking the view to the Golf Course for three houses.[25]

21. MacDonald Highlands leveled the hill, but this area was never sold to the property owners, and is still owned by the Golf Course.[26]

22. The third severance involved planning area 20, and occurred in 2013 and 2014.[27]

23. Planning area 20 has not been sold, but included the addition of a corner of non-playable area between two T boxes to a lot so the owner could adequately fit his house on the lot.[28]

25. Malek admitted he is subject to any easements existing on the Golf Course Parcel at the time he purchased it.[29]

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[19] *See* Notice of Henderson City Council Final Action, attached as **Exhibit A-11** to Hanks Decl.
[20] Exhibit A-11.
[21] Exhibit A-11.
[22] *See* excerpts from Paul Bykowski's February Deposition, 139:1-3; 145:13-18, attached as **Exhibit A-12** to Hanks Decl.
[23] Exhibit A-5, 127:19-24.
[24] Exhibit A-12, 142:13-14.
[25] Exhibit A-12, 146:4-25 through 147:1-10
[26] Exhibit A-12, 147:7-22.
[27] Exhibit A-12, 148:9; 149:3-4.
[28] Exhibit A-12, 150:12-25 through 152:1-18.
[29] *See* Defendant's Response to Plaintiff's Requests for Admissions, No. 10, attached as **Exhibit A-13** to Hanks Decl.

26. The MacDonald Highlands website and other promotional materials reference the Dragon Ridge Golf Course.[30]

27. The community and plat maps reference the Dragon Ridge Golf Course.[31]

28. The City of Henderson found there were no utility easements on the Golf Parcel.[32]

29. The CC&Rs required Malek to obtain Board approval for any boundary line change.[33]

III. LEGAL ARGUMENT

A. Nevada Recognizes Implied Restrictive Covenants.

The principal of implied restrictive covenants was first recognized by Nevada in 1913, in Shearer v. City of Reno, 36 Nev. 443, 136 P. 705 (1913), and has been continually recognized by Nevada. *See*, Montesa v. Gelmstedt, 70 Nev. 418, 270 P.2d 668 (1954); Cox v. Glenbrook Co., 78 Nev. 254, 371 P.2d 647 (1962); Charleston Plaza, Inc. v. Board of Education, Las Vegas Union School District, 387 P.2d 99 (Nev. 1963); Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1967) ("an easement by implication is, in effect, an easement created by law"); Meredith v. Washoe County School Dist., 84 Nev. 15, 435 P.2d 750 (1968); Brooks v. Jensen, 87 Nev. 174, 483 P.2d 650 (1971); Hynds Plumbing & Heating Co. v. Clark County School Dist., 94 Nev. 776, 587 P.2d 1331 (1978); Alrich v. Bailey, 97 Nev. 342, 630 P.2d 262 (1981) ("In Nevada, an easement may be created by express agreement, prescription, or implication."); Valley Motor, Inc. v. Almberg, 106 Nev. 338, 792 P.2d 1131 (1990); Jackson v. Nash, 109 Nev. 1202, 866 P.2d 262 (1993) ("It is well-settled that an easement may be created by implication without a written instrument."); Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n, 117 Nev. 948, 35 P.3d 964 (2001) (abrogated on other grounds); Brooks v. Bonnet, 124 Nev. 372, 185 P.3d 346 (2008).

In Shearer, the plaintiff sought to quiet title to a triangular piece of property bordering three streets in Reno, which he had purchased. This land, as well as the surrounding land, was owned by C.C. Powning. When Powning began selling off the property he induced buyers by assuring them that the land in dispute would remain undeveloped. The City of Reno contended that an implied restrictive

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[30] *See* website pages from MacDonald Highlands attached as **Exhibit A-14** to Hanks Decl.
[31] *See* MacDonald Highlands Community Map, attached as **Exhibit A-15** to Hanks Decl.
[32] *See* Project Information sheet, attached as **Exhibit A-16** to Hanks Decl.
[33] Exhibit A-7, 12.9.

covenant or dedication (term used when land is for public purposes) existed over the area in dispute, which prohibited Plaintiff from building on the area. The Court found that an irrevocable implied restrictive covenant existed because the area was plated on the map as open area, and used to induce purchasers to buy property in that area. The Court reasoned that,

> The sale by the map, or with reference to the streets upon it, was a sale not merely for the price named in the deed, but for the further consideration that the streets and public grounds designated on the map should forever be open to the purchaser…This was an essential part of the consideration. The purchaser took not merely the interest of the grantor in the land described in the deed, but, as appurtenant to it, **an easement in the streets and in the public grounds named, with an implied covenant that subsequent purchasers should be entitled to the same rights.** The grantor could no more recall this easement and covenant that he could recall any other party of the consideration. They added materially to the value of every lot purchased.

Id. at 708 (emphasis added).

In Boyd, the Johnsons owned two parcels of land, Lot 22 and Lot 121. The Johnsons sold Lot 22 to the McDonalds. At the time of the sale, the Johnsons were using portions of Lot 121 for a sign, extended driveway and patio. Thereafter, the Johnsons sold Lot 121 to the Boyds. The Boyds eventually demanded that the McDonalds cease use of the sign, extended driveway and patio. The McDonalds argued they had an implied easement. The Boyd Court noted there are three essential elements to an implied easement: "(1) unity of title and subsequent separation by a grant of the dominant tenement; (2) apparent and continuous user; and (3) the easement must be necessary to the proper or reasonable enjoyment of the dominant tenement." Id. at 647. The Court further noted that necessity really means "intent," and explained that "the reason that absolute necessity is not essential is because fundamentally such a grant by implication depends on the intention of the parties." Id. at 648 *quoting* Marshall v. Martin, 139 A. 348 (Conn. 1927). The Court stated that the inquiry is "what a reasonable grantee would be justified in expecting as a part of his bargain when he purchases land under the particular circumstances." Id. As such, the Court stated that "reasonable necessity may be restated in terms of reasonable expectation." Id. at 649.

The Court further recognized that "[i]f an easement is created by implication at the time of initial severance, it then vests, and, absent evidence of termination, it cannot be diminished or abridged." Id. at 650. Because the trial court found an easement existed, but made changes to

easement, the Nevada Supreme Court remanded the case for a new trial. The Court ruled that the question of fact was "whether the McDonalds, as reasonable purchasers knowing their boundary lines, had a right to expect, without further inquiry, that their purchase insured continued use in the added driveway and the patio, though these were not on their land." Id. at 652.

In Jackson, a 1993 case, the Nevada Supreme Court re-iterated the elements of an implied restrictive covenant as set forth previously in Boyd. Jackson, 109 Nev. at 270. While the Jackson Court upheld the trial court's finding that an implied restrictive covenant did not exist, it nevertheless applied the facts of the case to the elements detailed in Boyd. Thus, the Jackson decision unequivocally shows that Nevada does recognize implied restrictive covenants, and has a clear set of elements it applies to determine whether one exists over a piece of real property.

B. Genuine Issues of Material Fact Exists as to Whether an Implied Restrictive Covenant Exists Over the Golf Parcel.

Having established that Nevada does recognize implied restrictive covenants, the analysis then turns to whether issues of material fact exist that tend to prove an implied restrictive covenant exists over the Golf Parcel. Once again, the elements of an implied restrictive covenant are: (1) unity of title; (2) apparent and continuous use; and (3) necessary to proper or reasonable enjoyment. Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1967); Jackson v. Nash, 109 Nev. 1202, 866 P.2d 262 (1993). Here, genuine issues of material fact exist as to all three elements.

With regard to the first element, unity of title, this is a unique case in that one owner did not sell off portions of property to purchaser A and B.[34] Instead, DRFH Ventures, LLC, the owner of Dragon Ridge Golf Course in 2012 and 2013, sold off 1/3 acre of the golf course to Malek.[35] This was the first and only time DRFH Ventures sold a portion of the golf course to an individual. In that sense, the unity of title element is satisfied because only DRFH Ventures ever owned the golf course during the time period at issue in this case. Nevertheless, unity can also be found in the fact that Richard MacDonald is the individual who controlled all the companies relevant to this transaction. Specifically,

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[34] Although both the Rosenberg Trust and Malek purchased property in MacDonald Highlands, which is a master planned golf course community.
[35] Exhibit A-1.

the manager of DRFH Ventures is Richard MacDonald.[36] Richard MacDonald is also the manager of The Foothills Development Company, which is the general partner for FHP Ventures, LLC.[37] FHP Ventures is the developer of MacDonald Highlands.[38]

With regard to the second element, apparent and continuous use, Dragon Ridge Golf Course was open for play in 2000.[39] In other words, Dragon Ridge Golf Course was in use for 13 years prior to Malek purchasing a portion of it. Contrary to Malek's contention, the portion sold to him was not some after-sight or left over land having nothing to do with the golf course; instead, the portion sold to him was part of the in-bound play for the 9th hole, and consisted of a desert palate approved by MacDonald Highlands.[40] Having lived in MacDonald Highlands since 2006, this use was readily apparent to Malek. In fact, Malek cannot deny the continuous use of this land because he went through a lengthy re-zoning process knowing the area was not even zoned for residential use. Moreover, both the community map and the plat map show the golf course.[41]

The apparent and continuous use element is further evidenced by the fact that MacDonald Highlands was advertised as a golf course community,[42] and when the golf course was sold in 2014, Richard MacDonald testified that it would remain a golf course because "[t]hat's the condition of the community master plan."[43] In fact, Richard MacDonald testified that the developer always intended the golf course to be an amenity of MacDonald Highlands.[44] Dragon Ridge Golf Course is such an integral part of MacDonald Highlands that both the CC&Rs and the Design Guidelines reference the Golf Course and place restrictions on golf course parcels to preserve the views from those parcels.[45]

As to the third and final element, necessary to proper or reasonable enjoyment, the Boyd Court explained "necessity" really means "intent," and stated that "the reason that absolute necessity is not essential is because fundamentally such a grant by implication depends on the intention of the parties."

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[36] Exhibit A-2.
[37] Exhibit A-3.
[38] Exhibit A-5, 17:6-9.
[39] Exhibit A-5, 16:8.
[40] Exhibit A-5, 30:7-8; 61:16-25; 62:8-13.
[41] Exhibit A-15.
[42] Exhibit A-4, 18:9-15; 20:11-13.
[43] Exhibit A-5, 12:8-19; Exhibit A-12, 18:9-15.
[44] Exhibit A-5, 17:18-22.
[45] Exhibit A-6 and A-7.

Id. at 648 *quoting* Marshall v. Martin, 139 A. 348 (Conn. 1927). The Court stated that the inquiry is "what a reasonable grantee would be justified in expecting as a part of his bargain when he purchases land under the particular circumstances." Id. As such, the Court stated that "reasonable necessity may be restated in terms of reasonable expectation." Id. at 649. In the present case, the Rosenberg Trust paid a premium of $2.3 million for its property, 590 Lairmont Place, because of its location on the 9th hole of the Dragon Ridge Golf Course in the premier community of MacDonald Highlands.[46] When the Rosenberg Trust paid this premium it rightfully expected that the area surrounding its property would remain the same i.e. all portions of the Dragon Ridge Golf Course would remain part of the golf course. But if no restrictive covenant exists over the Golf Parcel, then the Rosenberg Trust purchased A, but really got B. This is the exact reason why implied covenants are recognized by Nevada, and other jurisdictions.

Just like that in Shearer, the Rosenberg Trust bought more than just the lot and house located at 590 Lairmont Place. They bought the surrounding area, and paid a premium for it. This surrounding area, the Dragon Ridge Golf Course, was used to induce the Rosenberg Trust to purchase property within MacDonald Highlands, and as such, was an "essential part of the consideration" paid for 590 Lairmont Place. In fact, this same covenant that applies to Malek also applies to all other portions of the golf course, and protects Malek from someone buying a portion of the golf course located in front of the portion he purchased. In other words, had DRFH Ventures sold off another 1/3 acre of the 9th Hole that ran continuous with the portion Malek purchased, he most definitely would be arguing restrictive covenant. Otherwise, if no restrictive covenant exists on the portion sold to Malek, then the whole golf course could have been severed and sold off in increments to any interested party. Certainly, this is not what any buyer who purchased property along the Dragon Ridge Golf Course anticipated.

That is the crux of this case: getting what you paid for, and ensuring what you paid for remains that way. But Malek incorrectly argues that the Rosenberg Trust lacks tangible losses i.e. view and privacy, and therefore no restrictive covenant can exist. Although the Rosenberg Trust contends these losses are real, and not fictional as Malek suggests, the Nevada Supreme Court has held that

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[46] Exhibit A-8.

"restrictive covenants may be enforced irrespective of the amount of damages which will result from a breach. Actual damages need not be shown." Zupanic v. Sierra Vista Recreation, Inc., 97 Nev. 187, 193-94, 625 P.2d 1177, 1181 (1981). As such, while the Rosenberg Trust does contend that it will suffer damages if the restrictive covenant is not upheld, whether actual damages will be realized is not a factor in determining whether a restrictive covenant exists.

New Mexico dealt squarely with the issue of implied restrictive covenants in the context of a golf course, and applied the same intent element as Nevada. *See*, Ute Park Summer Homes Association v. Maxwell Land Grant Company, 427 P.2d 249 (NM 1967). In Ute Park, the defendant owned 160 acres of land in Cimarron Canyon. The defendant prepared plat maps which divided the area into several lots, roads and a golf course. The plat map was never recorded, but was distributed and used in connection with the sale of the lots. Prospective purchasers were told that a golf course would be constructed. After all the lots were sold, defendant undertook to sell the "golf course" area without any restrictions, which prompted the subject lawsuit. The Court found that "where land is sold with reference to a map or plat showing a park or like open area, the purchaser acquires a private right, generally referred to as an easement, that such area shall be used in the manner designated." Id. at 253. The Court explained that

> The rationale of the rule is that a grantor, who induces purchasers, by use of a plat, to believe that streets, squares, courts, parks, or other open areas shown on the plat will be kept open for their use and benefit, and the purchasers have acted upon such inducement, is required by common honesty to do that which he represented he would do.

Id.

The Shearer Court used similar language, when it stated that "the efficacy of a dedication…flows so directly from the principles of honesty and good faith…" Shearer, at 709. Here, there is no dispute that Dragon Ridge Golf Course, and how 590 Lairmont Place was situated on that golf course, was an inducement for the Rosenberg Trust's purchase. Principals of honesty, good faith and fairness dictate that the area sold to Malek remain a golf course.

Nebraska also dealt with the issue of an implied restrictive covenant existing over a golf course property. Skyline Woods Homeowners Association, Inc. v. Broekemeier, 758 N.W.2d 376 (Neb. 2008). In Skyline, Liberty Building Corporation purchased a golf course in a chapter 11 bankruptcy.

Id. at 380. When Liberty attempted to develop the golf course for other purposes, the homeowners objected claiming an implied restrictive covenant existed that required the property to remain as a golf course. Id. The golf course was constructed first, and then a residential community was designed around the golf course. Id. The promotional materials for the community boasted the proximity to the golf course and the original developer testified that the golf course was the "center and the heart" of the residential development project. Id. Additionally, the Declaration of Protective Covenants governing the residential community placed restrictions on lots abutting the golf course, and created an easement to allow golf balls to enter a homeowner's property. Id. at 382-383.

The Skyline Court recognized that "[i]f there is common plan of development that places restrictions on property use, then such restrictions may be enforced in equity." Id. at 387. The Court further defined "implied restrictive covenant" as a "covenant which equity raises and fastens upon the title of a lot or lots carved out of a tract that will prevent their use in a manner detrimental to the enjoyment and value of neighboring lots sold with express restrictions in their conveyance." Id. *quoting* McCurdy v. Standard Realty Corporation, 175 S.W.2d 28, 29 (Ky.1943). The Court looked to other jurisdictions who had found the existence of implied restrictive covenants where there was a common scheme or plan, but no express covenants in the chain of title. *See* Shalimar Ass'n v. D.O.C. Enterprises, Ltd., 688 P.2d 682 (Ariz.App.1984) (finding implied restrictive covenant that land be used only as a golf course because of common plan of development); Ute Park Summer Homes Association v. Maxwell Land Grant Company, 427 P.2d 249 (NM 1967).

The Skyline Court concluded that homeowners who bought property relying on the proximity and existence of the golf course should be protected, and that an implied restrictive covenant existed requiring that the golf course be used only as a golf course, and this covenant burdens and runs with the golf course property. Skyline, at 390. The Court found there was ample testimony to support the existence of a common scheme of development. Specifically, the developer testified he "owned both the golf course property and the developmental property adjacent to the golf course, and he testified that he developed the residential lots in the subdivision 'specifically with the belief and it panned out that the lots would be more valuable if there was a successful golf course—actually a country club." Id. The developer "also testified that the golf course was the 'center and the heart' of the residential

development project…that when he sold the golf course property, he sold it to a buyer, American Golf, that he was sure would maintain the golf course." Id. Moreover, the developer testified that he "sold the residential lots using advertisements that centered around the existence of the golf course and country club. [The developer] testified that the marketing plan for the sale of the residential lots 'was an elegant or country club or leisure lifestyle." Id. The Court also noted that "[s]everal homeowners whose homes abut the golf course testified that they bought their property and paid a premium price for the property because of the proximity of the golf course and the lifestyle offered." Id. Finally, the Court also factored in that each homeowner had restrictions/easements against their property in connection with the golf course.

This concept of imposing implied restrictive covenants where there is a common scheme of development has also been recognized by Georgia and Maryland. *See* Walker v. Duncan, 223 S.E.2d 675, 676 (Ga. 1976) ("It is well-established that where a developer sells lots according to a recorded plat, the grantees acquire an easement in any areas set apart for their use."); Supervisor of Assessments of Anne Arundel County v. Bay Ridge Properties, Inc., 310 A.2d 773, 775 (Md. 1973) (finding that if such a scheme or plan is intended, restrictive covenants may be enforced in equity, and that enforcement may be had by or against a grantee even though the restriction does not appear in his chain of title).

In the present case, there is no dispute that MacDonald Highlands is a master planned community specifically designed around Dragon Ridge Golf Course.[47] The community map shows the Golf Course at the heart of MacDonald Highlands, and the Golf Course was advertised as a community amenity.[48] Additionally, the Design Guidelines which govern undeveloped lots in MacDonald Highlands state:

> The community identity is further enhanced by an 18-hole championship golf course and destination resort. The golf course fairways meander throughout the neighborhoods within MacDonald Highlands, with many of the individual homesites featuring direct frontage on the course. In addition, significant view corridors to the golf course are provided at key locations along the community street system.[49]

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[47] Exhibit A-5, 6:3-6.
[48] Exhibit A-5, 16:1-5.
[49] Exhibit A-6, p. 1.1-1.2.

The CC&Rs, in addition to referencing the Golf Course, also burden all properties abutting the Golf Course with an easement for golf balls and golfers to enter the properties.[50] Moreover, Richard MacDonald testified that Dragon Ridge Golf Course has to remain a golf course because "[t]hat's the condition of the community master plan."[51] As such, all the facts that led the Ute, Shalimar and Skyline Courts, as well as numerous other jurisdictions to find that an implied restrictive covenant existed based on the common scheme of development exists here. Even Malek cites to Tennessee and Texas, which also recognize the common scheme of development as grounds for finding an implied restrictive covenant exists on property. For the same reasons an implied restrictive covenant exists under Nevada law, i.e., the intent of the parties, so too does an implied restrictive covenant exist under the doctrine of a common scheme of development. As the Walker Court reasoned, the rationale for this type of equity is that the property owner gave consideration for its enhanced value in the increased price of their lot. This idea of inducement is recognized by Nevada when it analyzes whether an implied restrictive covenant exists based on the intent of the parties. As discussed previously, the Rosenberg Trust paid a premium for its property because of its location on the Golf Course, and equity dictates that the Golf Course land surrounding the Rosenberg Trust's property remain golf course property.

The facts in this case lean toward, if not outright prove, that an implied restrictive covenant exists on the Golf Parcel that prohibits the land from being used as anything other than part of the Dragon Ridge Golf Course. At the very least, this evidence shows that genuine issues of material fact exist, such that summary judgment is inappropriate.

C. The Implied Restrictive Covenant Has Never Been Terminated, Waived or Abandoned.

The Boyd Court recognized that "[i]f an easement is created by implication at the time of initial severance, it then vests, and, absent evidence of termination, it cannot be diminished or abridged." Boyd, at 650. Here, Malek argues that by virtue of the re-zoning of the Golf Parcel, Plaintiff waived its right to a restrictive covenant. This is contrary to Nevada law, which requires termination. There is

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[50] Exhibit A-7, Section 13.6.
[51] Exhibit A-5, 12:16-20.

simply no evidence that the restrictive covenant was terminated. Even if Malek were to argue that the re-zoning constitutes a termination, this too fails because the Nevada Supreme Court has held that "[a] zoning ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants merely because of a zoning change. Western Land Co. Ltd. v. Truskolaski, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972) *citing*, Rice v. Heggy, 322 P.2d 53 (Cal. Ct. App. 1958). *See also*, Meredith, *supra*.

Even if the zoning approval could constitute a termination (which it cannot), there are genuine issues of material fact regarding the legitimacy of the zoning approval. First, Bank of America has denied receiving notice of the application for zoning changes.[52] As such, Malek's contention that Bank of America did not object to the re-zoning misstates the facts in this case. Second, the zoning applications and the notices thereto were misleading or provided insufficient information to put any property owners on real notice of what was occurring. Specifically, the Informational Meeting document, makes no reference to Dragon Ridge Golf Course or Hole #9, and characterizes the boundary modification as a "minor boundary adjustment."[53]

Additionally, the findings made by the City of Henderson indicate that the application misrepresented the facts of the proposed change. By way of example, the City of Henderson found that the "proposal is consistent with the Comprehensive Plan."[54] This is an error as the Comprehensive Plan envisioned Dragon Ridge Golf Course, not portions of it being sold to individuals. The City of Henderson also found that "[t]the planned unit development is necessary to address a unique situation…"[55] There was nothing unique about this situation; Malek wanted to increase his lot size and purchase golf course property to achieve this goal, and DRFH Ventures wanted to make money. There is nothing unique about this. Finally, the City of Henderson found that "[t]he proposal mitigates any potential significant adverse impacts to the maximum practical extent."[56] This is equally false. A restrictive covenant existed over the Golf Course, and selling off 1/3 acre of it adversely impacts the

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[52] Exhibit A-9, No. 15.
[53] Exhibit A-10.
[54] Exhibit A-11.
[55] Exhibit A-11.
[56] Exhibit A-11.

Rosenberg Trust's property, as well as the rights of all owners of property abutting the Golf Course. Nevertheless, Nevada law is clear, zoning changes cannot invalidate a restrictive covenant.

Malek also suggests that the Rosenberg Trust waived the restrictive covenant because it did not conduct due diligence. Malek, however, cites to no law to support this contention. Essentially, Malek suggests that failure to observe stakes on the Golf Parcel is sufficient to waive a right to a restrictive covenant. First, the Rosenberg Trust disputes whether the stakes were readily observable, but even if they were, there was also the white stake from the Golf Course, located toward the edge of Malek's original property lines that marked the out-of-bounds area. As such, even if the Rosenbergs did observe stakes, it was not out of the ordinary. Regardless, there is no basis in law for the proposition that a party can waive a restrictive covenant by merely observing stacks, and if zoning changes cannot invalidate a restrictive covenant, passive observance (even if true) certainly cannot terminate a restrictive covenant.

Malek also suggests that the Rosenberg Trust had some affirmative duty to research the City of Henderson's website for any zoning changes. Once again, Malek cites to no law to support this contention. What Malek also fails to recognize is the Rosenberg Trust had no reason to research the zoning laws; neither Bank of America, nor MacDonald Highlands/Doiron, ever disclosed that a zoning change was effectuated over the Golf Course. Nevertheless, even if the Rosenberg Trust had researched the zoning changes, the zoning change cannot terminate the restrictive covenant.

While Malek does not address the issue of prior severances of the Golf Course, he does suggest in his statement of facts that other portions of the Golf Course were sold and re-zoned, and somehow this constitutes a waiver of the restrictive covenant. This is not true. The Nevada Supreme Court dealt squarely with this issue, and held that prior violations of a restrictive covenant is not grounds to abandon the covenant; "it must be shown that the lot owners acquiesced in substantial and general violations of the covenant within the restricted area." Tompkins v. Buttrum Const. Co. of Nevada, 99 Nev. 142, 145, 659 P.2d 865, 867 (1983) *citing* Western Land Co. Ltd. v. Truskolaski, 88 Nev. 200, 495 P.2d 624 (1972) (finding that "[e]ven if the alleged occurrences and irregularities could be construed to be violations of the restrictive covenants they were too distant and sporadic to constitute general consent by the property owners in the subdivision and they were not sufficient to constitute an

abandonment or waiver."). The Truskolaski Court held that "[i]n order for community violations to constitute an abandonment, they must be so general as to frustrate the original purpose of the agreement." Id. *citing* Thodos v. Shirk, 248 Iowa, 172, 79 N.W.2d 733 (1956). *See also*, Gladstone v. Gregory, 95 Nev. 474, 479, 596 P.2d 491, 494 (1979) (finding "in order for community violations to constitute an abandonment of a restrictive covenant they must be so general and substantial as to frustrate the original purpose.").

In the present case, Malek misstates the nature of the other severances. According to the testimony of Paul Bykowski and Richard MacDonald there were three instances of severances. The first was in planning area 15 and 16, which occurred in 2013 or 2014, and involved an out-of-play area located on a hill.[57] Interestingly, it is Richard MacDonald's property, and he testified, "I had an area of the golf course that I basically moved into, moved into with my yard so to speak. It was technically part of the golf course, but I haven't bothered to subdivide it, move it in..."[58] Most importantly, Mr. Bykowski testified that there are "no changes proposed for the area."[59] The second instance took place in 2004 or 2005, and involved a hill-like area that was blocking the view to the Golf Course for three houses.[60] MacDonald Highlands leveled the hill, but this area was never sold to the property owners, and is still owned by the Golf Course.[61] The third, and final instance, involved planning area 20, and occurred in 2013 and 2014.[62] This area has not been sold, but included the addition of a corner of non-playable area between two T boxes to a lot so the owner could adequately fit his house on the lot.[63]

These three instances, two of which occurred at the same time the Rosenberg Trust was objecting to Malek's attempt to violate the restrictive covenant, do not rise to a "general and substantial" frustration of the restrictive covenant. As such, the restrictive covenant has not been abandoned. Based on these facts, the restrictive covenant has not been terminated, waived or abandoned. At the very least, there are genuine issues of material fact as to this issue, and therefore, summary judgment is inappropriate.

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[57] Exhibit A-12, 139:1-3; 145:13-18
[58] Exhibit A-5, 127:19-24.
[59] Exhibit A-12, 142:13-14.
[60] Exhibit A-12, 146:4-25 through 147:1-10.
[61] Exhibit A-12, 147:7-22.
[62] Exhibit A-12, 148:9; 149:3-4
[63] Exhibit A-12, 150:12-25 through 152:1-18.

D. The Restrictive Covenant Supersedes the Design Guidelines.

Contrary to Malek's contentions, the Design Guidelines do not trump or exclusively control Malek's ability to build on his property. The restrictive covenant which controls the use of the Golf Parcel supersedes any design review guidelines. Swenson v. Erickson, 998 P.2d 807, 815 (Utah 2000). This is so because once the first lot was sold in MacDonald Highlands, the covenant with respect to the Golf Course vested in all lots in MacDonald Highlands, or at a minimum all lots abutting the Golf Course. Supervisor of Assessments of Anne Arundel County v. Bay Ridge Properties, Inc., 310 A.2d 773 (benefit of easements and covenants shown on a plat attaches to all lots on sale of the first lot). In Swenson, defendant Erickson constructed a woodworking shop in violation of the restrictive covenants governing the subdivision in which the parties lived. After the Swensons objected, defendant Erickson obtained retroactive approval from the architectural committee. The Utah Supreme Court found that the architectural committee's "authority to examine building plans, specifications and plot plans in order to determine 'conformity and harmony of external design,' did not override the restrictive covenant. Id.

Here, the same rule must apply. The Design Guidelines do not override the implied restrictive covenant, which limits the use of the Golf Parcel. To hold otherwise, would entirely circumvent the rules governing the termination of restrictive covenants. The Design Review Committee is tasked with the same authority as the architectural committee in Swenson, and that is "to protect and enhance owner value," and "preserve the natural character of the desert environment."[64] But these guidelines cannot override the covenant that requires the Golf Course to remain a golf course. In short, the Design Guidelines are an extension of the implied restrictive covenant, but they do not stand alone, and certainly do not stand superior to the restrictive covenant.

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[64] Exhibit A-6, p. 1.1.

E. Genuine Issues of Material Fact Exists as to Whether an Express Restrictive Covenant Exists Over the Golf Parcel.

Genuine issues of material fact exist regarding whether an express restrictive covenant/easement exists over the Golf Parcel. The Grant, Bargain, Sale Deed between DRFH Ventures and Malek, specifically states,

> SUBJECT TO:
>
> 1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any:
> 2. **Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.**[65]

Admittedly, this language is broad, but Malek admitted he is subject to any easements existing on the Golf Course Parcel at the time he purchased it.[66] Nevada law permits the use of parol evidence to determine the true intent of the parities when a contract is ambiguous. Trans Western Leasing v. Corrao Constr. Co., 98 Nev. 445, 447, 652 P.2d 1181, 1183 (1982); Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n, 117 Nev. 948, 954, 35 P.3d 964, 968 (2001). In Sandy Valley, the Court was tasked with interpreting the CC&Rs, which were ambiguous as to whether the developer intended to convey lots to the homeowners for use as a landing strip and recreation area. The Court resolved the ambiguity by looking at the recorded plats, promotional materials, testimony from purchasers and the land use referenced in the CC&Rs. Ultimately, the Court determined that substantial evidence existed from which the district court could determine intention, and that "the evidence indicated that the five lots were always intended to be used for swimming pools and tennis courts." Id. at 955.

Here, the MacDonald Highlands website and other promotional materials reference the Dragon Ridge Golf Course.[67] Likewise, the community and plat maps reference the Dragon Ridge Golf Course.[68] Additionally, the CC&Rs reference the Dragon Ridge Golf Course numerous times, as do the Design Guidelines.[69] This is all extrinsic evidence the Court can consider in determining whether a covenant restricting the use of the Golf Course existed at the time a portion was sold to Malek. This

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[65] Exhibit A-1. (emphasis added).
[66] Exhibit A-13, No. 10.
[67] Exhibit A-14.
[68] Exhibit A-15.
[69] Exhibit A-6 and A-7.

extrinsic evidence, at a minimum creates a genuine issue of material fact as to the existence of an express covenant. As such, summary judgment in favor of Malek is not warranted.

Finally, Malek's contention that no easements exist on the Golf Parcel based on the City of Henderson's inaction with respect to B2 Development's vacation of easements application is nothing but a red-herring. The City of Henderson simply found there were no **utility** easements on the Golf Parcel.[70] Nevertheless, as detailed above, the City of Henderson does not have the power to terminate or vacate a restrictive covenant.

F. Public Policy Supports Implied Restrictive Covenants.

Malek suggests that if an implied restrictive covenant exists in this case, it will invite litigation by other homeowners in the Valley. This is simply not true. First, it presumes there will be similar violations of restrictive covenants as the one here. Considering this case deals with golf course property, it is highly unlikely there could be that many cases dealing with violations of an implied restrictive covenant based on the sale of golf course property. Second, it ignores the fact that Nevada has recognized implied restrictive covenants since 1913, and yet there has not been a landslide of litigation. Third, simply because there may be more litigation on an issue, is not grounds to deprive the Rosenberg Trust of the relief it seeks, which is recognized by Nevada law. Multiple negligence and breach of contract cases are filed on a yearly basis, and yet Nevada still recognizes these causes of action. The decision to recognize and/or enforce a principal of law cannot be dependent upon the litigation that might ensue. Additionally, implied restrictive covenants are grounded in equity, and the Nevada Supreme aptly stated the public policy favoring implied restrictive covenants in City of Reno v. Matley, 79 Nev. 49, 54, 378 P.2d 256, 258-9 (1963), when it stated

> Most objections to upholding covenants as running with the land stem from the seeming incongruity that permits a man, by making a promise, to bind another who subsequently succeeds to land held by the first. Such covenants, it was thought, would seem to run against the public policy favoring the free alienability of land. This difficulty, however, would seem to be more imagined than real when dealing with the benefits, and not the burdens, of such covenants. 'If the promisee's legal relations in respect to that land are increased – his legal interest as owner rendered more valuable by the promise – the benefit of the covenant touches or concerns the land.'

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[70] Exhibit A-16.

Id. *quoting* Clark, Covenants and Interests Running with Land, 2d ed., p. 97 (1947).

Malek's contention that he "followed the rules" is completely without merit. The CC&Rs required Malek to obtain Board approval for any boundary line change.[71] Malek did not obtain this approval.[72] Additionally, Malek knew Dragon Ridge Golf Course was in operation from the time he moved to MacDonald Highlands in 2006. As a property owner in MacDonald Highlands he also knew that both the CC&Rs and Design Guidelines placed restrictions and imposed easements on lots abutting the golf course. The Skyline Court held that similar "facts would most certainly alert a potential, prudent buyer of the possibility of restrictions on its use." Skyline, at 391. Additionally, like the Skyline buyers, Malek "undoubtedly knew that abutting property owners relied on the existence of the golf course and that the residential lots were designed to benefit from the proximity of the golf course." Id.

As such, like the buyers in Skyline, Malek had notice of the implied restrictive covenants burdening the golf course property and failed to satisfy his duty of inquiry. To his detriment, he made no effort to inquire about how the surrounding homeowners would be protected.

G. Malek is Not Entitled to Summary Judgment on his Slander of Title Claim.

Plaintiff filed a Motion for Summary Judgment against Malek on his claim for slander of title. Plaintiff incorporates that Motion by reference, as though fully stated herein.

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[71] Exhibit A-7, 12.9.
[72] Exhibit A-12, 28:23-25 through 29:1.

IV. CONCLUSION

This Court must deny Malek's Motion for Summary Judgment. Nevada law recognizes implied restrictive covenants, and there are genuine issues of material fact as to whether an implied restrictive covenant exists over the golf parcel sold to Malek. Finally, as set forth in Plaintiff's Motion for Summary Judgment, Malek's claim for slander of title fails as a matter of law; therefore he is not entitled to summary judgment on this claim.

DATED this 4th day of May, 2015.

Respectfully submitted by:

HOWARD KIM & ASSOCIATES

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

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT MALEK'S MOTION FOR SUMMARY JUDGMENT** to the following parties:

Akerman			
Name	**Email**		**Select**
Deb Julien	debbie.julien@akerman.com	☑	☑

Akerman LLP			
Name	**Email**		**Select**
Akerman Las Vegas Office	akermanlas@akerman.com	☑	☑
Natalie L. Winslow, Esq.	natalie.winslow@akerman.com	☑	☑
Steven G. Shevorski, Esq.	steven.shevorski@akerman.com	☑	☑

Kemp Jones & Coulthard			
Name	**Email**		**Select**
Ian P. McGinn	ipm@kempjones.com	☑	☑
Sandy Sell	s.sell@kempjones.com	☑	☑

Kemp, Jones & Coulthard			
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J. Randall Jones	jrj@kempjones.com	☑	☑
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Janet Griffin	jlg@kempjones.com	☑	☑
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Pamela Montgomery	p.montgomery@kempjones.com	☑	☑

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

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Jacqueline Martinez	jacqueline@thefirm-lv.com	☑	☑
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Ryan E. Alexander, Esq.	ryan@ryanalexander.us	☑	☑

Cody Foote

An Employee of Howard Kim & Associates

EXHIBIT A

DECLARATION OF KAREN L. HANKS, ESQ. IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT MALEK'S MOTION FOR SUMMARY JUDGMENT

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 A-1 is a true and correct copy of the Grant, Bargain Sale Deed.

3. Attached hereto as Exhibit A-2 is a true and correct copy of the Secretary of State page for DRFH Ventures, LLC.

4. Attached hereto as Exhibit A-3 is a true and correct copy of the Secretary of State page for The Foothills Development Company.

5. Attached hereto as Exhibit A-4 are true and correct copies of excerpts from Paul Bykowski's January Deposition.

6. Attached hereto as Exhibit A-5 are true and correct copies of excerpts from Richard MacDonald's deposition.

7. Attached hereto as Exhibit A-6 are true and correct copies of excerpts from the Design Guidelines.

8. Attached hereto as Exhibit A-7 are true and correct copies of excerpts from the CC&Rs.

9. Attached hereto as Exhibit A-8 is a true and correct copy of the Purchase Agreement.

10. Attached hereto as Exhibit A-9 is a true and correct copy of Bank of America's Answers to Plaintiff's Interrogatories.

11. Attached hereto as Exhibit A-10 is a true and correct copy of the Informational Meeting Notice.

12. Attached hereto as Exhibit A-11 is a true and correct copy of the Notice of Henderson City Council Final Action.

13. Attached hereto as Exhibit A-12 are true and correct copies of excerpts from Paul Bykowski's February deposition.

14. Attached hereto as Exhibit A-13 is a true and correct copy of Malek's Responses to Plaintiff's Requests for Admission.

15. Attached hereto as Exhibit A-14 are true and correct copies of website pages from MacDonald Highland's website.

16. Attached hereto as Exhibit A-15 is a true and correct copy of MacDonald Highlands' Community Map.

17. Attached hereto as Exhibit A-16 is a true and correct copy of the Project Information Sheet.

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

Dated this 4th day of May, 2015.

KAREN L. HANKS, ESQ.

Ex. A-1

EXHIBIT A-1

Ex. A-1

Inst #: 201306260005003
Fees: $20.00 N/C Fee: $25.00
RPTT: $1020.00 Ex: #
06/26/2013 03:15:09 PM
Receipt #: 1571325
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: KGP Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P. N.: 178-28-520-001
R.P.T.T.: $1,020.00

Escrow #12-08-0699-RLB

Mail tax bill to and
When recorded mail to:
Shahin Shane Malek
544 Regents Gate
Henderson, NV 89012

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That **DRFH Ventures, LLC, a Nevada limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company,** for a valuable consideration, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to **Shahin Shane Malek, a married man, as his sole and separate property man** all that real property situated in the County of **Clark,** State of Nevada, bounded and described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

COMMONLY KNOWN ADDRESS:
Bare Lot, , NV

SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any:
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

A.P.N.: 178-28-520-001
R.P.T.T.: $1,020.00

Escrow #12-08-0699-RLB

Mail tax bill to and
When recorded mail to:
Shahin Shane Malek
544 Regents Gate
Henderson, NV 89012

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That **DRFH Ventures, LLC, a Nevada limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company,** for a valuable consideration, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to **Shahin Shane Malek, a married man, as his sole and separate property man** all that real property situated in the County of **Clark,** State of Nevada, bounded and described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

COMMONLY KNOWN ADDRESS:
Bare Lot, , NV

SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any:
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this 8 day of APRIL, 2013

DRFH Ventures, LLC, a Nevada Limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company

By: Richard C. MacDonald, Manager

Richard C. MacDonald

State of NEVADA }
} ss:
County of Clark }

This instrument was acknowledged before me on APRIL 8, 2013

by Richard C. MacDonald, Manager of DRFH Ventures, LLC, a Nevada Limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company

Joyce Muir

NOTARY PUBLIC
My Commission Expires: 3-5-2017

JOYCE MUIR
Notary Public-State of Nevada
APPT. NO. 93-2876-1
My App. Expires March 05, 2017

Joyce Muir
#93-2876-1
Exp: March 5, 2017

WALLACE • MORRIS SURVEYING, INC.
Land Survey Consulting

APN: 178-27-218-002

EXHIBIT "A"

EXPLANATION: PROPERTY DESCRIPTION FOR THAT CERTAIN AREA TO BE ADDED TO LOT 2, BLOCK 1 **MACDONALD HIGHLANDS A.K.A. FOOTHILLS @ MACDONALD RANCH PLANNING AREA 10.**

BASIS OF BEARING:
THE BASIS OF BEARING FOR THIS PROPERTY DESCRIPTION BEING, SOUTH 04°03'35" WEST, BEING THAT CERTAIN CENTERLINE OF STEPHANIE STREET, DESCRIBED AS "S04°03'35"W 898.21 FEET" AS SHOWN PER BOOK 92, PAGE 100 OF PLATS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 27, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D.M., IN THE CITY OF HENDERSON, COUNTY OF CLARK, STATE OF NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF SAID MACDONALD RANCH DRIVE AND STEPHANIE STREET AS SHOWN PER BOOK 92, PAGE 100 OF MAPS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;
THENCE ALONG THE CENTERLINE OF SAID STEPHANIE STREET, NORTH 04°03'35" EAST, 898.21 FEET;
THENCE DEPARTING SAID LINE, NORTH 85°56'25" WEST, 40.00 FEET, SAID POINT BEING THE NORTHEAST CORNER OF THE EXTERIOR BOUNDARY LINE OF "THE FOOTHILLS AT MACDONALD RANCH, LOT 10" A.K.A., PLANNING AREA 10" AS PER MAP RECORDED IN BOOK 92, PAGE 100 OF PLATS;
THENCE ALONG THE NORTHERLY EXTERIOR BOUNDARY LINE OF SAID BOOK 92, PAGE 100 OF PLATS, SOUTH 81°15'00" WEST, 20.51 FEET TO THE **POINT OF BEGINNING;**
THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES:
SOUTH 81°15'00" WEST, 106.47 FEET;
THENCE NORTH 62°21'00" WEST, 73.00 FEET;
THENCE DEPARTING SAID LINE, NORTH 36°04'33" EAST, 65.60 FEET;
THENCE NORTH 30°02'19" EAST, 41.47 FEET;
THENCE NORTH 68°55'54" EAST, 29.88 FEET;
THENCE NORTH 46°00'15" EAST, 56.90 FEET TO A POINT ON A CURVE TO WHICH A RADIAL LINE BEARS, SOUTH 65°17'22" WEST;
THENCE SOUTHEASTERLY, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 155.00 FEET, THROUGH A CENTRAL ANGLE

[illegible] RADIAL LINE BEARS NORTH 49°19'53" EAST

THENCE SOUTHERLY, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE WESTERLY, HAVING A RADIUS OF 644.00 FEET, THROUGH A CENTRAL ANGLE OF 07°00'16", AN ARC DISTANCE OF 78.24 FEET;

THENCE SOUTH [illegible] WEST, 13.61 FEET TO THE NORTHERLY LINE OF THE

x: 702.212.3963

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5740 S. Arville Street, Suite 206, Las Vegas, Nevada 89118, Ph: 702.212.3967

Description: Clark,NV Document-Year.Date.DocID 2013.1203.40861 Page: 6 of 9
Order: Doc2 Comment:

Escrow No.: 12-08-0699-RLB

EXHIBIT "A"

LEGAL DESCRIPTION

LOT FIFTY-FIVE-TWO (55-2) OF AMENDED PLAT OF A PORTION OF MACDONALD HIGHLANDS PLANNING AREA 3 AND MACDONALD HIGHLANDS PLANNING AREA 10 A.K.A., "THE FOOTHILLS AT MACDONALD RANCH, LOT 10", PLANNING AREA 10, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 145, OF PLATS, PAGE 63, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Document Title: Clark,NV Document Year.Date.Doc ID 2013.1203.4003 Page: 7 of 9
Order: Doc Comment:

State of Nevada
Declaration of Value Form

1. Assessor Parcel Number(s)
   a) 178-28-520-001
   b) —
   c) _____
   d) _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

2. Type of Property:
   a. X Vacant Land b. ☐ Sgl. Fam. Residence
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg. f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

3 a. Total Value/Sales Price of Property $200,000.00

   b. Deed in Lieu of Foreclosure Only (value of property) _____

   c. Transfer Tax Value: $200,000.00

   d. Real Property Transfer Tax Due $1,020.00

4. **If Exemption Claimed:**

   a. Transfer Tax Exemption, per NRS 375.090, Section: _____

   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: GRANTOR/SELLER

Signature: _____ Capacity: GRANTEE/BUYER

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	DRFH Ventures, LLC, a Nevada Limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company	Print Name:	Shahin Shane Malek
Address:	552 S. Stephanie Street	Address:	544 Regents Gate
City:	Henderson	City:	Henderson
State:	NV Zip: 89012	State:	NV Zip: 89012

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company Esc. #: 12-08-0699-RLB
Address: 701 N Green Valley Pkwy., #120
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Description: Clark,NV Document-Year.Date.DocID 2013.1203.40995 Page: 8 of: 9
Order: Doc Comment:

State of Nevada
Declaration of Value Form

1. Assessor Parcel Number(s)
   a) 178-28-520-001
   b) _____
   c) _____
   d) _____

2. Type of Property:
   a. x Vacant Land b. ☐ Sgl. Fam. Residence
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg. f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3 a. Total Value/Sales Price of Property $0.00
   b. Deed in Lieu of Foreclosure Only (value of property)
   c. Transfer Tax Value: $0.00
   d. Real Property Transfer Tax Due $0.00

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section: 3
   b. Explain Reason for Exemption: RE-RECORDING GRANT, BARGAIN, SALE DEED 20130626-5003 TO CORRECT THE LEGAL DESCRIPTION WITHOUT CONSIDERATION

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature: _____ Capacity: GRANTOR/SELLER

Signature: _____ Capacity: GRANTEE/BUYER

	SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name:	DRFH Ventures, LLC, a Nevada limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company	Print Name:	Shahin Shane Malek
Address:	552 S. Stephanie Street	Address:	544 Regents Gate
City:	Henderson	City:	Henderson
State:	NV Zip: 89012	State:	NV Zip: 89012

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company Esc. #: 12-08-0699-RLB
Address: 701 N Green Valley Pkwy., #120
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Ex. A-2

EXHIBIT A-2

Ex. A-2

DRFH VENTURES, LLC

Business Entity Information

Status:	Active	File Date:	12/22/2003
Type:	Domestic Limited-Liability Company	Entity Number:	LLC19977-2003
Qualifying State:	NV	List of Officers Due:	12/31/2015
Managed By:	Managers	Expiration Date:	12/22/2503
NV Business ID:	NV20031201643	Business License Exp:	12/31/2015

Additional Information

Central Index Key:	

Registered Agent Information

Name:	RICHARD C MACDONALD	Address 1:	552 S STEPHANIE ST
Address 2:		City:	HENDERSON
State:	NV	Zip Code:	89012
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent		
Status:	Active		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - RICHARD C MACDONALD

Address 1:	1730 W. HORIZON RIDGE PARKWAY, SUITE 120	Address 2:	
City:	HENDERSON	State:	NV
Zip Code:	89012	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization

Ex. A-3

EXHIBIT A-3

Ex. A-3

THE FOOTHILLS DEVELOPMENT COMPANY, A LIMITED-LIABILITY COMPANY

Business Entity Information

Status:	Active	File Date:	9/2/1993
Type:	Domestic Limited-Liability Company	Entity Number:	LLC10855-1993
Qualifying State:	NV	List of Officers Due:	9/30/2015
Managed By:	Managers	Expiration Date:	9/2/2023
NV Business ID:	NV19931003409	Business License Exp:	9/30/2015

Additional Information

Central Index Key:	

Registered Agent Information

Name:	RICHARD C MACDONALD	Address 1:	552 S STEPHANIE ST
Address 2:		City:	HENDERSON
State:	NV	Zip Code:	89012
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent		
Status:	Active		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - RICHARD C MACDONALD

Address 1:	1730 W. HORIZON RIDGE PKWY., #120	Address 2:	
City:	HENDERSON	State:	NV
Zip Code:	89012	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Ex. A-4

EXHIBIT A-4

Ex. A-4

In Re:

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

Paul Bykowski

January 21, 2015

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the Laramont property.
MR. GUNNERSON: Objection. Form. Foundation.
BY MS. CLINE:
Q Do you understand what I am asking?
A Kind of. Are you asking the relationship between Foothills Partners, the declarant and the Foothills at MacDonald Ranch Master Association?
Q Correct.
A Yes, I could explain that.
Q Will you?
A Sure.
Q Thank you.
A The MacDonald Highlands project was originally named the Foothills at MacDonald Ranch. So sometimes you will hear it referred to as both. For marketing reasons they changed it to MacDonald Highlands. But the reason the association is Foothills at MacDonald Ranch and the developer is Foothills Partners is because the initial master plan name was Foothills at MacDonald Ranch.
Foothills Partners was the declarant that recorded the CC&Rs over the property and established the Foothills at MacDonald Ranch Master Association to, I guess, manage the CC&Rs and collect the HOA dues and

run the association. There is an association manager that does most of the work, but the Foothills at MacDonald Ranch Master Association is still developer controlled, as the declarant appoints three of the current five members on the board. The association still votes on everything. But because three of the five are appointed and not voted, it's technically developer controlled.
Q Is there a point when it may become controlled by someone other than the developer?
A Yes.
Q Do you know when that is or what conditions would need to happen for that to happen?
A I do. I believe there are two conditions. Either a time, which I am not sure what it is, or at 50 percent of the allotted units, which I believe there were 2,000. So I think once we pass 1,000 units, the association gets another elected member and then would technically have control of the board. I am not positive, but I believe that is how it works.
Q Okay. Do you have a position within the homeowners association now?
A Yes.
Q What is that?
A I am the president.

Q And what are your responsibilities as president of the association?
A I run the homeowners association meetings. I am a signature on maps, applications, checks and any other legal documents.
Q What kind of applications?
A Could be an insurance application. I know I fill out bank forms.
Q Okay. So, like, when the association is doing business, they might get insurance, they might get a bank account and you would sign?
A Yes.
Q Is there anything else that you have the responsibility as a president of the association?
A Exclusively as president or as a member of the board?
Q Well, let's go with exclusively as president first, and then we can talk about as member of the board. How about that?
A Okay. I believe exclusively as president you mainly run the homeowners association meetings and sign things.
Q Okay. So as a member of the board?
A As a member of the board, I would vote -- or I don't know if I vote because I am the president. So

I mostly abstain from the voting. As a member I have input on the expenditures of the association, the post orders for the guards, the landscape maintenance. I am on the Compliance Committee, which is a committee that reviews any violations and the Modifications Committee.
Q What does a Modifications Committee do?
A The Modifications Committee reviews any modifications to completed properties within the community, such as patio covers, paint changes, landscape changes, pool additions and other architectural changes to a completed property.
Q Okay. So besides having input on expenditures, posting orders for the guards, landscaping for the Compliance Committee and Modifications Committee, is there anything else that you have responsibility for as a member of the board?
A I think I may, but I can't recall anything specific right now.
Q That's okay. If you think of it later, just let me know. Later if we take a break for lunch and you think of something over lunch, you can always bring it back up again, or when we do your deposition as the 30(b)(6) witness for the association, we can talk about it then.
Can you tell me about the design review

Ex. A-5

EXHIBIT A-5

Ex. A-5

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF RICHARD C. MACDONALD

Taken at the Law Offices of
Howard Kim & Associates
1055 Whitney Ranch Drive
Suite 110
Henderson, Nevada 89014

Monday, February 2, 2015
9:50 a.m.

Reported by: Angela Campagna, CCR #495

occupation?

A. I'm a real estate developer.

Q. What is MacDonald Highlands?

A. MacDonald Highlands is a two square mile of luxury community, planned community, master planned community.

Q. And is it located in Henderson or Las Vegas, Nevada?

A. Henderson.

Q. Who is the developer for that community?

A. I am.

Q. And when you say "you", you personally or a company that you're affiliated with?

A. A company that I own.

Q. What is the company that you own?

A. Foothills Partners basically which is now FHP Ventures.

Q. Now, when you say Foothills Partners, basically what do you mean by that?

A. There are other entities involved in various phases of the development.

Q. Could you go through that and explain which entities are involved and which vary various phases of the development just so I can get a better

A. They did.

Q. So they bought the whole package?

A. They did.

Q. As of today, is that still true, Pacific Links International both owns the land and the operation of the golf course?

A. Yes.

Q. Were there any conditions with respect to that sale in terms of what Pacific Links International could do with the golf course?

A. What they could do with it?

Q. Yeah. Could they tear it down and start building condominiums on that land?

A. No. It has to be operated as a golf course.

Q. So that was one condition that it has to remain a golf course as part of that sale?

A. That's the condition of the community master plan. Whether that is in the contract, I don't remember.

Q. Okay. So as part of the community master plan for MacDonald Highlands, the area that is the golf course of Dragon Ridge will always remain a golf course? Is that what you're saying?

MR. GUNNERSON: Objection. Foundation.

BY MS. HANGS:

Q. In other words, was it advertised as a golf club community with that one feature that it was advertised as?

A. It was an amenity.

Q. When was the golf course completed, the construction of the actual golf course completed?

A. Either 2000 or 2001.

Q. When was it opened for play?

A. Sometime in April.

Q. Of that same year, 2000-2001?

A. Sometime in there.

Q. Now, I think you mentioned something about the community master plan having a requirement that the golf course remain a golf course, correct?

MR. GUNNERSON: Objection. Misstates prior testimony. Foundation. Go ahead and answer if you can.

THE WITNESS: Repeat that again.

BY MS. HANKS:

Q. Yeah. I'm trying to summarize what you said earlier. I think you said something about the community master plan?

A. I have a 90-year old mother I have to check on.

Q. Do you want to go off the record for a second?

A. No. It's not her.

Q. What I was trying to get clarification is I think you testified earlier something about the community master plan indicates that the golf course will always remain a golf course. Is that your understanding?

MR. GUNNERSON: Same objections.

THE WITNESS: I believe that we control that.

BY MS. HANKS:

Q. And when you say "we", who are you referring to?

A. Well, the company.

Q. When you say "the company", which company?

A. Would be probably FHP Ventures.

Q. So would it be fair to state that FHP Ventures as developer intended for the golf course to always be an amenity as part of MacDonald Highlands?

A. Yes.

Q. Would you agree that the golf course is a major amenity of MacDonald Highlands?

MR. GUNNERSON: Objection. Form. Vague.

BY MS. HANKS:

Q. Okay. So what is this section, at least that first sentence indicating to a homeowner?

MR. GUNNERSON: Same objection.

THE WITNESS: Well, what you need to understand is that we have three landscape pallets in the community. We have natural desert pallet which is used in a lot of areas. We have an enhanced desert pallet which is used in some others, and then we have what is called the oasis pallet which you find in places like the Stephanie entrance close to this property or the Valle Verde entrance.

So you have three different landscaping types that can be in that perimeter area. And, now, if they -- if the HOA managed that and maintained it, they would go bankrupt, because they would be basically maintaining vegetation on the golf course which they have never done.

So I don't know what relevance that has to what we're discussing. But just so you know, that doesn't mean that you're supposed to have landscaping equal to the Valle Verde gate as you come in, because as I said, we've had three different pallets. And in this case it's mostly the natural pallet.

going to protect them in terms of using privacies when people did buy multiple lots?

MR. GUNNERSON: Objection. Foundation. Calls for speculation.

BY MS. HANKS:

Q. When I say protect them, I mean you're going to carefully review the proposed structure to make sure it doesn't impair.

A. Not to the point of precluding people from building on adjacent lots. That would be unreasonable.

Q. Drawing your attention to page 3.11, this might answer what we were talking about earlier. And you can correct me if I'm wrong.

The last paragraph here indicates that, "Any slope area adjacent to the golf course and not a part of the area of home development or construction shall be landscaped as a natural desert zone or natural area."

Do you see that?

A. Yes.

Q. Is that one of the pallets of landscaping we were discussing earlier that exists within MacDonald Highlands?

A. Yes.

Q. And to the best of your recollection, would that be the natural desert zone or natural area of pallet landscaping, likely be what was in the perimeter strip that we discussed earlier?

A. I think a lot of that was actually enhanced in some areas. Along the houses, I think that was enhanced, desert bloom and things like that. The piece that was sold was actually just a natural area, because it wasn't used by the golf course.

Q. So it would be the natural area as this term is used in this paragraph?

A. Correct.

Q. And keeping with the building envelope and the understanding of building on the different lots, if you go to page 3.14, it's the paragraph towards the middle in that section called "Building Orientation."

And there is a sentence that indicates, "The Design Review Committee will consider each lot independently and will give extensive consideration to view corridor impacts on adjacent homes, solar orientation, drainage patterns, impacts to existing conditions, and driveway access."

any other lot purchasers?

A. Yes.

Q. On how many occasions has that happened, approximately?

A. There may have been three or four.

Q. And can you explain to me generally what happened in those instances where the owners wanted to buy a little bit more land?

A. Well, I mean, there is a lot of variations. Some cases they wanted to do landscaping, and they didn't buy it. We did the landscape for them in a couple cases, maybe three.

There was another instance where a lady wanted to buy another parcel. Again, you know, scrap land that wasn't being used for the golf course, but was within the golf course confines, and that was sold and then my lot.

Q. What happened with your lot?

A. I had an area of the golf course that I basically moved into, moved into with my yard so to speak. It was technically part of the golf course, but I haven't bothered to subdivide it, move it in, it's just one of the things that I took care of when the sale was negotiated.

Q. Now, with respect to the landscape

Ex. A-6

EXHIBIT A-6

Ex. A-6

MACDONALD
HIGHLANDS

DESIGN GUIDELINES

Prepared:.....September 1, 1992

Revision Dates:.....September 24, 1998
May 12, 1999
December 13, 1999
April 27, 2000
September 1, 2000
May 1, 2002
January 7, 2003
July 7, 2003
March 1, 2004
December 1, 2005
September 1, 2006

***** TO AVOID UNNECESSARY EXPENSE, PLEASE ADVISE YOUR ARCHITECT TO SCHEDULE A MEETING WITH THE DESIGN REVIEW COMMITTEE PRIOR TO PREPARATION AND SUBMITTAL OF ARCHITECTURAL PLANS *****

1730 West Horizon Ridge Parkway, Suite 100
Henderson, Nevada 89012
702.458.0001 • Fax 702.458-5570
www.macdonaldhighlands.com

1.0 INTRODUCTION

1.1 MACDONALD HIGHLANDS

PHILOSOPHY

MacDonald Highlands is situated in a majestic mountain valley featuring a backdrop of rugged mountain peaks as well as spectacular city light views. The master plan for MacDonald Highlands is committed to the preservation of the site's inherent natural beauty, thus ensuring that the mountainous desert character of the site will always be symbolic of the community's identity. Because of this commitment, MacDonald Highlands will soon take its place as the crown jewel of southern Nevada master-planned communities.

A dedication to the preservation of nature's beauty, enhanced by the highest aesthetic standards of landscape design, MacDonald Highlands will set the stage for an uncompromising standard of residential living. Years of effort by a team of outstanding land planners, architects, and engineers will provide a project of enduring quality. Additionally, to protect and enhance owner value, a strict set of covenants and guidelines will be carefully monitored by a professionally advised design review committee.

The fundamental community concept of MacDonald Highlands is to preserve the natural character of the desert environment, particularly the rugged hillside areas. The residential neighborhoods are designed such that site development will blend harmoniously into the natural desert setting, creating a rural atmosphere of casual country estates. This design includes reducing the design speed of all of the site roadways to 20 M.P.H., thus allowing such roadways to conform to the natural contour and setting of the hillside environment. The community identity is

further enhanced by an 18-hole championship golf course and destination resort. The golf course fairways meander throughout the neighborhoods within MacDonald Highlands, with many of the individual homesites featuring direct frontage on the course. In addition, significant view corridors to the golf course are provided at key locations along the community street system.

Because each development within MacDonald Highlands will be unique in terms of its natural opportunities and constraints, it is expected that the design of each development be tailored to preserve, enhance, and protect those special features of each individual Lot or Parcel. Each development project must consider those approaches in design and construction, which will accentuate those unique attributes while preserving the natural features of each Lot or Parcel. The design of each Lot or Parcel within the MacDonald Highlands community shall support the overall philosophy of the community by carefully integrating the development into the topography.

Design standards and restrictions and a Design Review Committee have been developed to implement and enforce this philosophy. Minimum standards of design arising out of the environmental and climatic needs of the desert provide direction to Lot or Parcel owners and developers in the planning, design, and construction of their residences or projects to insure compatibility with the environment, harmonious architectural approaches, and compatibility with adjacent development within the community. The Design Review Committee will encourage creativity, innovative use of materials and design, and unique methods of construction so long as the final result is consistent with these Design Guidelines and the overall philosophy of MacDonald Highlands. No one residence, structure, improvement, or development should stand apart in its design or construction so as to detract from the overall environment and appearance of MacDonald Highlands.

The design and architectural standards and restrictions as set forth in these Design Guidelines should be viewed by each Owner as his assurance that the special environment of MacDonald Highlands will be preserved and enhanced over time.

1.2 DESIGN GUIDELINES

The purpose of these Supplemental Design Guidelines is to provide specific direction for the expression of the built environment within the Custom Home neighborhoods of MacDonald Highlands. They are intended to provide an overall framework for future development, achieving a sense of neighborhood identity, land use character, scale and sensitivity to the desert environment in the development of MacDonald Highlands' neighborhoods.

The purpose of these Design Guidelines is to implement the community design theme by addressing the architectural, landscape, and site planning design criteria for the development of MacDonald Highlands. These Guidelines are intended to set standards for the quality of design, to assure land use compatibility, to direct character and form, and to enhance the community's overall value. The Guidelines are intended first as an information source to Owner's builders, developers, architects, or investors interested in MacDonald Highlands, and second, as a regulatory mechanism to insure that all Improvements in the community are carried out in an environmentally sensitive manner. These Guidelines will thus insure a high standard of project-wide design consistency throughout the life of the community.

MacDonald Highlands Design Guidelines are intended to be a conceptual, dynamic guide to development and, as such, are subject to change when the Design Review Committee determines such

final design review, insures that the final plans and construction drawings are consistent with the previously approved preliminary plans and the Design Guidelines. The final phase includes an inspection by a representative(s) of the Design Review Committee to determine whether actual construction has been completed in strict compliance with the approved plans and the Design Guidelines.

Approval of plans and specifications by the Design Review Committee is not, and should not be deemed to be, a representation or warranty that said plans and specifications comply with applicable governmental ordinance or regulations including, without limitation, City of Henderson zoning ordinances, subdivision regulation, and building codes.

1.4 BUILDING ENVELOPE

Within the Hillside Buildable Areas, the concept of a maximum allowable building area, called the Building Envelope, has been developed to ensure the preservation of views from each residence in MacDonald Highlands.

All Improvements on a Lot or Parcel within MacDonald Highlands must be designed to be within this Building Envelope, including the Residence, accessory buildings, outside patios and terraces, tennis courts and swimming pools, if permitted by the Design Guidelines, and any other Improvements or structures on the Lot or Parcel. Only approved plants may be planted within the Building Envelope, unless otherwise approved by the Design Review Committee. Outside of the Building Envelope, the natural desert must be undisturbed or revegetated with complementary desert plant material where possible. Moreover, it is not intended that the Owner design his Residence or other Improvements so as to completely fill the Building Envelope. Designs, which, in the

opinion of the Design Review Committee, overwhelm the Building Envelope and are, therefore, inconsistent with the philosophy of MacDonald Highlands, will not be approved.

Before any conceptual planning is done, an Owner should consult with the Design Review Committee to determine the location of the Building Envelope. Although the shape and location of the Building Envelopes are intended to be somewhat flexible, modifications to the Building Envelope can be made only by the Design Review Committee and only if the modifications do not result in a significant adverse impact upon the natural features of the Lot or Parcel, or upon neighboring Lots or Parcels, or the Project as a whole.

After the final design approval has been given by the Design Review Committee, a revised Building Envelope will be based on actual plans, which may differ in size and shape from the original conceptual Building Envelope. Thereafter, the Building Envelope may be changed only through an amendment process after obtaining the approval of the Design Review Committee. This process assures that the view corridor of the Building Envelope will be permanently protected from any future encroachment or development.

1.5 DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

"Apartment Development" shall mean a Parcel or portion thereof which is described in a Parcel Declaration, is limited by the Declaration to residential use, and contains Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City of Henderson, and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.

"Golf Course Lot" shall mean a residential Lot which has a portion of its boundary immediately adjacent to the Golf Course, or a Condominium or Cluster Residential Development which has a portion of its common elements immediately adjacent to the Golf Course.

"Hillside Residential" shall mean those residential projects within the Hillside Buildable areas.

"Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, trails, tennis courts, sprinkler pipes, garages, swimming pools, spas, and other recreational facilities, the paint on all surfaces, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning, and water softener fixtures or equipment.

"Landscape Easement Area" shall mean the approximate foot portion of land adjacent to the public rights-of-way in MacDonald Highlands and the entryways to MacDonald Highlands, which is subject to an easement for landscaping, sidewalks, perimeter walls, and utility access as described in the CC&Rs.

"MacDonald Highlands" (also known as The Foothills at MacDonald Ranch and MacDonald Ranch Country Club) shall mean the real property described on Exhibit "A" attached to this Declaration, together with any additional real property, which may from time to time become subject to and covered by this Declaration, and the development to be completed thereon.

"Streets" shall mean those areas of MacDonald Highlands, which are depicted as "Private Street" or "Public Street" or on any subdivision map recorded and filed by Declarant, or on any Master Development Plan.

"Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

No boats, trailers, or other recreational vehicles shall be stored on-site unless they are parked inside an enclosed area, which is permanently attached to a main residence, or unless alternate storage plans are approved by the Design Review Committee.

2.8 SETBACKS

All Developments within MacDonald Highlands shall maintain setbacks and easements consistent with the setback standards described in Section 3.0 of these Design Guidelines. Variation of setbacks will be encouraged in the residential areas of moderate density to distinguish individual identities and avoid formal redundancy.

Within the Non-Residential projects, no building or parking will be permitted closer than 15 feet to the right-of-way or as specified in the Henderson Development Code. This area shall be landscaped consistent with the design concepts set forth by these Guidelines.

2.10 FENCES AND WALLS

Introduction & Philosophy: As a luxury, view-oriented community, MacDonald Highlands is designed to have a minimal amount of fences and walls. In order to preserve the spectacular scenery unique to MacDonald Highlands, the Design Review Committee reserves the right to approve the location, materials, color, columns, and design of all fences and walls.

MacDonald Highlands' development theme has been expressed as casual country estate and rural atmosphere. While there will be some parcels which will be developed in a more urbanized design pattern, the majority of the MacDonald Highlands project and especially the Hillside Estates areas will be developed with this rural country estate design theme. In order to establish and maintain this overall rural ambiance and to preserve the natural hillside terrain, the community will discourage and prevent the proliferation of walls.

In those areas identified as Hillside Estates, the construction of walls for the purpose of identifying property lines of an individual lot or for confining animals is prohibited. The construction of boundary walls and property line walls by the Master Developer of a parcel may be allowed upon review and approval of the design and purpose by the Design Review Committee. Types of walls used in the development of individual lots that will be considered for approval by the Design Review Committee in Hillside Estates areas are structural support walls, retaining walls, and security walls, which are designed and constructed as an integral part of the residential structure. Where security walls are necessary, they will be designed and constructed under the parameters for "view walls."

Chain link and/or perimeter fencing is not permitted, except during construction. Furthermore, exposed wall-top security devices such as concertina wire is prohibited. Because the site affords such dramatic view potential, it is strongly encouraged that open fencing be used predominantly within MacDonald Highlands.

Pool fencing should follow the same standards for openness, visibility and design, but compliance with City, County, and State Ordinances is essential.

Special attention to waterproofing and location of irrigation spray heads will be necessary in order to eliminate leaking, staining, aesthetic, or structural problems.

2.10.1 Perimeter or Boundary Walls

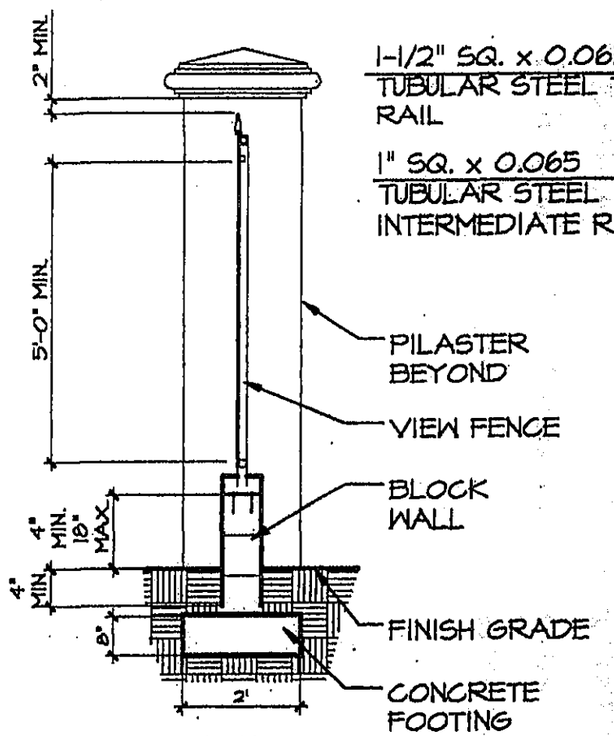
Within the MacDonald Highlands community, the term Perimeter Wall will be used to identify those walls used around the exterior perimeter of the MacDonald Highlands community. Typically, such perimeter walls will be 5 to 6 feet with the standard height being 6 feet, except for short sections where the wall steps up or down to transition a change in elevation.

Certain situations may arise that necessitates the construction of a boundary wall between two parcels. Where this necessity has been reviewed, acknowledged, and approved by the Design Review Committee, the developer may construct such a wall. The design of such boundary walls is subject to the review and approval of the Design Review Committee. The use of open type view walls for these situations is encouraged. The Design Review Committee discourages the use of solid masonry walls that will block views.

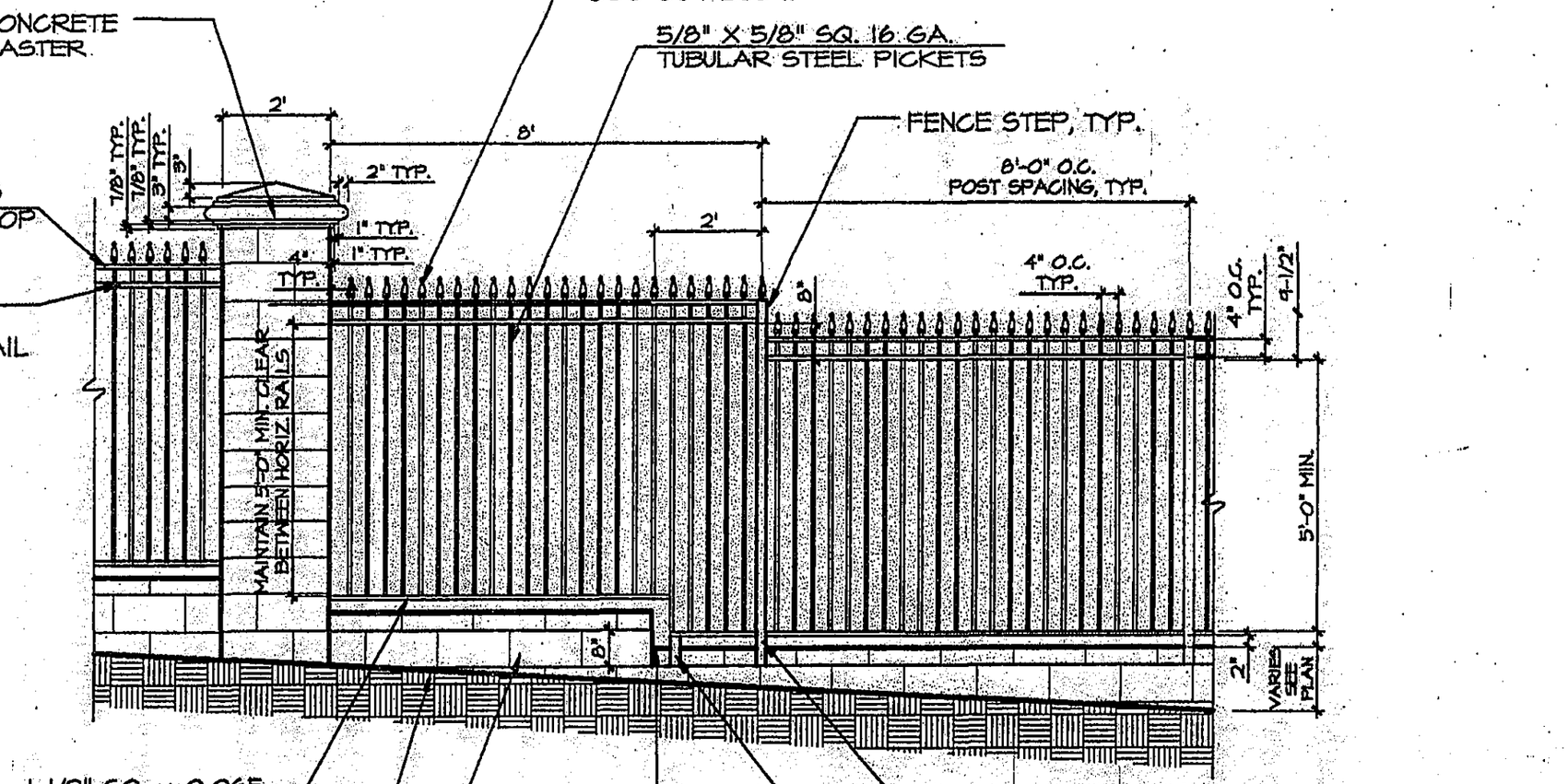
2.10.2 View Walls

The use of "view walls" for purposes other than to provide retaining or structural support is encouraged within the MacDonald Highlands community. Lots along the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. Where permitted, view walls will be used to delineate property lines, to provide security fencing, to enclose properties, etc. All architectural designs and colors are subject to compliance with the appropriate sections of these design guidelines and approval by the Design Review Committee.

The design of View Walls should promote the open view oriented characteristics of the MacDonald Highlands community. View walls shall be designed to minimize massing impacts on the community and to minimize any visible barriers to views that would result from the construction of such walls. The use of open distinctive ornamental metal materials for such walls is encouraged. A solid masonry base no higher than 18" may be approved by the Design Review Committee depending upon the architectural design and materials. Masonry pillars to support the metal sections may be approved by the Design Review Committee depending upon the architectural design and materials. All masonry components of view walls will have exterior surfaces that are constructed of native materials, which complement the natural desert environment and colors.



SECTION



ELEVATION

NOTES:

FENCE: PAINT WITH (1) COAT METAL PRIMER AND (2) FINISH COATS. PAINT COLOR TO BE AMERON 450HS "FOOTHILLS MAHOGANY".

BLOCK: CONCRETE BLOCK IS CSR BROWN #2 DOUBLE SPLITS. STANDARD WALL BLOCK IS 6" x 8" x 16". IF RETAINING OVER 24" BLOCK IS 8" x 8" x 16". SOLID SMOOTH CAP IS 4" x 6" (or 8") x 16" FLUSH WITH BLOCK WALL, COLOR TO MATCH BLOCK.

CONNECTIONS: HORIZONTAL RAILS ARE TO BE WELDED TO POSTS. WELDS SHALL BE CONTINUOUS AROUND RAILS AND GROUND SMOOTH PRIOR TO PAINTING.

PILASTER CAP:
PRECAST CAP AVAILABLE AT 'ARCHITECTURAL PRECAST, INC.' 702.643.7000, CONTACT IS KIRK. DIMENSIONS AS SHOWN. COLOR TO BE STANDARD MRCC PRECAST COLOR.

EACH OCCURRENCE THAT EXCEEDS THE STANDARD WALL HEIGHT FOR THE CITY OF HENDERSON IN ORDER TO MEET POOL SAFETY REQUIREMENTS WILL HAVE TO GO TO THE CITY FOR APPROVAL OF A VARIANCE.

VIEW WALL EXHIBIT

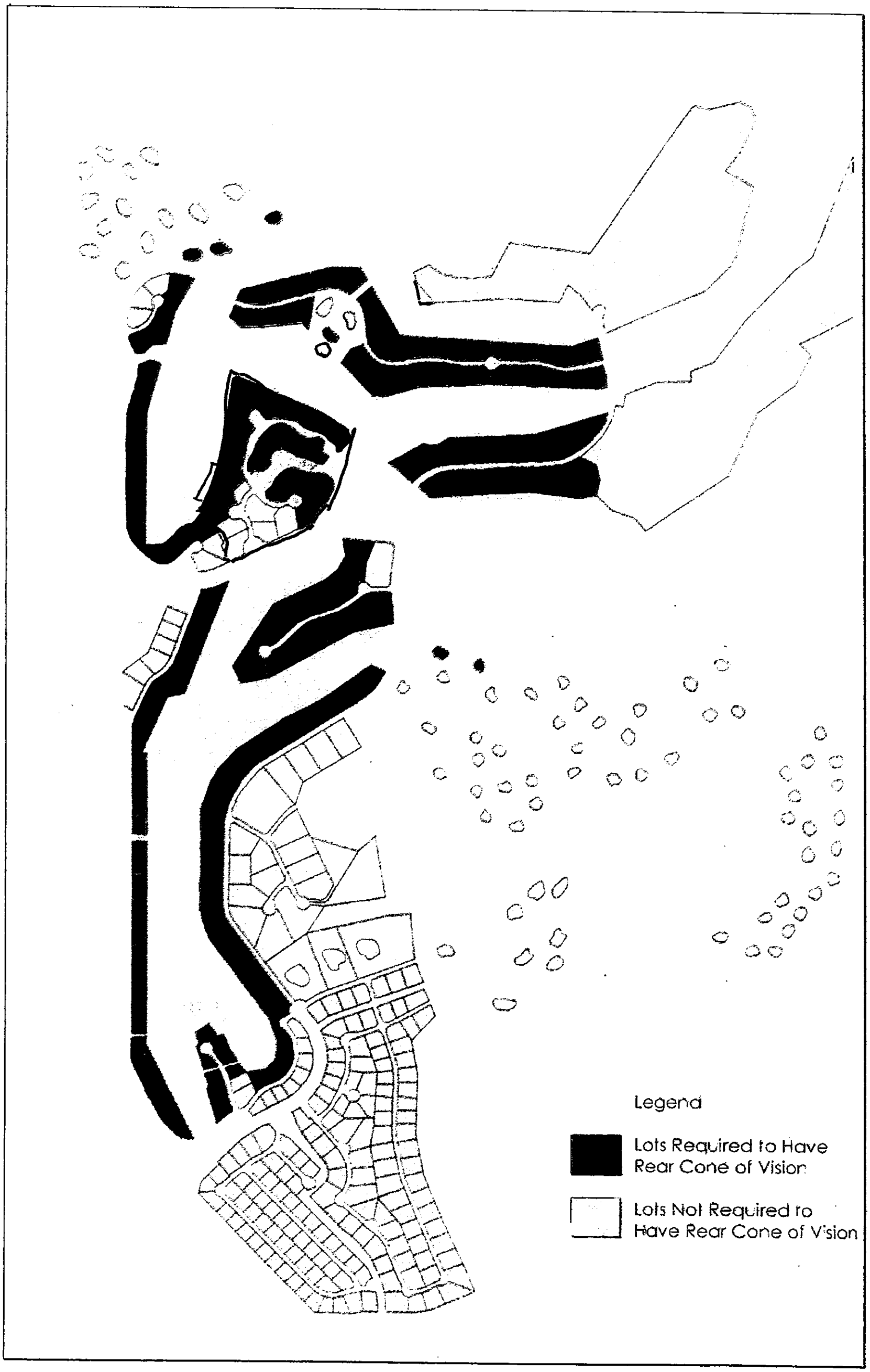
MACDONALD HIGHLANDS

2.10.4 Rear Yard Cone of Vision

In all site design and layout, careful attention to open space is important. Those lots that front on the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. If a solid wall is desired along the side property line(s), the solid side yard wall must end at a distance of 15 feet from the property corner. A single pilaster is required at each property line corner on both sides in the rear. In addition, those lots that require preservation of view corridors will not be permitted to install improvements, plant trees or other plant material that are taller than 4 feet within a distance of 15 feet from the rear yard property corner.

2.10.5 Security Walls

All security walls within the MacDonald Highlands project must be designed and constructed using the design criteria established for View Walls and incorporating those specific code requirements for providing the required protection (such as for swimming pools). The design and construction of all security walls must be submitted to the Design Review Committee for review and approval.



Rear Yard Cone of Vision Master Plan

2.13 SERVICE AREAS

All above-ground garbage and trash containers, clotheslines, mechanical equipment, and other outdoor maintenance and service facilities must be screened by walls, berms, or landscape from other Lots or Parcels, streets, or public spaces.

2.14 GOLF COURSE LOTS OR PARCELS

Golf Course Lots or Parcels may be required to have fences or walls along the Golf Course boundaries if required by the Design Review Committee. All fencing on Golf Course Lots or Parcels along the boundaries adjacent to the Golf Course shall be located, constructed, and maintained in accordance with specifications established by the Design Review Committee for the purpose of preserving and protecting the views of adjoining land from the Golf Course.

These fences shall be low masonry walls with wrought iron fencing, in a combination approved by the Design Review Committee. Owners of Golf Course Lots or Parcels, prior to installing fences or walls, or prior to modifying fences or walls existing on a Golf Course Lot or Parcel, shall obtain written approval regarding the location thereof and any such construction of modification from the Design Review Committee.

Any portion of a Golf Course Lot or Parcel, which is visible from Neighboring Property, shall be kept neat, clean, and free of weed and residue. All Golf Course Lots or Parcels shall be landscaped and maintained in accordance with the rules and regulations established by the Declarant or the Design Review Committee. Such landscaping shall not be modified without prior approval of

the Design Review Committee, which Committee shall determine that such modification will not interfere with the view from Neighboring Property of that Lot or Parcel thus landscaped or of other Golf Course Lots or Parcels.

No temporary storage facilities, storage sheds, or any other temporary or permanent structures may be placed on any Golf course Lots or Parcels so as to be Visible from Neighboring Property or the Golf Course without the prior consent of the Design Review Committee.

2.15 SWIMMING POOLS

Swimming pools should be designed as being visually connected to the residence through walls or courtyards, and screened or separated from the Natural Areas or direct view of the Street or of neighboring properties. They must be constructed according to the City of Henderson Regulations.

2.16 TENNIS COURTS

Tennis courts are not allowed except in certain situations on large Lots or Parcels as approved by the Design Review Committee. Tennis courts should be fenced and sited for minimal visual impact from the street or from neighboring properties. The construction of tennis courts below grade helps to reduce the need for fencing. Lighting from tennis courts will not be permitted to spill onto adjacent property, and no tennis court lighting shall be installed without the approval of the Design Review Committee.

2.17 LOT OR PARCEL RESTRICTIONS

No more than one Residence may be constructed on any Lot or Parcel.

The MacDonald Highlands design guidelines permit one accessory structure per design-accepting lot (i.e., larger lots) provided it complies with design requirements and restrictions per City of Henderson building code. Please be advised that a detached guesthouses, guest suites and/or cabana that includes a kitchen is not permitted in the City of Henderson (City of Henderson Ordinance No. 1295, Section 1.BN.2, adopted March 17, 1992). Any approved accessory structures should be designed as a single visual element, compatible with and complimentary to the design and form of the main residence, and should be visually connected by walls, courtyards, or other major landscape elements. The accessory structure must be contained within the building setbacks, shall be located to respect the views, privacy, and other aspects of adjacent properties, and the use of mature landscaping is encouraged to soften the appearance of these structures. No accessory structure may be leased or rented separately from the main residence. Requests for accessory structures must first be submitted to the Design Review Committee for review and approval, prior to submission to the City of Henderson for plans check and permit issue.

3.2 DESIGN CRITERIA - CUSTOM HOMES
[Planning Areas 1-Phase I, 3, 4, 5A (Highlands I), 5B, 5C (Highlands II), 6, 7, 8A, 10, 12, 15, 16, 18, 26, Palisades Unit I & Palisades Unit II]

Introduction

The goal for developing the architectural theme of MacDonald Highlands is to project a harmonious image and a distinctive identity. This should be achieved not by dictating a particular style but encourage a blending of styles emphasizing simple, strong masses and forms.

The purpose of these Architectural Standards is to provide guidance for the Lot Owner and architect. The maintenance of high architectural standards protects and enhances real estate values at MacDonald Highlands. The restriction of unsightly construction also helps to ensure that the image of a prestigious community is maintained. All proposed construction shall comply with the following general criteria:

- Is the residence compatible with a prestigious, high-quality image?
- Will the proposed residence maintain the character of the community?
- Does the residence seem appropriate to the concept of the community?

MacDonald Highlands is planned as one of the premier luxury communities in the United States. The community's incomparable setting, featuring majestic and rugged topography with expansive golf course amenities, and proximity to one of the country's most unique destination resorts, require an unparalleled unity and excellence in design, architecture, and landscape.

3.3 SITE PLANNING CRITERIA – CUSTOM HOMES [Planning Areas 1-Phase I, 3, 4, 5A (Highlands I), 5B, 5C (Highlands II), 6, 7, 8A, 10, 12, 15, 16, 18, 26, Palisades Unit I & Palisades Unit II]

Introduction

The natural topography, vegetation and setting of MacDonald Highlands create a unique environment, which requires careful attention throughout the site design and development process. The integrated design of site and residence is crucial to ensure that the dwelling blends harmoniously into the surrounding desert landscape. The design must fully analyze the unique physical characteristics of the lot, including topography, slope, view, drainage, vegetation, and access.

The desert landscape is a fragile environment, and may take many years to naturally recover from the impacts of disturbances related to site development. In order to minimize these impacts, MacDonald Highlands along with the City of Henderson, have developed the criteria within this Supplemental Design Guidelines manual to protect the natural desert character of the community.

3.3.1 Building Envelope

The Building Envelope is the portion of the lot, exclusive of any setbacks, easements or other encumbrances, upon which lot improvements may be located. All lot improvements, including residential structures, accessory buildings, outside patios and terraces, tennis courts, swimming pools, and other site elements, must be designed within the Building Envelope.

A maximum Building Envelope has been established for each custom lot to foster creative solutions to the massing of building components and to ensure the preservation of views from each residence in MacDonald Highlands. The Building Envelope is based upon the minimum setbacks as outlined in Table 3.9, and the building height limit as described in Section 3.4.

It is not intended that the design of the residence completely fill the Building Envelope. Although the shape and location of the Building Envelope are intended to be somewhat flexible, only the Design Review Committee can make modifications to the Building Envelope only if the modifications do not result in a significant adverse impact upon the natural features of the lot, adjacent lots or the MacDonald Highlands community as a whole. Designs, which in the opinion of the Design Review Committee overwhelm the Building Envelope, will be considered inconsistent with the philosophy of MacDonald Highlands and will not be approved.

3.3.1.a Combined Lots

If an Owner owns two contiguous Lots and wants to combine the two Lots into a single homesite, the Owner may do so only with the prior consent of the DRC and only if the change, in the DRC's opinion, does not materially impair views and/or privacy from neighboring Lots or Common Areas. When considering combining Lots, the Owner must recognize that combining two Lots or Building Envelopes may be beneficial, as it could provide more Open Space between adjacent Lots and improve view corridors; it may also have an adverse impact on the views and privacy of other nearby Lots or Common Areas, and should be reviewed carefully by the DRC. An Owner may apply for a variance on a front yard setback based on specific Lot configurations subject to DRC approval. The Owner or his representative is urged to submit a proposed revised Building Envelope for Combined Lots as early in the design process as is reasonable prior to preliminary submittal. Specific focus will be placed on, but not limited to the following:

SITE PLANNING CRITERIA – CUSTOM HOMES

MINIMUM SETBACKS*

	LOT SIZE	FRONT	SIDE	REAR
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Manor Estate: Planning Areas: 5B and 12	1 Ac.	25'	15'	35'
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Manor Estate: Planning Area 10	1/2 to 1 Ac.	25'	15'	35'
Hillside Estate: Planning Areas: 6, 7, 18, 26, Palisades Units I and II	1/2 Ac.	25'	15'	30'
Golf Estate: Planning Areas: 1-Phase 1, 8A, 15/16	1/2 Ac.	25'	15'	30' **
Executive Estate: Planning Areas: 3, 5A and 5C (Highlands Units I and II)	1/3 Ac.	25'	10' Corner Side One-Story: 15' Corner Side Two-Story: 20'	30' **

* Accessory structures provided on interior lots must be setback a minimum of five feet (5') from all property lines. While accessory structures provided on lots along the golf course and/or common open space must be setback a minimum of ten feet (10') from all property lines, [redacted]

** Single-story elements, including but not limited to patios, sundecks and "open" balconies may encroach 10'-0" maximum into the rear setback on Executive and Golf Estates, however, must comply with minimum side setbacks.

- Adjustments in Building Envelope
- Preservation of view corridors
- Building height restrictions
- Architectural massing

The plat for a newly configured single Lot must be approved by the City of Henderson, Nevada and must be recorded. All expenses associated with recording the new Lot and pursuing any required governmental approvals are the responsibility of the Owner.

3.3.2 Natural Area

The natural area is the portion of the lot that lies outside of the Building Envelope, and must remain in its natural desert condition. Additional plant material may be added in the Natural Area subject to approval by the Design Review Committee. If approved, only plants indigenous to the general area of development may be used, and the density and mix should approximate that of the surrounding desert landscape. Irrigation of the Natural Area is not permitted since the indigenous vegetation does not require additional water. Irrigation of the Natural Area can lead to disease and demise of the native plants, and contribute to the spread of undesirable plant species or weeds.

Lot Owners in Planning Area 7 and Planning Area 5B shall be required to prepare a legal description of Natural Area that cannot be amended without Design Review Committee approval.

Any slope area adjacent to the golf course and not a part of the area of home development or construction shall be landscaped as a "Natural Desert Zone" or "Natural Area".

3.3.3 Private Area

The Private Area is the portion of the Building Envelope that has limited visibility from neighboring properties because it is screened from view by plant materials, walls or other structures. The Private Area is the least restrictive in terms of plant selection, and may include any plant material listed on the Approved Plant List, or subject to Design Review Committee approval, any other plant material not included on the Prohibited Plant List.

3.3.4 Building Orientation

The custom lot areas within MacDonald Highlands have been designed to provide a sense of exclusivity to each of the neighborhoods. This exclusivity is further achieved through the ample sizing of individual lots to enable the creation of a pleasant neighborhood character with an emphasis on one-story homes and significant space between residences. 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 view corridors, impacts on adjacent homes, solar orientation, drainage patterns, impacts to existing site conditions, and driveway access.

3.3.4.a Solar Orientation: The desert climate is characterized by extreme conditions ranging from intense heat in the summer to very cold temperatures in winter. Passive solar design techniques are encouraged in order to minimize summer heat gain while maximizing heat gain during winter months. The placement of windows is of particular importance in relationship to solar orientation. Windows with direct sun exposure should

be shielded by covered patios, wide overhangs, shade structures, tinted glass or other similar devices, to minimize the effects of the sun.

The use of solar panels, hot water storage systems, or other similar devices shall not be visible from any street or community open space, and are subject to approval by the Design Review Committee.

3.3.4.b View Orientation: The hillside character of MacDonald Highlands provides spectacular view opportunities for most of the lots throughout the community. The orientation of the residence's major rooms, patios and terraces should be designed to take advantage of these dramatic views. The use of large picture windows and corner glass are especially effective in capturing the views offered by the site, and are characteristic of the Desert Elegance style of architecture.

With the golf course orientation of MacDonald Highlands, there is an inherent risk that golf balls and the play of golf may impact lots or residences with golf course frontage. The Design Review Committee strongly recommends that, during the planning of site improvements on your lot, careful consideration be given to the possibility of errant golf balls, particularly regarding the orientation of windows or other breakable surfaces of the dwelling. Netting, screens, excessive landscaping, fences or large blank walls will not be allowed. Evaluation of the proper siting, orientation, massing and setbacks should provide for maximum golf or view orientation with minimal adverse impact from the play of golf. Design consideration should also be given to the noise generated by golfers, golf carts and maintenance vehicles.

3.3.4.c Relationship To Adjacent Lots & The Overall Community: Residential structures should be designed to blend into the overall character of the desert environment as much as possible, minimizing any negative visual impact from surrounding areas. The design of individual homes should carefully consider the scale, proportion, and massing of building elements to ensure the resulting structure is compatible with the overall philosophy of MacDonald Highlands.

It is the intent of these guidelines to ensure that not only are the architectural designs consistent with community standards but that each new home compliments and enhances those homes that already exist. An important aspect of the MacDonald Highlands philosophy is the goal of having the home fit within the existing terrain and not reconfigured the terrain to fit within the home. Careful consideration of the surrounding site conditions should be designed as an integral element of the lot's development. Therefore, the Design Review Committee will require all Lot Owners to provide the Design Review Committee with lot cross-sections as shown in Exhibit "V". In addition to presenting the proposed elevations of the home, the cross-section must depict the proposed contours carried out to the lot lines.

Furthermore, if adjacent lots have existing homes, the Lot Owner is to show the existing homes and its elevation in relation to his/her proposed design. Elevation data from adjacent lots will be made available to the Lot Owner by the Design Review Committee upon request. Cross-sections are to be included in the Schematic Plan Review Submittal.

3.3.7.g View Preservation: The hillside character of MacDonald Highlands provides spectacular view opportunities for most of the lots throughout the community. The orientation of the residence's major rooms, patios and terraces should be designed to take advantage of these dramatic views.

While views should be maximized from individual homesites, the residence should be designed and sited such that view opportunities from surrounding lots are not obstructed.

5.10.a Rear Yard Cone of Vision / Dedicated View Corridors

Those lots that require preservation of view corridors will not be permitted to install improvements, plant trees or install other plant material that are taller than 4 feet (i.e., at *maturity*, not with maintenance) within a distance of 15 feet from the rear yard property corner (Exhibit "O", Page 2.38).

Ex. A-7

EXHIBIT A-7

Ex. A-7

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MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE FOOTHILLS AT MACDONALD RANCH

"**Default Rate**" means a per annum rate equal to four percent (4%) above the "reference rate" as announced from time to time by Bank of America National Trust and Savings Association (or, if Bank of America ceases to publicly announce such reference rate, the highest of the "prime rates" as set forth in *The Wall Street Journal*), but not to exceed the maximum interest rate permitted by law.

"**Delegate**" means a representative selected, in accordance with the Bylaws, by the Members within one or more Neighborhoods to be responsible for casting all votes attributable to the Units within such Neighborhood(s) on all matters requiring a vote of the Members (except as otherwise specifically provided in this Declaration and in the Bylaws). The term "Delegate" shall include an alternative Delegates acting in the absence of the Delegate.

"**Developmental Rights**" means any rights or combination of rights reserved by Declarant hereunder or pursuant to a Supplemental Declaration to (i) add real estate to the Common Interest Community (including the right of Declarant to add all or any portion of the Additional Properties to the Common Interest Community as set forth in Article 9), (ii) create Units, Common Elements or Limited Common Elements within the Common Interest Community, (iii) subdivide Units or convert Units into Common Elements, (iv) withdraw land from the Common Interest Community or (v) exercise any other right or benefit now or hereafter constituting a "developmental right" under the Act.

"**Director**" means a member of the Board of Directors.

"**Golf Club**" means any portion of the Resort Properties operated or used as a private membership golf club or golf course and/or related amenities and facilities.

"**Governing Documents**" means this Declaration, any Supplemental Declaration, the Plats, the Bylaws and the Rules, all as they be amended from time to time. Any exhibit, schedule or certification accompanying a Governing Document is a part of that Governing Document.

"**Limited Common Elements**" means a portion of the Common Elements which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Section 2.3. The initial Limited Common Elements are described in Exhibit C-2.

"**Master Plan**" means the Master Plan as defined in Recital A. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit A from the Master Plan bar its later annexation in accordance with Article 9.

"**Member**" means a Person entitled to membership in the Association. A "**Member in Good Standing**" means a Member whose voting rights have not been suspended in accordance with Section 4.4.

"**Owner**" means one or more Persons who hold the record title to a Unit, including Declarant and a Participating Builder but excluding in all cases a Person holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"**Participating Builder**" means a Person who purchases one or more Units for the purpose of constructing improvements thereon for later sale to consumers or who purchases parcels of land within the Properties for further subdivision, development and/or resale in the ordinary course of such Person's business; provided, however, that the term "Participating Builder" shall not include Declarant or its successors.

"**Perimeter Strip**" means a five-foot strip located within the Resort Properties consisting of the area between the perimeter of the Resort Properties abutting the Common Elements or a Unit and a distance of five feet from the boundary of the applicable Common Elements or Unit.

"**Person**" means a natural person, a corporation, a partnership, joint venture, a limited liability company, an association, a trustee, government entity or any other entity.

"**Plat**" means a recorded final subdivision map of the real property constituting all or a portion of the Common Interest Community, as required by NRS Chapter 278, as such plat may be amended from time to time, and includes the map(s) referred to in Exhibit B-1.

"**Resort**" means any portion of the Resort Properties operated or used as a resort hotel, and/or related amenities and facilities and/or other resort or recreational amenities or facilities.

"**Resort Properties**" means all or any portion of the real property described in Exhibit D-1 or such other real property in The Foothills as may, from time to time, be designated on the Master Plan as (i) golf course property or developed as a Golf Club in accordance with City zoning and land use ordinances and/or (ii) as the hotel or resort property or developed as a Resort in accordance with City zoning and land use ordinances.

"**Rules**" means the Rules and regulations of the Association adopted from time to time by the Association in accordance with this Declaration and the Bylaws as such Rules and regulations may be amended from time to time.

"**Special Declarant Rights**" means rights reserved for the benefit of Declarant under Article 15 and such other special declarant rights as may be provided for in the Act.

"**Supplemental Declaration**" means an amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by Declarant pursuant to Section 3.4(b) designating Voting Groups.

"**Unit**" means a portion of the Properties, whether improved or unimproved, that may be independently owned and conveyed and which is intended for development, use and occupancy as

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the official records of the County recorder. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 9.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Common Interest Community pursuant to this Article 9, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

Section 9.4. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional declarations, covenants, conditions, restrictions and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional declarations, covenants, conditions, restrictions and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

Section 9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in Exhibit A or Exhibit B-1.

Article 10.
ASSESSMENTS

Section 10.1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time be authorized by the Board of Directors, to commence at the time and in the manner set forth in Section 10.8. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.5; and (d) Specific Assessments as described in Section 10.6. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest the Default Rate computed from the date the delinquency first occurs, late charges, reasonable attorney's fees and other costs of collection, shall be a charge on the land and, until paid, shall be a continuing lien upon each Unit against which the assessment is made, as more particularly provided in Section 10.7. Each such assessment, together with interest, late charges, reasonable attorney's fees and other costs of collection, also shall be the

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Article 11.
ARCHITECTURAL STANDARDS

Section 11.1. General. No structure shall be placed, erected or installed upon a Unit, and no Construction Activity shall take place except, in each case, in strict compliance with this Article, including obtaining approval of the appropriate committee pursuant to Section 11.2. All Construction Activities shall be based on guidelines that take into account the unique setting of the Properties in the hillside area, the requirements of applicable city ordinances and, if applicable, approved engineering plans.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its Unit or to paint the interior of its Unit (not visible from outside the Unit) any color desired. However, modifications or alterations to the interior of a Unit, including screened porches, patios and similar portions of a Unit which are visible from outside the Unit shall be subject to the same approval or other Construction Activities under this section. No permission or approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications provided such Construction Activities are conducted in accordance with the provisions of this Declaration governing the activities themselves.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer and, if required by the DRC or any other committee established by the Board of Directors pursuant to this Article, approved engineering plans. All structures shall be located within any applicable Building Envelope.

This Article shall not apply to the Construction Activities of Declarant, nor to Construction Activities with respect to the Common Elements by or on behalf of the Association.

This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the DRC, as described in Section 11.2(a), subject to the right of the Board of Directors to exercise such DRC rights as it determines and subject to the right of the Board of Directors and the DRC to delegate additional functions or reviews to other committees. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require fees to be paid in full prior to review of any application.

(a) **Design Review Committee.** The Design Review Committee ("DRC") shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction

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over all original construction on any portion of the Properties. Until one hundred percent of the Additional Properties have been developed and conveyed to Owners other than Participating Builders, Declarant retains the right to appoint all members of the DRC who shall serve at the discretion of Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the DRC, who shall serve and may be removed at the discretion of the Board of Directors.

(b) **Modifications Committee.** The Board of Directors may establish a Modifications Committee ("MC") of at least three and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. In the absence of an MC, the powers of the MC shall be exercised by the Board of Directors or any committee to whom such authority is delegated by the Board. Members of the MC may include architects, engineers or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over Construction Activities consisting of modifications, additions or alterations made on or to existing structures on Units or containing Units and the open space, if any, appurtenant thereto. *Provided*, however, the MC may delegate its authority as to a particular Neighborhood to the appropriate board or committee of the Neighborhood, if any, subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the DRC shall have the right to veto any action taken by the MC which the DRC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the DRC.

Section 11.3. Guidelines and Procedures.

(a) **Design Guidelines.** Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all Construction Activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics and intended use thereof.

The DRC shall adopt the Design Guidelines at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The DRC shall make the Design Guidelines available to Owners and Participating Builders who seek to engage in development of or construction upon all or any portion of the Properties and all such Owners and Builders shall conduct their activities in strict accordance with the Design Guidelines. In the discretion of Declarant, the Design Guidelines may be recorded in the official records of the County recorder, in which event the recorded version, as it may unilaterally be amended from time to time by the DRC by recordation of amendments thereto, shall control in the event of any question as to which version of the Design Guidelines was in effect at any particular time.

Section 12.6. Unsightly or Unkempt Conditions. All portions of a Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Unit which, in the determination of the Board of Directors, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Units shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty, dilapidated or otherwise fallen into disrepair. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve hours.

No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any street, open area, drainage ditch, stream, pond or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

Section 12.7. Antennas. No exterior antennas, aerials, satellite dishes, masts or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be installed or maintained on any Unit or upon any portion of the Properties except in conformity with the rules and regulations adopted by the Association applicable to the installation and maintenance of such devices and improvements, in effect from time to time, which the Association shall make available to all Owners.

Section 12.8. Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc. In addition to the applicable provisions of the Design Guidelines, all basketball hoops and backboards, clotheslines, garbage cans, above-ground storage tanks and structures, mechanical equipment and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets and property located adjacent to the Unit. All rubbish, trash and garbage shall be stored in appropriate containers approved pursuant to Article 11 and shall regularly be removed from the Properties and shall not be allowed to accumulate.

Section 12.9. Subdivision of Unit and Time Sharing. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors. Declarant, however, or any transferee of Developmental Rights pursuant to Section 15.1, hereby expressly reserves the right to subdivide, change the boundary line of, and replat any Unit(s) or other portion of the Properties owned by Declarant or such transferee. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on

possibility of a fire or other hazard. In the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 13.5. Easement Over Resort Properties for Benefit of Association. Declarant expressly reserves for the benefit of the Association, its agents, employees and contractors, an easement over the Perimeter Strips, for the purpose of maintaining the planted landscaping on the Perimeter Strips in a condition substantially equal to the landscaping located on the Common Elements. Notwithstanding the Association's reservation of this easement, the respective owners and/or operators of the Resort Properties shall be responsible for maintaining their properties, including any Golf Club and Resort facilities and improvements, and all expenses associated with the maintenance, repair and upkeep of their respective properties, and neither the Association nor any Owner shall have any responsibility to maintain any portion of the Resort Properties including the Perimeter Strips. Complaints by the respective owners of the Resort Properties regarding the failure of an Owner to maintain his Unit or the failure of the Association or a Neighborhood Association to maintain the Common Elements under its control must be filed with the Board. The Association or Neighborhood Association shall respond to any such written complaint within thirty (30) days of receipt of the complaint.

Section 13.6. Grant of Easements. Every Unit is hereby burdened with an easement allowing golf balls hit by any golfers using the Golf Club to come over and on each such Unit. All golfers using the Golf Club shall have an easement to come on each Unit for the purpose of seeking and retrieving such golf balls, provided that golfers shall not have the right to use such easement to come on any fully fenced Unit. The foregoing easement shall not relieve golfers using the Golf Club of any liability they may have for property damage or personal injury resulting from the entry of golf balls or golfers on any Unit.

Section 13.7. Waiver of Liability. THE DECLARANT, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS MEMBERS), THE PARTICIPATING *BUILDERS*, *THE OWNER AND OPERATOR OF THE GOLF CLUB, AND ANY* SUCCESSOR IN TITLE TO THE GOLF CLUB, AND ANY AGENTS, SERVANTS, *EMPLOYEES, DIRECTORS, OFFICERS,* AFFILIATES, REPRESENTATIVES, RECEIVERS, SUBSIDIARIES, PREDECESSORS, SUCCESSORS AND ASSIGNS OF ANY SUCH PARTY, SHALL NOT IN ANY WAY BE RESPONSIBLE FOR ANY CLAIMS, DAMAGES, LOSSES, DEMANDS, LIABILITIES, OBLIGATIONS, ACTIONS OR CAUSES OF ACTION WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ACTIONS BASED ON (A) ANY INVASION OF AN OWNER'S USE OR ENJOYMENT OF THE UNIT, (B) IMPROPER DESIGN OF THE GOLF COURSE, (C) THE LEVEL OF SKILL OF ANY GOLFER (REGARDLESS OF WHETHER SUCH GOLFER HAS THE PERMISSION OF THE MANAGEMENT TO USE THE GOLF COURSE), OR (D) TRESPASS BY ANY GOLFER ON THE UNIT, THAT MAY RESULT FROM PROPERTY DAMAGE OR PERSONAL INJURY FROM GOLF BALLS (REGARDLESS OF NUMBER) HIT ON THE UNIT, OR FROM THE EXERCISE BY ANY GOLFER OF THE EASEMENTS GRANTED HEREBY.

Ex. A-8

EXHIBIT A-8

Ex. A-8

870115127

RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions and Earnest Money Receipt)

Date: March 13, 2013

Barbara and Fredric Rosenberg ("Buyer"), hereby offers to purchase 590 Lairmont Place ("Property"), within the city or unincorporated area of Henderson, County of Clark, State of Nevada, Zip 89012, A.P.N.# 178-27-218-003 for the purchase price of $ 2,160,000.00 (Two million one hundred sixty thousand dollars) ("Purchase Price") on the terms and conditions contained herein:

BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

Buyer's Offer

i. FINANCIAL TERMS & CONDITIONS:

$ 325,000.00 **A. EARNEST MONEY DEPOSIT ("EMD")** is ☒ presented with this offer -OR- ☐ _____ to escrow company with in 24 hours of acceptance

(NOTE: It is a felony in the State of Nevada punishable by up to four years in prison and a $5,000 fine to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

$ _____ **B. ADDITIONAL DEPOSIT** to be placed in escrow on or before (date) _____. The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on this additional deposit should be set forth in Section 28 herein.)

$ _____ **C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN ON THE FOLLOWING TERMS AND CONDITIONS:**
☐ Conventional, ☐ FHA, ☐ VA, ☒ Other (specify) CASH.
Interest: ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to exceed _____ %. Initial monthly payment not to exceed $ _____, not including taxes, insurance and/or PMI or MIP.

$ _____ **D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):**
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____.
Interest: ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to exceed _____ %. Monthly payment not to exceed $ _____, not including taxes, insurance and/or PMI or MIP.

$ _____ **E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM."**

$ 1,835,000.00 **F. BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

$ 2,160,000.00 **G. TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____

Property Address: 590 Lairmont Place SELLER(S) INITIALS: _____

2. **ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:**

A. **NEW LOAN APPLICATION:** Within N?A business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice; (2) authorize ordering of the appraisal (per lender's requirements); and (3) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer

☐ does -OR- ☐ does not

authorize lender to provide loan status updates to Seller's and Buyer's Brokers, as well as Escrow Officer. Buyer agrees to use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. **CASH PURCHASE:** Within One business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

C. **APPRAISAL:** If an appraisal is required as part of this agreement, or requested by Buyer, and if the appraisal is less than the Purchase Price, the transaction will go forward if (1) Buyer, at Buyer's option, elects to pay the difference and purchase the Property for the Purchase Price, or (2) Seller, at Seller's option, elects to adjust the Purchase Price accordingly, such that the Purchase Price is equal to the appraisal. If neither option (1) or (2) is elected, then Parties may renegotiate; if renegotiation is unsuccessful, then either Party may cancel this Agreement upon written notice, in which event the EMD shall be returned to Buyer.

3. **SALE OF OTHER PROPERTY:**

This Agreement

☒ is not -OR-

☐ is contingent upon the sale (and closing) of another property which address is

_____.

Said Property

☐ is currently listed

☐ is not -OR- ☐ is presently in escrow with _____.

Escrow Number: _____. Proposed Closing Date: _____.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

4. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(B) of this Agreement, all items are transferred in an "AS IS" condition.

A. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s), window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(s), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

B. The following additional items of personal property: Per MLS listing terms

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lalmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

5. **ESCROW:**

A. **OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after execution of this Agreement ("Opening of Escrow"), at seller's choice title or escrow company ("Escrow Company" or "ESCROW HOLDER") with _____ ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement and receipt of the EMD (if applicable). ESCROW HOLDER is instructed to notify the Parties (through their respective Brokers) of the opening date and the Escrow Number.

B. **EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited per the Earnest Money Receipt Notice and Instructions contained herein.

C. **CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on (date) 4/30/2013 or sooner. If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. **IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation which became effective January 1, 1987, that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

E. **FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to ESCROW HOLDER a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by ESCROW HOLDER in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the ESCROW HOLDER the necessary documents, to be provided by the ESCROW HOLDER, to determine if withholding is required. (See 26 USC Section 1445).

6. **TITLE INSURANCE:** Upon COE, Buyer will be provided with the following type of title insurance policy: ☐ CLTA; ☒ ALTA-Residential; -OR- ☐ ALTA-Extended (including a survey, if required).

7. **PRORATIONS, FEES AND EXPENSES** (Check appropriate box):

A. **TITLE AND ESCROW FEES:**

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	N/A
Escrow Fees	☐	☐	☑	☐
Lender's Title Policy	☐	☐	☐	☑
Owner's Title Policy	☑	☐	☐	☐
Real Property Transfer Tax	☑	☐	☐	☐
Other: _____	☐	☐	☐	☐

B. **PRORATIONS:**

TYPE	PAID BY SELLER	PRORATE	N/A
CIC (Common Interest Community) Assessments	☐	☑	☐
CIC Periodic Fees	☐	☑	☐
SIDs / LIDs / Bonds / Assessments	☐	☐	☑
Sewer Use Fees	☐	☑	☐
Trash Service Fees	☐	☑	☐
Real Property Taxes	☐	☑	☐
Other: _____	☐	☐	☐

All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____

C. INSPECTIONS AND RELATED EXPENSES (See also Section 12): Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water) are turned on and supplied to the Property within two (2) business days after execution of this Agreement, to remain on until COE. (It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.)

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED	N/A
Appraisal	☐	☐	☐	☒	☐
CIC Capital Contribution	☐	☐	☐	☒	☐
CIC Transfer Fees	☐	☐	☐	☒	☐
CLUE Report ordered by Seller	☐	☐	☐	☒	☐
Energy Audit	☐	☐	☐	☒	☐
Fungal Contaminant Inspection	☐	☐	☐	☒	☐
Home Inspection	☐	☐	☐	☒	☐
Mechanical Inspection	☐	☐	☐	☒	☐
Oil Tank Inspection	☐	☐	☐	☒	☐
Pool/Spa Inspection	☐	☐	☐	☒	☐
Roof Inspection	☐	☐	☐	☒	☐
Septic Inspection (requires pumping)	☐	☐	☐	☒	☐
Septic Lid Removal	☐	☐	☐	☒	☐
Septic Pumping	☐	☐	☐	☒	☐
Soils Inspection	☐	☐	☐	☒	☐
Structural Inspection	☐	☐	☐	☒	☐
Survey _____ (type)	☐	☐	☐	☒	☐
Termite/Pest Inspection	☐	☐	☐	☒	☐
Well Inspection (Quantity)	☐	☐	☐	☒	☐
Well Inspection (Quality)	☐	☐	☐	☒	☐
Wood-Burning Device/Chimney Inspection (includes cleaning)	☐	☐	☐	☒	☐
Other: _____	☐	☐	☐	☐	☒
Re-Inspections	☐	☐	☐	☒	☐

If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice).

D. CERTIFICATIONS: Notwithstanding the elections below, in the event an inspection reveals problems with any of the foregoing, Buyer reserves the right to require a certification.

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED
Fungal Contaminant	☐	☐	☐	☒
Roof	☐	☐	☐	☒
Septic	☐	☐	☐	☒
Well	☐	☐	☐	☒
Wood-Burning Device/Chimney Certification	☐	☐	☐	☒
Other: _____	☐	☐	☐	☐

The foregoing expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

E. SELLER'S ADDITIONAL COSTS AND LIMIT OF LIABILITY: Seller agrees to pay a maximum amount of $ zero to correct defects and/or requirements disclosed by inspection reports, appraisals, and/or certifications. It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request additional repairs, which may exceed the above-stated amount, based upon the Seller's Real Property

Disclosures or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this section. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

F. **LENDER AND CLOSING FEES:** In addition to Seller's expenses above, Seller will contribute $ zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

G. **HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with _____. ☐ Seller -OR- ☒ Buyer will pay for the Home Protection Plan at a price not to exceed $ 750.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for ordering the Home Protection Plan.

8. **TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

9. **COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

10. **DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents (each of which is incorporated herein by this reference). Check applicable boxes.

- ☐ **Construction Defect Claims Disclosure,** if Seller has marked "Yes" to Paragraph 1(d) of the Seller Real Property Disclosure Form (NRS 40.688)
- ☐ **Fungal (Mold) Notice Form** (not required by Nevada law)
- ☐ **Lead-Based Paint Disclosure and Acknowledgment,** required if constructed before 1978 (24 CFR 745.113)
- ☐ **Pest Notice Form** (not required by Nevada law)
- ☐ **Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer**
- ☐ **Open Range Disclosure** (NRS 113.065)
- ☒ **Seller Real Property Disclosure Form** (NRS 113.130)
- ☐ **Other** (list) _____.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____

11. **ADDITIONAL DISCLOSURES:**

A. LICENSEE DISCLOSURE OF INTEREST (BUYER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Barbara Rosenberg is a licensed real estate agent in the State(s) of California, and has the following interest, direct or indirect, in this transaction: ☒ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) _____.

B. In addition, for **NEW CONSTRUCTION**, to the extent applicable, Seller will provide: Public Offering Statement (NRS 116.4103); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridors (NRS 113.070); Water/Sewage (NRS 113.060); Impact Fees (NRS 278B.320); Surrounding Zoning Disclosure (NRS 113.070); FTC Insulation Disclosure (16 CFR 460.16); and Other: _____.

C. AIRPORT NOISE: Buyer hereby acknowledges the proximity of various overflight patterns, airports (municipal, international, military and/or private) and heliports. Buyer also fully understands that existing and future noise levels at this location, associated with existing and future airport operations, may affect the livability, value and suitability of the Property for residential use. Buyer also understands that these airports have been at their present location for many years, and that future demand and airport operations may increase significantly. For further information, contact your local department of aviation or the Federal Aviation Administration.

D. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, ancestry, handicap or familial status and any other current requirements of federal or state fair housing law.

12. **BUYER'S DUE DILIGENCE:**

A. DUE DILIGENCE PERIOD: Buyer shall have 12 calendar days from Acceptance to complete Buyer's Due Diligence. Buyer shall ensure that all inspections and certifications are initiated in a timely manner as to complete the Due Diligence in the time outlined herein. (If utilities are not supplied by the deadline referenced herein or if the disclosures are not delivered to Buyer by the deadline referenced herein, then Buyer's Due Diligence Period will be extended by the same number of calendar days that Seller delayed supplying the utilities or delivering the disclosures, whichever is longer.) During this period Buyer shall have the exclusive right at Buyer's discretion to cancel this Agreement. In the event of such cancellation, unless otherwise agreed herein, the EMD will be refunded to Buyer. If Buyer provides Seller with notice of objections, the Due Diligence Period will be extended by the same number of calendar days that it takes Seller to respond in writing to Buyer's objections. If Buyer fails to cancel this Agreement within the Due Diligence Period (as it may be extended), Buyer will be deemed to have waived the right to cancel under this section.

B. PROPERTY INSPECTION/CONDITION: 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 insurable 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. During such Period, Buyer shall have the right to have non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on 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. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

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C. **PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such other matter as aforesaid, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was signed by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ COE -OR- ☐ _____. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser and shall be liable to Buyer for the sum of $ 150.00 per calendar day in addition to Buyer's legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable by Buyer.

17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein).

18. DEFAULT:

A. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Not withstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply.

B. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

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C. **IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, Seller shall have one of the following legal recourses against Buyer (initial one only):

[_____] [_____] As Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

-OR-

[BR] [JR] Seller shall have the right to recover from Buyer all of Seller's actual damages that Seller may suffer as a result of Buyer's default including, but not limited to, commissions due, expenses incurred until the Property is sold to a third party and the difference in the sales price.

Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than $5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will -OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself, as to the condition of the Property, prior to COE. Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

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

Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to and received a final, binding contract by affixing their signatures to this Agreement and all counteroffers. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "CLUE" means Comprehensive Loss Underwriting Exchange. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the escrow. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statues as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. **SIGNATURES, DELIVERY, AND NOTICES:**

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented.

C. Except as otherwise provided in Section 9, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Any cancellation notice shall be contemporaneously faxed to Escrow.

25. **IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

NO REAL ESTATE BROKER/AGENT MAY SIGN FOR A PARTY TO THIS AGREEMENT UNLESS THE BROKER OR AGENT HAS A PROPERLY EXECUTED POWER OF ATTORNEY TO DO SO.

THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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27. ADDENDUM(S) ATTACHED: _____

28 _____

29 _____

30 28. ADDITIONAL TERMS: _____

31 _____

32 _____

33 _____

34 _____

35 _____

36 _____

37 _____

38 _____

39 _____

Earnest Money Receipt

40

41 BUYER'S AGENT ACKNOWLEDGES RECEIPT FROM BUYER HEREIN of the sum of $ 325,000.00

42 evidenced by ☐ Cash, ☐ Cashier's Check, ☒ Personal Check, or ☐ Other _____

43 payable to Title Co., Upon Acceptance, Earnest Money to be deposited within ONE (1) business

44 day, with ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, - OR - ☐ Seller's Broker's Trust Account.

45

46 Date: March 13, 2013 Signed: _____ Buyer's Agent: Stephan McGill

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 620 Lairmont Place SELLER(S) INITIALS: _____ / _____

Buyer's Acknowledgement of Offer

Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Barbara Rosenberg — Barbara Rosenberg — 3/13/13 — ____ : ____ ☐ AM ☐ PM
Buyer's Signature — Buyer's Printed Name — Date — Time

Fredric Rosenberg — Fredric Rosenberg — 3/13/13 — ____ : ____ ☐ AM ☐ PM
Buyer's Signature — Buyer's Printed Name — Date — Time

Seller must respond by: _____ ☐ AM ☐ PM on (month) _____, (day) _____, (year) _____. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect.

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Kathryn Bovard — Agent's Name: Siobhan McGill
Company Name: Reality ONE Group — Agent's Public ID: 214400
Phone: 702-898-7575 — Office Address: 2631 St. Rose Parkway # 100
Email: siobhanmcgill@gmail.com — City, State, Zip: Henderson, NV 89052
Fax: 702-637-7210

Seller's Response

☐ ACCEPTANCE: Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.
☐ COUNTER OFFER: Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.
☐ REJECTION: In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

FIRPTA DECLARATION: Pursuant to Section 5.B. herein, Seller declares that he/she
☐ is not -OR-
☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Mail Returned Bank of America — 3/13 3:33 ☐ AM ☒ PM
Seller's Signature — Seller's Printed Name — Date — Time

____ — ____ — ____ — ____ : ____ ☐ AM ☐ PM
Seller's Signature — Seller's Printed Name — Date — Time

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Michael Dolron — Agent's Name: Michael Dolron
Company Name: MacDonald Highlands Realty — Office Address: 552 S Stephanie Street
Phone: 702-614-9100 — City, State, Zip: Henderson, NV 89012
Email: _____ — Fax: 702-614-9400

LICENSEE DISCLOSURE OF INTEREST (SELLER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. _____ is a licensed real estate agent in the State(s) of _____, and has the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship) _____.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg — BUYER(S) INITIALS: _____ / _____
Property Address: 590 Lairmont Place Henderson, NV 89012 — SELLER(S) INITIALS: MM / _____

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BANA000011

Ex. A-9

EXHIBIT A-9

Ex. A-9

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: natalie.winslow@akerman.com

Attorneys for Bank of America, N.A., for itself and as successor by merger to BAC Home Loans Servicing, LP

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02/04/2015 03:42:01 PM

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

v.

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.: I

BANK OF AMERICA, N.A.'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

Defendant Bank of America, N.A., pursuant to Nevada Rule of Civil Procedure 33, answers plaintiff Fredric and Barbara Rosenberg Living Trust's (**plaintiff**) Interrogatories as follows:

GENERAL OBJECTIONS APPLICABLE TO ALL REQUESTS

1. Bank of America asserts the General Objections with respect to each and every Interrogatory.

2. Bank of America objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or other applicable privileges. These requests are interpreted and construed by Bank of America as not encompassing any documents or information protected by the attorney-client, work product, or other applicable privilege or protection unless otherwise stated. To the extent that any document or information that is properly subject to any such privilege is inadvertently produced or identified in connection with these Interrogatories, such inadvertent disclosure is not to be construed as a waiver of such privilege, and such documents or information shall be returned to counsel for Bank of America.

3. Bank of America's discovery and investigation in connection with this lawsuit is continuing. Bank of America's responses are limited to information obtained to date, and are given without prejudice to Bank of America's right to amend or to supplement its responses after considering information obtained through further discovery or investigation.

4. Bank of America objects to the Interrogatories, definitions, and instructions to the extent that they seek to impose a burden or obligations broader than, different from, or in addition to those obligations imposed by the applicable Rules of Civil Procedure.

5. Bank of America objects to the Interrogatories to the extent that they seek to require Bank of America to identify or produce any information or documents not currently in its possession, custody, or control.

6. Bank of America objects to plaintiffs' instructions and definitions to the extent they impose undue burdens, are overly broad, are vague and ambiguous, and seek information outside the scope of Rule 26.

INTERROGATORY NO. 1:

State the name, address, occupation and relationship to the parties of each individual who assisted in the answering of these interrogatories.

///

///

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

ANSWER:

Objection. This Interrogatory seeks information protected by the attorney-client privilege and work product doctrine. Without waiving any objection, the Interrogatories were prepared with the assistance of counsel and verified by Scott Horowitz.

INTERROGATORY NO. 2:

Did You, in the process of answering these interrogatories, the request for production of documents, and requests for admission served contemporaneously herewith, make a due diligent search of all related documents, books, reports, memos, photos, writing, and computer records within Your possession and control, in order to obtain information with respect to this action? If not, please explain why You have not undertaken such a search.

ANSWER:

Objection. This Interrogatory is vague and ambiguous as to the terms "due and diligent," "related," "within your possession and control," "with respect to," and "information." Without waiving any objection, yes.

INTERROGATORY NO. 3:

Do You possess any information, facts, writings, or evidence that You believe might relate to Your defense of this litigation. If so, please identify each and every item of information, fact, writing or evidence specifically and in detail, and in addition, identify the person or persons possessing such information by stating each person's name, address, title, and relationship to the parties herein.

ANSWER:

Objection. This Interrogatory is vague and ambiguous and overly broad as to the phrase "you believe might relate to Your defense." Without waiving any objection, Bank of America identified in its initial disclosures the witnesses and documents it believes have relevant information.

///

///

///

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

INTERROGATORY NO. 4:

To the extent You answered any of the Requests for Admissions served upon You contemporaneously herewith, anything other than an unqualified "Admit" then for each and every such answer, set forth the specific basis or grounds for Your answer, whether You are aware of any information, facts, writings or evidence whatsoever relating to this litigation that either supports or contradicts Your answer, and the identity of all persons who have any knowledge or information which either supports or contradicts each of Your answers which are not an unqualified admission.

ANSWER:

Objection. This Interrogatory is compound and overly broad in scope. Without waiving any objection, Bank of America states that, where appropriate, it explained the reasons for, and the information supporting its qualified responses in the requests for admission.

INTERROGATORY NO 5:

Identify all marketing efforts You, or a real estate agent/broker acting on Your behalf, made to sell the Rosenberg Property, and identify the dates of those marketing efforts.

ANSWER:

Objection. This Interrogatory is vague and ambiguous as to the terms "on Your behalf," "marketing" and "efforts." It is also overly broad in that it seeks *every* effort made on behalf of Bank of America and/or a real estate agent to sell the property. Without waiving said objections, and per Rule 33(d), Bank of America has identified the following documentation of efforts it and/or its listing agent made to sell the Rosenberg Property: an Exclusive Authorization and Right to Sell, Exchange or Lease Brokerage Listing Agreement with MacDonald Highlands Realty, LLC and Michael Doiron, Bates Stamped BANA000038 – 44. Bank of America also directs Plaintiff to co-defendant Michael Doiron, who would have the information as to her efforts to sell the Rosenberg Property. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

INTERROGATORY NO. 6:

If You did not make any efforts to sell the Rosenberg Property prior to March 2013, identify the reason for the delay.

///

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

ANSWER:

Bank of America incorporates its objections from Interrogatory No. 5. It is also not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Bank of America made efforts to sell the Rosenberg Property; therefore, there was no delay.

INTERROGATORY NO. 7:

Describe, in detail, any and all representations you made to Fredric, Barbara, and/or David Rosenberg in your efforts to sell the Rosenberg Property.

ANSWER:

Objection. The information requested from this Interrogatory, to the extent it exists, is as easily (if not more) ascertainable from plaintiffs as Bank of America. The Interrogatory is also vague and ambiguous as to the terms "representations" and "efforts to sell." Without waiving any objection, please see BANA000001 – 37. To the extent Bank of America listed the Rosenberg Property on the MLS, Bank of America directs Plaintiffs to that listing. Bank of America also states that the property was sold "as is" and without warranty. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

INTERROGATORY NO. 8:

Describe any conversations You had with Michael Doiron regarding the Rosenberg Property, Golf Course Parcel, Malek Lot 1, and Malek Lot 2.

ANSWER:

Objection. This Interrogatory is overly broad and burdensome insofar as it is not limited in scope or time, and requests "any" conversations, even those unrelated to the issues in this lawsuit. Without waiving any objection, at this time Bank of America has no information responsive to this Interrogatory. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

INTERROGATORY NO. 9:

Describe any conversations You had with MacDonald Realty regarding the Rosenberg Property, Golf Course Parcel, Malek Lot 1, and Malek Lot 2.

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ANSWER:

Objection. This Interrogatory is overly broad and burdensome insofar as it is not limited in scope or time, and requests "any" conversations, even those unrelated to the issues in this lawsuit. Without waiving any objection, at this time Bank of America has no information responsive to this Interrogatory. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

INTERROGATORY NO. 10:

Provide the date when You first became aware that the Golf Course Parcel could be re-zoned.

ANSWER:

Bank of America has no record of receiving notice prior to this litigation.

INTERROGATORY NO. 11:

Provide the date when You first became aware that the Golf Course Parcel was successfully re-zoned.

ANSWER:

Bank of America has no record of receiving notice prior to this litigation.

INTERROGATORY NO. 12:

Identify why You did not object to the re-zoning of the Golf Course Parcel.

ANSWER:

Because Bank of America did not have notice prior to this litigation, Bank of America did not object to the re-zoning of the Golf Course Parcel and sold the Property to Plaintiff "as is."

INTERROGATORY NO. 13:

Describe, in detail, all communications You had regarding the re-zoning of the Golf Course Parcel, including but not limited to, the individuals You communicated with and the dates of those communications.

ANSWER;

Bank of America has no record of receiving notice prior to this litigation.

INTERROGATORY NO. 14:

Provide the date when You first became aware that the Golf Course Parcel was to be sold.

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ANSWER;

Bank of America has no record of receiving notice prior to this litigation.

INTERROGATORY NO. 15:

Provide the date when You first became aware that the Golf Course Parcel was sold to Shahin Shane Malek.

ANSWER:

Bank of America has no record of receiving notice prior to this litigation.

INTERROGATORY NO. 16:

Identify any and all information You had regarding or relating to Malek Lot 1, Malek Lot 2, and the Golf Course Parcel prior to selling the Rosenberg Property.

ANSWER:

Objection. This Interrogatory is vague and overly broad. Without waiving any objection, at this time Bank of America has no information responsive to this Interrogatory. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

INTERROGATORY NO. 17:

Describe the nature of Your relationship(s) with any other defendants in this action, including but not limited to, MacDonald Highlands Realty, LLC, and Michael Doiron.

ANSWER:

Objection. This Interrogatory is vague and ambiguous as to "the nature" and "relationships." Without waiving any objection, Bank of America contracted with MacDonald Highlands Realty, LLC and Michael Doiron to serve as selling agent for the Rosenberg Property. Bank of America is related to the remaining defendants as their co-defendant in this action.

INTERROGATORY NO. 18:

Describe the nature of any agreement(s) between You and MacDonald Highlands Realty, LLC and/or Richard MacDonald relating to any and all properties located in MacDonald Highlands.

ANSWER:

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Objection. This Interrogatory is overly broad and burdensome. Further, this Interrogatory seeks confidential and proprietary information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank of Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *c.f. Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994); *Sullivan Marketing Inc. v. Callassis Communications, Inc.*, 1994 WL 177795 at *2 (S.D.N.Y. 1994). Without waiving any objection, Bank of America has identified the following documentation: an Exclusive Authorization and Right to Sell, Exchange or Lease Brokerage Listing Agreement with MacDonald Highlands Realty, LLC and Michael Doiron, Bates Stamped BANA000038 – 44. Discovery is ongoing, and Bank of America reserves its right to supplement its answer.

DATED this 4 day of February, 2015.

AKERMAN LLP

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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VERIFICATION

STATE OF California :
: ss
COUNTY OF Ventura :

Scott Horowitz being first duly sworn upon oath, deposes and says:

That Scott Horowitz is the AVP Operation Team Mgr of Bank of America, N.A. in the above-entitled matter; that he/she has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his/her own knowledge except for those matters therein stated on information and belief, and as for those matters he/she believe it to be true.

Bank of America, N.A.

By _____

Name Scott Horowitz

Title AVP Operation Team Mgr

Date 2/3/15

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

Subscribed and sworn to (or affirmed) before me on this 3rd day of February, 2015 by Scott Horowitz proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature _____ 2/3/15 (Seal)

YENY ESTRADA BELTRAN
COMM.# 2071284
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
My Comm. Expires June 13, 2018

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LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2015 and pursuant to NRCP 5(b), I I caused a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWERS TO PLAINTIFF'S INTERROGATORIES**, to be electronically served via the Court's filing system WizNet.:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Jacqueline A. Gilbert, Esq.
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Dr., Ste. 110
Henderson, NV 89014

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THE FIRM, P.C.
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An employee of AKERMAN LLP

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Ex. A-10

EXHIBIT A-10

Ex. A-10

CPA-06-52ooio-All

INFORMATIONAL MEETING
for City of Henderson Application Numbers
CPA-2012500313, ZCA-2012500314, DRA-2012500316

DATE: Monday, October 22, 2012

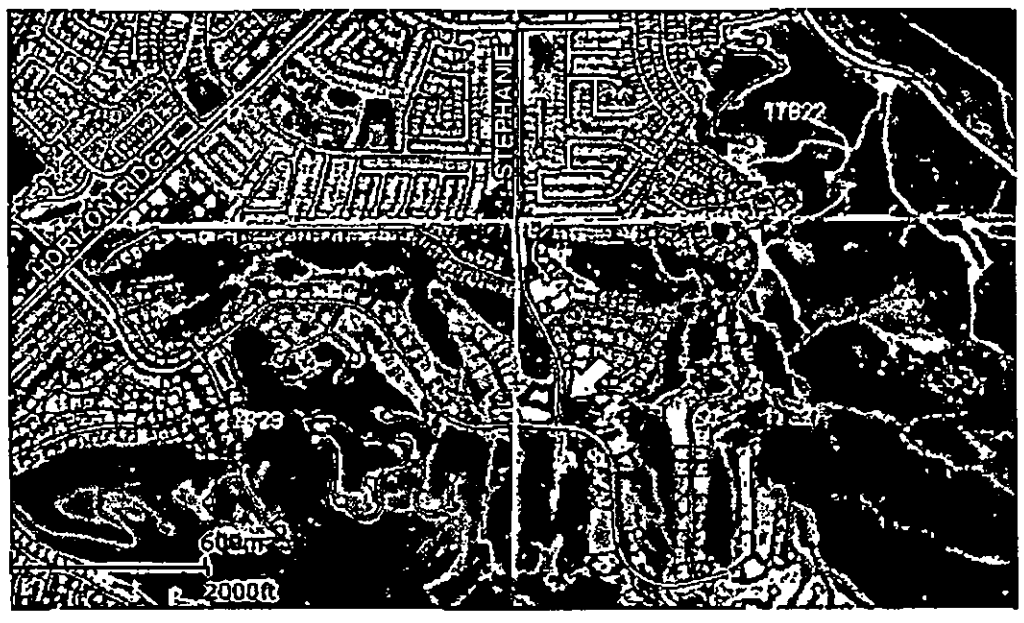
TIME: 5:30 p.m.

MEETING LOCATION: DragonRidge Country Club
552 S. Stephanie Street
Henderson, NV 89012

TOPIC: Planning Area 10 Lot 2 Boundary Modification

Per City of Henderson code requirements, a meeting is being held to receive neighborhood comments on applications relating to a minor boundary adjustment to Lot 2 in Planning Area 10. The area of amendment is approximately 1/3 of an acre. A land use amendment, a rezoning and an amended tentative map have been submitted to the City of Henderson to facilitate this boundary amendment.

We look forward to addressing any comments or questions that you may have. A representative from the City of Henderson Community Development Department will also be available to answer your questions. Please contact B2 Development Services (451-3510) if you are unable to attend the meeting but would like to be included on future mailings.



PLTF1771 10

Ex. A-11

EXHIBIT A-11

Ex. A-11

A Place To Call Home

FILED
CITY CLERK
CITY OF HENDERSON
RECEIVED
2012 DEC -6 A 9:29

NOTICE OF HENDERSON CITY COUNCIL FINAL ACTION
(NRS 278.0235)

NOTICE is hereby given that on December 4, 2012, the City Council of the City of Henderson took the following final action on the application listed below:

PH-25	PUBLIC HEARING COMPREHENSIVE PLAN AMENDMENT CPA-06-520010-A11 ZONE CHANGE ZCA-06-660018-A15 TENTATIVE MAP TMA-12-500316 MACDONALD HIGHLANDS AKA FOOTHILLS @ MACDONALD RANCH (GOLF HOLE #9) APPLICANT: MACDONALD PROPERTIES

A) Amend the Land Use Policy Plan from PS (Public/Semipublic) to VLDR (Very Low-Density Residential) on 0.34 acres;
B) Amend an approved master plan by rezoning a 0.34-acre portion of a 1,162-acre master plan 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 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; and
C) An 18-lot residential subdivision (16 single-family, 2 common); located within the MacDonald Highlands master plan, off MacDonald Ranch Drive and Stephanie Street, in the MacDonald Ranch Planning Area.

ACTION TAKEN: Approved with the following conditions:

CPA-06-520010-A11

FINDING OF FACT

A. Events, trends or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary.

ZCA-06-660018-A15

FINDINGS OF FACT

A. The proposal is consistent with the Comprehensive Plan.
B. The planned unit development is necessary to address a unique situation or represents a substantial benefit to the City, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards, based upon the purposes set out in Section 19.1.4.
C. The planned unit development complies with standards of Section 19.6.4.
D. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
E. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.
F. The same development could not be accomplished through the use of other t echniques, such as re-zonings, variances or administrative adjustments.
G. The proposed hillside plan preserves the integrity of and locates development with the least impact upon sensitive peaks and ridges.
H. Locates development compatibly with the natural terrain.
I. Provides for development standards in excess or equal to those required by this ordinance.
J. The proposed master plan corrects an error or meets the challenge of some changing condition, trend or fact.
K. The proposed master plan is consistent with the Comprehensive Plan and the stated purposes of Section 19.1.4.
L. The proposed master plan will protect the health, safety, morals or general welfare of the public.
M. The City and other service providers will be able to provide sufficient public safety, transportation, and utility facilities and services to the subject property, while maintaining sufficient levels of service to existing development.
N. The proposed master plan will not have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.
O. The proposed master plan will not have a significant adverse impact on other property in the vicinity.
P. The subject property is suitable for the proposed master plan.
Q. The need exists for the proposed master plan at the proposed location.

PUBLIC WORKS DEPARTMENT CONDITIONS

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits.
2. Applicant shall submit a drainage study for Public Works' approval.
3. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements and dedicate any necessary right-of-way.
4. Applicant shall construct full offsites per Public Works' requirements and dedicate any necessary right-of-way.
5. Applicant shall revert and/or merge acreage of existing parcels per Public Works' approval and provide proof of completed mapping prior to issuance of a certificate of occupancy.
6. Applicant must apply for and receive approval to vacate unnecessary rights-of-way and/or easements per Public Works' requirements and provide proof of vacation prior to issuance of a certificate of occupancy.
7. FHA Type B drainage shall be allowed only where lots drain directly to public drainage facilities, public parks, or golf courses.
8. Streets shall be privately owned and maintained.
9. Applicant shall show the limits of the flood zone and submit a letter of map revision to FEMA prior to the Shear and Tie inspection.
10. Applicant shall update the master traffic study.

DEPARTMENT OF UTILITY SERVICES CONDITIONS

11. Applicant shall submit a utility plan and a utility analysis for Utilities' approval.
12. Applicant shall comply with the requirements of the master utility plan established for the project location.
13. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings. (Amended A12)
14. Applicant shall finalize the access and maintenance agreement covering public utilities traversing Dragon Ridge Golf Course.
15. Applicant shall participate in the MacDonald Ranch 2370 Refunding Agreement. (A-14)
16. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings for Planning Area 18. (A-14)
17. Applicant may be required to provide a water and/or sewer system capacity analysis covering the overall water and/or sewer system providing service to the project, prior to submitting civil improvement plans to the City. Preparation of said capacity analysis shall be coordinated with the Department of Utility Services. (A-14)
18. Applicant may be responsible for performing water and/or sewer system upgrades in accordance with the results of the system capacity analysis or, at a minimum, applicant shall be responsible for participating in a proportionate share of the costs to complete these system upgrades.
(A-14)

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the International Fire Code is NRS 477.030 and Ordinance Numbers 2649 and 2738 as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

19. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted), and any other fire apparatus access roadway obstructions.
20. Applicant shall submit fire apparatus access road (fire lane) plans for Fire Department review and approval.
21. Applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon the review of the civil improvement drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on site.
22. Projects constructed in phases shall submit a phasing plan describing the fire apparatus access roads and fire hydrant locations relevant to each phase.
23. Applicant shall provide a dual water source as approved by Public Works and the Fire Department.
24. Applicant shall provide a minimum turning radius of 52 feet outside and 28 feet inside for all portions of the fire apparatus access road (fire lane). This radius shall be shown graphically and the dimensions noted on the drawings.
25. Applicant shall install an approved sprinkler system in all buildings/homes per the Hillside Ordinance.
26. Applicant shall provide an approved Fire & Life Safety Report prior to submitting for building permits. This report shall address fire access issues for the proposed school site. (A-14)

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

27. All private open space, landscaped areas within public rights-of-way, landscaping along public rights-of-way, and landscaping within drainage channels (arroyos) shall be installed by the developer and maintained by a property owners association, unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.
28. Developer shall submit a revised master development plan report, after City Council approval, listing all conditions of approval and waivers.
29. Permitted uses, prohibited uses, restricted uses, limited uses (uses) and property development standards shall be as approved by this application. In the case of a conflict between the approved uses as referenced in the Master Plan and the Development Code in effect at the time of master plan approval, and property development standards and City ordinances, unless specifically approved as a waiver, the most restrictive shall prevail.
30. Developer shall conform with the multifamily provisions of Title 19 with a maximum build-out of 370 multifamily and 680 single-family dwelling units.
31. Approval does not endorse the site plan, uses or exhibits presented in support of this application.

32. Applicant shall submit two detailed private park plans for the Parks and Recreation Advisory Board, Planning Commission, and City Council approval. This condition is not a waiver of the park construction tax, which shall be collected from the individual homebuilders within the project. Specific improvements and timing for installation shall be determined as part of a park agreement.
33. Applicant shall comply with the current design standards for the development of all the RM-8-H zoned parcels to be consistent with the Hillside Ordinance and the adopted MacDonald Highlands Master Plan Design Guidelines.
34. All private open space, landscaped areas within private rights-of-way, landscaping along public or private rights-of-way and landscaping within drainage channels (arroyos) and slope easements shall be installed by the developer and maintained by the Property Owners Association unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.
35. The developer shall submit revised design guidelines (book form) for City Council approval. Any amendments to the guidelines that are determined to be minor by Community Development may be revised at staff level.
36. Each subdivision approved shall be credited with common usable open space from the development of the two proposed private park sites and trails to be provided by the master development. Each subdivision approved as a planned unit development shall attempt to provide the minimum amount of common usable open space within the physical boundaries of, or immediately adjacent to, the subdivision. Private open space improvements shall be determined through the approved development standards and design guidelines for the entire Master Plan Overlay District.
37. The applicant shall work with staff to determine unit counts and that the percent of land disturbance is in accordance with the Hillside Ordinance, not only for the overall master plan but also on a planning area by planning area basis. If transfer of units and disturbance is proposed, applicant shall provide information on the sending and receiving planning areas to demonstrate that the site disturbance and unit counts balance for the overall master plan. Prior to any additional master plan amendments or subdividing any planning area, the applicant shall submit a Hillside Development Plan, which is subject to review and approval per Section 19.5.9.D.25 of the Development Code.
38. Planning Area 1 shall be permitted a maximum of 67 units; Planning Area 18 shall be permitted a maximum 150 units; and Planning Area 18A shall be permitted a maximum of 144 dwelling units. (Amended A-12)
39. Prior to issuance of building permits, applicant shall receive design review approval for Parcel 18A.
40. Total master plan site disturbance is limited to 713 acres. (Added A-12)
41. Parcel 20 shall be permitted a maximum of 236 dwelling units.

WAIVERS

a. Reduce front-yard setback to 14 feet for side-loaded garages and living areas of the house for Planning Areas 11 and 17.
b. Allow maximum building height of 59 feet for Parcel 18A.
c. Allow maximum cul-de-sac length of 2,530 feet for Parcel 18A.
d. Allow gated streets for Parcel 18A.

e. Allow Buildings 23 and 24 to be constructed within the sensitive ridgeline.
f. Allow two kitchens within a dwelling unit. (A-12)
g. Allow a maximum combined casita (guesthouse) area, with multiple structures allowed, of up to 25 percent of the gross living area of the primary residence. (A-12)
h. Allow a maximum cut height of 63 feet, a maximum fill height of 66 feet, and no maximum cut/fill length for Planning Areas 18 and 20. (A-12)
i. Allow fully vertical cut slopes with no additional stabilization in areas approved by a geotechnical report; allow 2-to-1 fills in areas approved by a geotechnical report. (A-12)
j. Allow natural undisturbed areas to include areas of disturbance with revegetation and vamishing. (A-12)
k. Allow rockery walls a maximum height of 18 feet, with horizontal offsets to be determined by the geotechnical and structural engineers. (A-12)
l. Allow a reduced curve radius of 50 feet within a modified knuckle. (A-12)
m. Allow 12 percent maximum grade for all roadways within 50 feet of a house. (A-12)
n. Allow streetlights to be placed only at intersections. (A-12)
o. Allow a minimum of 125 feet between intersections, measured centerline-to-centerline. (A-12)
p. Allow 26 dwelling lots/dwelling units to be constructed within the sensitive ridgeline setback.
q. The maximum height of the cuts and fills shall not exceed 56 feet on the cut height and 48 feet on the fill height as shown on the grading plan. The maximum Cut/Fill length shall not exceed 950 feet. (A13)
r. The minimum centerline radius for roadways shall be 140 feet without super elevation. (A13)
s. Allow a maximum fill height (depth) of 85 feet for the school site.
t. Allow a private street section of 29 feet back-of-curbs without the 6.5-foot aprons for Planning Areas 18 and 20, and a public street section of 37 feet back-of-curbs without the 4-foot aprons to access the school site.

TMA-12-500316

PUBLIC WORKS DEPARTMENT CONDITIONS

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits.
2. Applicant must apply and receive approval to vacate unnecessary rights-of-way and/or easements per Public Works' requirements and provide proof of vacation prior to approval Final Map.
3. Applicant shall revise Civil Improvement Plans per Public Works' requirements.

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

4. Approval of this application requires the applicant to comply with all Code requirements not specifically listed as a condition of approval but required by Title 19 of the Henderson Municipal Code, compliance with all plans and exhibits presented and amended as part of the final approval, and compliance with all additional items required to fulfill conditions of approval.
5. Approval of this tentative map shall be for a period of four years from the effective date of approval.
6. Prior to issuance of a building permit for homes, the applicant shall submit to Community Development and Neighborhood Services a copy of the Owner's Association's (i.e., Homeowners Association or Landscape Maintenance Association) articles of incorporation to include association name, officers, addresses, and resident agent (if applicable).
7. All grading and construction/staging activity must remain completely on-site, or will require the approval of any and all affected adjacent property owner(s).

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Tedie Jackson, Minutes Clerk

A copy of this Notice of Final Action has been filed with Sabrina Mercadante, City Clerk, in the Office of the City Clerk, and sent to each applicant listed on the application for the above-referenced item on this 6th day of December, 2012.

RESOLUTION NO. 4066
(CPA-06-520010-A11 – MacDonald Highlands - Golf Hole 9)

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).

WHEREAS, MacDonald Properties has made application to have the land use designations of that certain land consisting of 0.34 acres, more or less, in the City of Henderson, Clark County, Nevada, described as:

Being a portion of Lot 55-1 of Final Map of MacDonald Highlands Planning Area 3 as shown per Book 136, page 21 of Plats, Clark County, Nevada, located in the Northwest Quarter (NW ¼) of Section 27, Township 22 South, Range 62 East, M.D M., in the City of Henderson, County of Clark, State of Nevada, more particularly described as follows·

Commencing at the centerline intersection of MacDonald Ranch Drive and Stephanie Street as shown per Book 92, page 100 of Plats, Clark County, Nevada;

Thence along the centerline of said Stephanie Street, North 04°03'35" East, 389 11 feet;

Thence departing said line, North 85°56'25" West, 40 00 feet, said point being the northeast corner of the exterior boundary line of "The Foothills at MacDonald Ranch, Lot 10" A.K.A., Planning Area 10" as per map recorded in Book 92, Page 100 of Plats;

Thence along the northerly exterior boundary line of said Book 92, page 100 of Plats, South 81°15'00" West, 20.51 feet to the POINT OF BEGINNING;

Thence along said line the following two (2) courses:

South 81°15'00" West, 106.47 feet;

Thence North 62°21'00" West, 73 00 feet;

Thence departing said line, North 36°04'33" East, 65.60 feet;

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.

FREDERIC AND BARBARA ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

Electronically Filed
Oct 12 2016 12:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

JOINT APPENDIX VOLUME 6

Respectfully submitted by:

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593

KAREN HANKS, ESQ.
Nevada Bar No. 9578

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Frederic and Barbara Rosenberg Living Trust

Docket 69399 Document 2016-31815

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1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	13	1/12/15	Amended Complaint	JA_0089
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
8/9/10/11	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
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1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
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
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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
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1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086

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13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
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14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2014, I served via first class, U.S. Mail, postage prepaid, fax and email, the foregoing **PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANT BANK OF AMERICA, N.A.'S FIRST SET OF INTERROGATORIES** to the following parties:

Darren T. Brenner, Esq.
Natalie L. Winslow, Esq.
AKERMAN LLP
Attorneys for Bank of America, N.A.

Akerman

Name	Email	Select
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Jon Randall Jones, Esq.
Spencer H. Gunnerson, Esq.
KEMP, ONES & COULTHARD, LLP
Attorneys for Michael Doiron, MacDonald Highlands Realty LLC and Real Properties Management Group Inc.

Kemp, Jones & Coulthard

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Justin A. Shiroff, Esq.
SNELL & WILMER, LLP
Attorneys for Shahin Shane Malek

Snell & Wilmer, LLP

Name	Email	Select
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Patrick G. Byrne	pbyrne@swlaw.com	

/s/ Diana S. Cline
An Employee of Howard Kim & Associates

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Exhibit 17

The City of Henderson

Comprehensive Plan Amendment Application Form

Project Name MacDonald Highlands Golf Hole #9

Project Location NW of MacDonald Ranch Road & Stephanie Street

Assessor's Parcel Number(s) 178-28-520-001 (portion)

CPR Number waived per G. Toth Planning Area MacDonald Highlands

A concept plan review (CPR) is required before this application may be submitted.

When the proposed Comprehensive Plan Amendment affects more than one parcel and land use designation, provide acreage land use information for each parcel. (Attached additional sheets if necessary.)

Gross Acres .34 Existing Land Use PS Proposed Land Use VLDR

Gross Acres _____ Existing Land Use _____ Proposed Land Use _____

Gross Acres _____ Existing Land Use _____ Proposed Land Use _____

Intent of this Request To amend the land use of subject area for future inclusion into an adjacent residential parcel (PA 10, Lot 2).

Related Applications CPA-52-99-A2

Property Owner

Name Dragonridge Properties, LLC pbykowski@macdonaldproperties.com

Address 522 S. Stephanie Street City Henderson

State NV Zip Code 89012 Phone (702 458-0001 E-mail See Above

Applicant

Name Paul Bykowski Company MacDonald Properites

Address 522 S. Stephanie Street City Henderson

State NV Zip Code 89012 Phone (702 458-0001 E-mail See Above

Contact Person

Name Barbara Baird Company B2 Development Svcs.

Address 209 S. Stepahnie Street #B-128 City Henderson

State NV Zip Code 89012 Phone (702 451-3510 E-mail barbara@b2ds.com

Fax (702 451-4988 Alternate Phone (702 604-5966

The person listed as contact will be contacted to attend staff reviews, answer questions regarding this application, provide additional information when necessary, and will recieve a copy of the staff report prior to the Planning Commission meeting.

Ownership Disclosure

Please list all individuals and entities with an interest in the Applicant and the Owners. Said list should include, without limitation, any and all general partners, corporate officers and managers of limited liability companies with an interest in the Applicant and the Owner.

Name	Relationship/Position	% of Ownership
Richard C. MacDonald	Manager	100%

By signing this document I acknowledge that to the best of my knowledge the above list includes the names of all owners, officers, general partners, managers of limited liability companies, and all other ownership interests in either the applicant or owner. Only original notary accepted.

Property Owner Signature

Richard C. MacDonald
Print Name

NOTARY

This instrument was acknowledged before me on 9-10-2012

Signature

JOYCE MUIR
Notary Public-State of Nevada
APPT. NO. 93-2876-1
My App. Expires March 05, 2013

For Office Use Only	
CCPA#	20065201 A 1 1
Accepted by	
Date	9/25/12

CDCP-0003 (04/12)

CPA-06-520010-A11

INFORMATIONAL MEETING
for City of Henderson Application Numbers
CPA-2012500313, ZCA-2012500314, DRA-2012500316

DATE: Monday, October 22, 2012

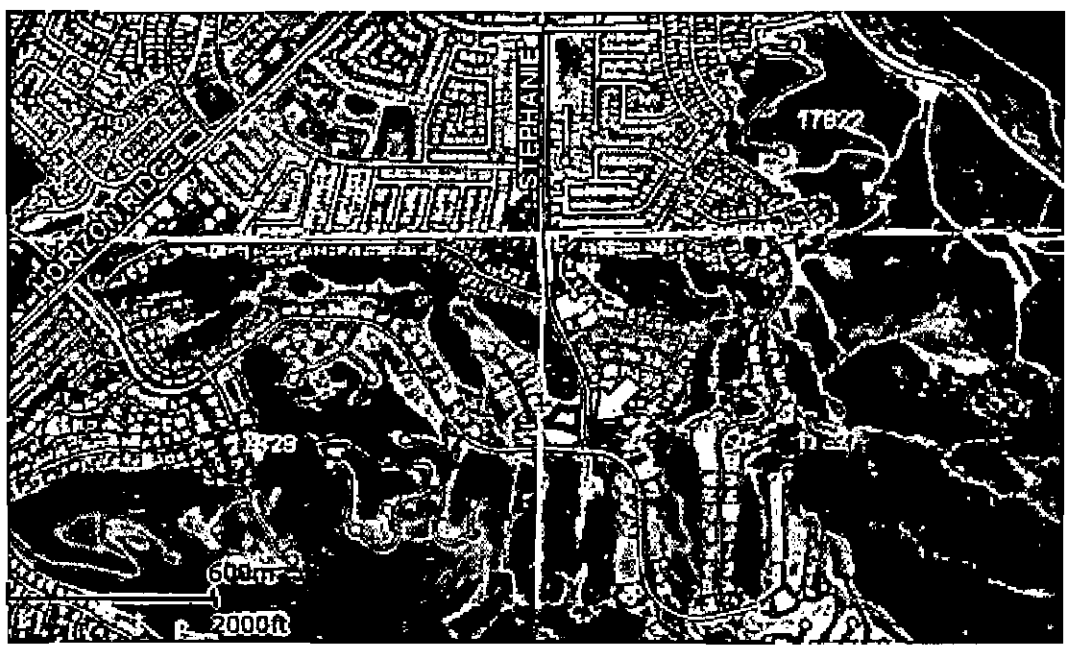
TIME: 5:30 p.m.

MEETING LOCATION: DragonRidge Country Club
552 S. Stephanie Street
Henderson, NV 89012

TOPIC: Planning Area 10 Lot 2 Boundary Modification

Per City of Henderson code requirements, a meeting is being held to receive neighborhood comments on applications relating to a minor boundary adjustment to Lot 2 in Planning Area 10. The area of amendment is approximately 1/3 of an acre. A land use amendment, a rezoning and an amended tentative map have been submitted to the City of Henderson to facilitate this boundary amendment.

We look forward to addressing any comments or questions that you may have. A representative from the City of Henderson Community Development Department will also be available to answer your questions. Please contact B2 Development Services (451-3510) if you are unable to attend the meeting but would like to be included on future mailings.



CPA-D6-520010-
A11

CITY OF HENDERSON
Community Development
P.O. Box 95050
Henderson, NV 89009

AFFIDAVIT OF COMPLIANCE
NEIGHBORHOOD MEETING NOTIFICATION

PROJECT NUMBER(S): CCPA2012500313, CZCA2012500314, CTMA2012500316

PROJECT NAME: MacDonald Highlands - PA10, Lot 2 & Golf Hole 9

NEIGHBORHOOD MEETING DATE: 10/22/12 **PC DATE:** 11/15/12

I Barbara Baird do hereby certify that I understand my obligation as an applicant to provide notification of the required neighborhood meeting for the above listed project. I further certify that a copy of the attached neighborhood meeting notice for the above referenced agenda item was prepared for each person listed on the attached mailing list and deposited at the U.S. Post Office for mailing on 10/13/12. I further understand that failure to comply with the requirements of holding a neighborhood meeting may result in continuance of my hearing, and I agree to waive any rights to have the hearing held within any relevant time limits if the required neighborhood meeting was not held.

Barbara Baird 10/23/12
Applicant/Representative Signature Date

Barbara-Baird
Print Name

VAC-2 012-500376

The City of Henderson

Vacation Application Form

- ☐ City (Public) Street (fee)
- ☐ Public Drainage Ways (fee or easement)
- ☐ Slope Easements
- ☐ Government Patent Easements
- ☐ Municipal Utility Easements (MUE)
- ☐ Public Street & Utility Easements
- ☐ Public Utility Easement (PUE)
- ☒ Non-Exclusive Utility Easements (NUE)
- ☐ Utility Easements (UE)
- ☐ Other _____

Project Name MacDonald Highlands - Golf Hole #9 COH Pre-App# _____

Assessor's Parcel Number(s) 178-28-520-001 (portion) SAM # 127

Sixteenth Section S 1/2 of the NW1/4 of Section 27 Township 22 S Range 62 E, M.D.M.

Intent of this Request To vacate easeaments over a .34-acre portion of parcel.

Related Applications CPA-12-500313, ZCA-12-500314, TMA-12-500316

Applicant

Name Paul Bykowski Company MacDonald Properties

Address 552 S. Stephanie St. City Henderson

State NV Zip Code 89012 Phone (702) 458-001 E-mail pbykowski@macdonaldproperties.com

Surveyor or Contact Person

Name Barbara Baird Company B2 Development Services

Address 209 S. Stephanie St. #B-128 City Henderson

State NV Zip Code 89012 Phone (702) 451-3510 E-Mail barbara@b2ds.com

Fax (702) 451-4988 Alternate Phone (702) 604-5966

The person listed as contact will be contacted to attend staff review, answer questions regarding this application, provide additional information when necessary, and will receive a copy of the staff report.

Ownership Affidavit

I (We), certify, (that I am/we are) a fee holder of property involved in this application and request the vacation of the City's interest in the applied for area(s). The foregoing statements herein contained and the information here with submitted are in all respects true and correct to the best of my (our) knowledge and belief. The undersigned agrees to bear the entire cost associated with the preparation and recording of the vacation map(copies of map templates may be obtained from the City's Survey Section or via the City's website), Order of Vacation, deeds, any applicable transfer taxes and, if necessary, the hiring of a Professional Land Surveyor to perform the field survey. Said vacation map and deeds are to accompany the City's Order of Vacation; all to be recorded in the Office of the Clark County, Nevada Recorder.

Please list all individuals and entities with an ownership interest in the Applicant and the Owners. Said list should include, without limitation, homeowner's association, joint venture, trust, company or corporation or any and all general partners, corporate officers and managers of limited liability companies with an interest in the Applicant and the Owner.

NAME	ADDRESS	PHONE/FAX/EMAIL
Dragonridge Properties, LLC	552 S. Stephanie St. Henderson, NV 89012	458-0001
Richard C. MacDonald	Manager	

By signing this document I acknowledge that to the best of my knowledge the above list includes the names of all owners, officers, general partners, managers of limited liability companies, and all other ownership interests in either the applicant or owner.

Application to be signed by the owner(s) of each abutting/affected property of the proposed vacation area (signature authorization and ownership disclosure needed if owner is a company or corporation). Attach additional application forms if needed. Only original notary accepted.

Owner's Signature

Richard C. MacDonald
Print Name

NOTARY

This instrument was acknowledged before me on 10-30-2012

Signature

JOYCE MUIR
Notary Public-State of Nevada
APPT. NO. 93-2876-1
My App. Expires March 05, 2013

PWSR-0501 (2/11)

For Office Use Only

CVAC#	20125003 76
Accepted by	YM
Date	10/30/12
Type I	Type II

BANA 00783
JA_1109

Mary Baer

From: barbara@b2ds.com
Sent: Thursday, January 24, 2013 9:20 AM
To: Brian Adams
Cc: Mary Baer
Subject: Fwd: VAC-12-500376

Brian,

Please accept this e-mail as our formal request withdraw the referenced application. After City Council approval , when the surveyor was preparing the map it was discovered that no easements existed, thus nullifying the need for a vacation. Please contact our office if you have any questions or if you require further information.

Thank you,

Barbara Baird
B2 Development Services
702.451.3510 office
702.604.5966 mobile

Begin forwarded message:

From: Mary Baer <Mary.Baer@cityofhenderson.com>
Date: January 22, 2013 9:49:53 AM PST
To: "barbara@b2ds.com" <barbara@b2ds.com>
Subject: RE: VAC-12-500376

Barbara,

I agree, I don't see any blanket easements. Most of the golf course parcels we deal with have blanket easements granted over them, so we generally condition them for vacation.

It doesn't look like there is anything to vacate.

Mary E. Baer, SR/WA
City of Henderson
(702) 267-1309
(702) 267-1301 fax

From: barbara@b2ds.com [mailto:barbara@b2ds.com]
Sent: Tuesday, January 22, 2013 9:31 AM
To: Mary Baer
Subject: VAC-12-500376

Mary,

Per ROW comments on CTMA-2012500316, we submitted an application to vacate the blanket easements on the golf course parcel (VAC-12-500376, approved by City Council 1/8/13). However, now that the surveyor is preparing the Vacation Map for submittal, he cannot find where any blanket easements were granted over this golf course lot as it was not mapped as a common element. I have attached the recorded FInal Map for the gold parcel for your review. Please advise as to the need for the vacation.

Thank you,

Barbara Baird
B2 Development Services
702.451.3510 office
702.604.5966 mobile

EXHIBIT C

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Affiant being first duly sworn, deposes and says:

1. That the Affiant is the Custodian of Records for the City of Henderson, and in such capacity, is the Custodian of Records of the documents produced.

2. That Affiant received a Subpoena *Duces Tecum* in the matter *The Frederic and Barbara Rosenberg Living Trust v. Bank of America, N.A. et al* calling for the production of records regarding the property with APN #: 178-28-520-001, as listed in Exhibit A.

3. That the Custodian of Records has examined the originals of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of these records supplied are and were maintained and duly relied upon in the normal course and scope of the business.

5. Affiant declares under penalty of perjury that the foregoing is true and correct.

IF NO RECORDS, INITIAL NO. 1 BELOW AND SIGN:

1. _____ I hereby declare under penalty of perjury that a thorough search of our records has been conducted and to the best of my knowledge there are no records for the above referenced person.

SUBSCRIBED AND SWORN to before me

This 30th day of September, 2014 by Nanci Waters.

Nanci Waters
Custodian of Records *[Print Name]*

Lizet Elias
Notary Public of and for said County and State

Nanci Waters
Custodian of Records *[Signature]*

Notary Public - State of Nevada
COUNTY OF CLARK
LIZET ELIAS
No. 03-85498-1 My Appointment Expires July 10, 2015

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Exhibit 18

Preston P. Rezaee, Esq.
Nevada Bar No. 10729
Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
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
Attorneys for Defendant,
SHAHIN 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; 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 ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT NO.: I **DEFENDANT SHAHIN SHANE MALEK'S FOURTH SUPPLEMENTAL NRCP 16.1 DISCLOSURE**

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

/ / /

/ / /

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 Karen Hanks, 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.

/ / /

/ / /

/ / /

/ / /

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

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

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

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

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

The Rule 30(b)(6) witness for Defendant MacDonald Properties, Ltd. is expected to testify to 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., 17th 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.

///

///

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

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

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

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

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

II.

LIST OF DOCUMENTS

Bates Range	Description	Dates
MALEK000001-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
MALEK000068-MALEK000342	Escrow and Purchase Records for 594 Lairmont Place and Golf Parcel and The Foothills at MacDonald Ranch Master Association Welcome Documents	Varied
MALEK000343-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
MALEK000447	Revised Site and Guest House Plan	
MALEK000448	Neat Document-Wiring instructions for golf course	
MALEK000449-MALEK000461	Email Correspondences	
MALEK000462-MALEK000536	Wallace-Morris Surveying's Response to Subpoena Duces Tecum of Defendant Shahin Shane Malek	Varied
MALEK000537-MALEK000556	**Latest construction plans for 594 Lairmont Place. (Produced in third supplemental disclosure – numbering corrected.)**	**Varied**
MALEK000557	**Fee estimate from B2 Development Services.**	**8/23/2012**
MALEK000558-MALEK000559	**Fax from Wells Fargo and copy of check to FHP Ventures in amount of B2 Development Services' cost estimate, partially redacted to remove bank account information.**	**2/5/2015**

The documents identified in bold above are being produced on a Compact Disk mailed with the printed copy of these disclosures, and have previously been produced by electronic means.

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

COMPUTATION OF DAMAGES

Defendant claims attorneys' fees and costs as an element of his damages for his counterclaim. **To date, Defendant has incurred more than $45,000.00 in reasonable attorneys' fees and costs in the above-titled action**. Defendant reserves the right to supplement this disclosure as additional attorneys' fees and costs are incurred while the case progresses through dispositive motions, trial, and final judgment.

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.

DATED this 16th day of March, 2015.

/s/ Jay DeVoy
Jay M. DeVoy, Esq., of counsel
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THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorney for Defendant,
SHAHIN SHANE MALEK

CERTIFICATE OF SERVICE

I hereby certify that one this 16th day of March, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system and to be placed in the United States Mail, with first class postage prepaid thereon, and addressed the foregoing **DEFENDANT SHAHIN SHANE MALEK'S NRCP 16.1 FOURTH SUPPLEMENTAL DISCLOSURE** to the following parties:

Howard C. Kim, Esq.
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Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

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

TAB 24

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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

(emphasis added).

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

DATED this 22nd day of April, 2015.

HOWARD KIM & ASSOCIATES

Karen L. Hanks, Esq.
Nevada Bar No. 009578
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Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust

CERTIFICATE OF SERVICE

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

THE FIRM, P.C.
Preston P. Rezaee, Esq.
Preston.thefirm-lv.com
Attorneys for Shahen 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 and Associates

TAB 25

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-689113-C

Dept. No. I

PLAINTIFF'S OPPOSITION TO DEFENDANT MACDONALD REALTY, MICHAEL DORION AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its counsel of record, HOWARD KIM & ASSOCIATES, hereby opposes Defendants MacDonald

Highlands Realty, Michael Dorion, and FHP Ventures'[1] ("Defendants") Motion for Summary Judgment.

This Opposition is based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the Declaration of Melissa Barishman, attached hereto as Exhibit 1, and any exhibits thereto, and any oral argument the Court permits at the hearing of this matter.

DATED this 4th day of May, 2015.

Respectfully submitted by:

HOWARD KIM & ASSOCIATES

Melissa Barishman, Esq.
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Telephone: (702) 485-3300
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Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Contrary to Defendants' contention, this is not a case of extortion, nor is it about views of parking lots, streets and clubhouses. Instead, this a case about purchasing A, with its superior qualities, and getting B, with its inferior qualities; all because Defendants failed to disclose facts known to them, about the adjacent property that materially affected the Rosenberg Trust's property. While Defendants seem to think $2.3 million is chump change, the Rosenbergs are hard-working people who consider this to be a significant amount of money, and they deserve the full value of what they paid for, not less than the value of what they paid for.

[1] FHP Ventures used to be The Foothills Partners. FHP Ventures has not filed an answer to Plaintiff's Complaint. Plaintiff is in the process of filing a Motion to Amend Complaint to Conform to the Evidence, whereby Plaintiff intends to delete its claims for injunctive relief and declaratory relief against FHP Ventures. As such, the parties agreed FHP Ventures could wait until such time the Amended Complaint was filed, assuming the Motion is granted, to file its responsive pleading.

Defendants knew that there was a material change to the golf course that impacted the Rosenberg Trust's property, and yet Defendants failed to disclose the material change to the Rosenberg Trust. Defendants seek to pass the buck by imposing unrealistic, and non-existent duties, couched as due diligence, on the Rosenberg Trust to discover facts it had no reason to believe had even occurred. In other words, Defendants seek to evade liability claiming they had zero duty to disclose material facts, despite having all the knowledge of the material facts, but the Rosenberg Trust, who had no knowledge of anything, had a duty to play detective and discover facts it did not even know existed. This is the untenable proposition Defendants ask this Court to adopt by way of their Motion.

Genuine issues of material fact exist regarding all of the Rosenberg Trust's claims against Defendants Macdonald Highlands and Michael Doiron, such that summary judgment in favor of Defendants must be denied.

II. STATEMENT OF DISPUTED AND UNDISPUTED FACTS[2]

Defendants' statement of undisputed facts 1-20, (while factually correct) include argumentative language, rather than a neutral recitation of the facts in this case. The Rosenberg Trust disputes any use of argumentative language which mischaracterizes the fact. With regard to fact No. 22, the Rosenberg Trust disputes that the testimony cited by Paul Bykowski is fact. This is inadmissible opinion testimony. With regard to fact No. 23, Defendants take a statement made by Mrs. Rosenberg concerning the *possibility* that a golfer could look into her home, and leap to the conclusion that the Rosenberg's entire privacy is compromised. This unfounded, conclusory statement is not fact. Also, Defendants cite to Richard MacDonald's outlandish testimony that anyone who lives on a golf course has zero privacy. This is not fact. This is just conjecture, and constitutes inadmissible opinion testimony.

The Rosenberg Trust highlights the following undisputed facts that Defendants failed to address in their Motion:

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[2] The Statement of Disputed and Undisputed Facts is supported by the Declaration of Melissa Barishman attached hereto as **Exhibit 1.**

1. Malek approached Doiron about purchasing a piece of the golf course to merge with 594 Lairmont Place, a lot he purchased on August 8, 2012, and which is adjacent to 590 Lairmont Place (the Rosenberg Property).[3]

2. Paul Bykowski and Richard MacDonald decided what portion of Dragon Ridge Golf Course would be sold to Malek, with the end result comprising 1/3 of an acre of the 9th hole's in-play area.[4]

3. There were no discussions about the impact that would result to the Rosenberg Property if the Golf Parcel was merged with 594 Lairmont Place.[5]

4. MacDonald Highlands and Doiron represented DRFH Ventures, the owner of Dragon Ridge Golf Course, in the Golf Parcel sale transaction to Malek.[6]

5. Richard MacDonald is the manager of DRFH Ventures.[7]

6. Doiron wrote the contract for the sale of the Golf Parcel that was purchased by Malek.[8]

7. Prior to finalizing the sale, the Golf Parcel had to be rezoned from public/semipublic with master plan and hillside overlays to low-density residential with master plan and hillside overlays.[9]

8. The physical maps reflecting the zoning changes to the Golf Parcel were updated on or about January 24, 2013.[10]

9. Both MacDonald Highlands Realty and Doiron knew the City of Henderson had approved the re-zoning applications.[11]

10. After the rezoning was approved, MacDonald Highlands Realty did not update its disclosure records to include current zoning and community maps that reflected the change made to the Golf Parcel, did not change the community map on its website to reflect the anticipated boundary line changes to 594

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[3] *See* excerpts from Michael Doiron's March Deposition, 161:17-25, attached as **Exhibit 1-A** to Barishman Decl.
[4] *See* excerpts from Bykowski deposition, 130:6-13 , attached as **Exhibit 1-B** to Barishman Decl.
[5] Exhibit 1-A, 168:14-20.
[6] Exhibit 1-A, 161:1-4.
[7] *See* Secretary of State printout attached as **Exhibit 1-C** to Barishman Decl.
[8] Exhibit 1-A, 160:22-24.
[9] Exhibit 1-A, 164:3-5. *See also*, City of Henderson Zoning Ordinance No. 2986 attached as **Exhibit 1-D** to Barishman Decl.
[10] *See* excerpts from Michael Tassi deposition, 28:8-11, attached as **Exhibit 1-E** to Barishman Decl.
[11] Exhibit 1-A, 165:18.

Lairmont Place (Malek's lot), and did not change the topography table located in the MacDonald Highlands office to reflect the anticipated boundary line changes to 594 Lairmont Place.[12]

11. Doiron showed the Rosenberg Trust a diagram of all of the lots in MacDonald Highlands, but the diagram did not show the Rosenberg Trust the anticipated sale of the Golf Parcel to Malek.[13]

12. The binder Doiron disclosed to the Rosenberg Trust during the due diligence period included outdated zoning maps.[14]

13. Also the Zoning Classification and Land Use Disclosure contained in the binders stated that it "contains the most recent zoning and land use information" for the subject property.[15]

14. The Rosenberg Trust did not have a survey of its property conducted because the boundary lines and the property had not been altered based on the preliminary title report the Trust obtained.[16]

15. The City of Henderson did not record the final map of the boundary line changes to 594 Lairmont Place, which now included a portion of the golf course until "May or June of 2013."[17]

16. Doiron never disclosed to Plaintiff that the Golf Parcel had been rezoned or that Malek had purchased the Golf Parcel and intended to merge the Golf Parcel with 594 Lairmont Place.[18]

17. The Rosenberg Trust's purchase agreement only made references to 590 Lairmont Place, and not the golf course.[19]

18. When the Rosenberg Trust conducted a visual inspection of the subject property, it did not observe stakes on the golf parcel. [20]

19. The Rosenberg Trust subsequently learned that Malek had purchased a portion of the golf

---

[12] Exhibit 1-A, 165:19-22; 166:2-7; 166:22-25.
[13] *See* excerpts from Rosenberg Deposition, 136:21-137:2, attached as **Exhibit 1-F** to Barishman Decl.
[14] Exhibit 1-A, 176:12; 179:16-17; 183:8-9. See also, Exhibit 1-F, 272:22-273:3.
[15] *See* Zoning Classification and Land Use Disclosure attached as **Exhibit 1-G** to Barishman Decl.
[16] Exhibit 1-F, 156:10-12.
[17] Exhibit 1-E, 51:10-22.
[18] Exhibit 1-A, 184:15-19.
[19] *See* Purchase Agreement attached as **Exhibit 1-H** to Barishman Decl.
[20] Exhibit 1-F, 130:10-12.

course from a third party approximately one to two months after it purchased 590 Lairmont Place.[21]

III. LEGAL ARGUMENT

A. Genuine Issues of Material Fact Exist Regarding Defendants Failure to Disclose Material and Relevant Information Pertaining to the Rezoning of the Golf Parcel and Change in the Lot Lines of 594 Lairmont Place.

Defendants completely gloss over the duties imposed by NRS 645.252 on a licensee, such as Doiron. NRS 645.252 provides in pertinent part

> A **licensee** who acts as an agent in a real estate transaction:
>
> 1. **Shall disclose to each party** to the real estate transaction as soon as is practicable:
>
> (a) **Any material and relevant facts**, data or information **which the licensee knows**, or which by the exercise of reasonable care and diligence should have known, **relating to the property which is the subject of the transaction.**

NRS 645.252 (emphasis added).

Here, pursuant to NRS 645.252, Defendants had a duty to disclose the sale of the Golf Parcel, the re-zoning of the Golf Parcel, and the fact that the lot lines of 594 Lairmont Place (Malek's lot) were altered. All of these facts were material and relevant to the Rosenberg Trust's property because the re-zoning and lot line changes altered what the Rosenberg Trust purchased. When the Rosenberg Trust purchased its house, it purchased it based on the understanding that the surrounding area i.e. Hole 9 of the Dragon Ridge Golf Course would remain intact. However, the sale of a 1/3 acre portion of Hole 9 of the golf course to Malek is not a "minor lot line adjustment" as Defendants suggest. In fact, the mere description of the transaction as "minor" intimates that Defendants know the implication of what they failed to disclose, and they are hoping that if it is deemed minor i.e. immaterial they will be absolved of liability. But whether the sale of the Golf Parcel to Malek was minor (immaterial) or major (material) is an issue of fact for the jury. According to the Rosenberg Trust's real estate experts, the sale of the Golf Parcel to Malek has diminished the value of the Rosenberg Property by at least $1 million. As such, genuine issues of material fact exist as to whether the sale of the Golf Parcel to Malek was a "material and relevant" fact requiring disclosure under NRS 645.252.

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[21] Exhibit 1-F, 158:16-24.

Additionally, there is no dispute that Defendants knew about the sale of the Golf Parcel because they represented one of the parties to the transaction, DRFH Ventures. In fact, Doiron acknowledged she wrote the contract for the sale of the Golf Parcel to Malek.[22] It is also undisputed that Doiron knew that before the sale of the Golf Parcel could be finalized, the area had to be re-zoned.[23] Doiron also knew that prior to the Rosenberg Trust purchasing 590 Lairmont Place, the City of Henderson had approved the re-zoning of the Golf Parcel.[24] While the sale of the Golf Parcel did not close until after the Rosenberg Trust purchased 590 Lairmont Place, Doiron knew that the boundary line changes were imminent given that the re-zoning was approved.

Despite this, Defendants never disclosed the sale of the Golf Parcel to the Rosenberg Trust.[25] It was only through sheer coincidence, that the Trust learned, from an unrelated third party, that Malek had purchased a portion of the golf course; but this was one to two months after it purchased 590 Lairmont Place.[26] Because there are genuine issues of material fact both as to Defendants' knowledge and whether the sale of the Golf Parcel was material and relevant, summary judgment in favor of Defendants is inappropriate.

Defendants attempt to side-step the duties imposed by NRS 645.252, by focusing on the fact that 590 Lairmont Place was sold "As Is." This is nothing but a red-herring because the as-is condition relates to 590 Lairmont Place, not the surrounding area. Of course the sale of 590 Lairmont Place was an as-is sale; it was a bank owned property. Every single "AS-IS" provision in the documents pertain to the condition of the subject property ***only*** and not the golf course and/or Golf Parcel, or the change in the lot lines of Malek's property:

- On February 20, 2013 Plaintiff's letter of interest to Defendant BANA states in pertinent part: "15. **CONDITION OF PROPERTY**: . . . Buyer shall **purchase the property 'As-Is.'**"[27]

- The March 13, 2013 email from Plaintiff's realtor to Defendants states "My buyers are very serious and have **no restrictions regarding seeing the interior** as they walked it

---

[22] Exhibit 1-A, 160:22-161:4.
[23] Exhibit 1-A, 164:3-5; Exhibit 1-D.
[24] Exhibit 1-A, 165:18.
[25] Exhibit 1-F, 135:7-10.
[26] Exhibit 1-F, 158:16-24.
[27] Defendants' MSJ Exhibit B at 2. (Emphasis added).

during the construction phase, (they are aware that there was a leak) and **they will take property AS-IS**.[28]

- The March 13, 2013 Purchase Agreement defines **"Property"** as "the **real property and any personal property included in the sale.**"[29] The Purchase Agreement further states that "Buyer acknowledges that at COE, the **Property will be sold AS-IS**."[30]

- The Real Estate Purchase Addendum states that "BUYER IS **BUYING THE PROPERTY 'AS IS.'**"[31]

In addition to the documentary evidence, the Rosenberg Trust understood "AS-IS" to mean that it would purchase the subject property "**as is** in terms of the **structural problems that were inside the house**, the **cosmetic problems that were inside the house**."[32] The Rosenberg Trust further understood "AS-IS" to mean "take the property as they see it."[33] As such, any reference to the Rosenberg Trust purchasing the subject property "AS-IS" pertains ***only*** to the property itself.

Even if by some stretch of the imagination "as-is" encompasses more than just 590 Lairmont Place, the very case law cited by Defendants states that the exception to the "as-is" rule is where there is information solely available to the seller, the seller knows the information materially affects the value or desirability of the property, and also knows these facts are not known or within reach of the buyer. Mackintosh v. Jack Matthews & Co., 855 P.2d 549, 552 (Nev. 1993). When these factors exist, Nevada imposes a duty to disclose. In the present case, Defendants had knowledge of the Golf Parcel sale and all the consequences that came with that sale, i.e. re-zoning and lot line changes. The sale of the Golf Parcel does materially affect the "value and desirability" of the Rosenberg Property, because it not only changes the overall views and privacy of the property, it changes the whole nature of the property. While Defendants have minimized the value of these views, and the amount of privacy that has been lost, the Rosenberg Trust's experts polled several real estate professionals, and a majority agreed that the Rosenberg Property has a diminished value of at least $1 million because of the Golf Parcel sale to Malek. Of course Defendants have experts who state otherwise, but this just proves genuine issues of

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[28] Defendants' MSJ Exhibit F. (Emphasis added).
[29] Defendants' MSJ Exhibit G at BANA 000009. (Emphasis added).
[30] Defendant's MSJ Exhibit G at BANA 000008. (Emphasis added).
[31] Defendants' MSJ Exhibit H at MHR 105 (Defendant's erroneously attached BANA 000012-13 to Exhibit H). (Emphasis added).
[32] Exhibit 1-F, 74:8-13. (Emphasis added).
[33] Exhibit 1-F, 74:16-17.

material fact exist as to whether the Golf Parcel sale materially affects the Rosenberg Property such that disclosure of the Golf Parcel sale was required by Nevada law.

Additionally, Defendants erroneously claim that because of the "as-is" nature of the sale, it was incumbent upon the Rosenberg Trust to discover the facts surrounding the Golf Parcel sale. But this information was only known by Defendants and Malek. The Rosenberg Trust had absolutely no reason to believe such a transaction had even taken place. Despite this, Defendants allege that because the City of Henderson had updated the physical zoning maps in late January 2013, the Rosenberg Trust "had access to all pertinent information regarding zoning information prior to the closing" on 590 Lairmont Place. However, for this allegation to have merit, the Rosenberg Trust would have needed a reason to inspect the zoning of the *golf course*. But Defendants never disclosed the Golf Parcel sale, never disclosed the re-zoning and never disclosed that the sale of the Golf Parcel altered Malek's lot lines. In other words, Defendants seek to evade liability claiming they had zero duty to disclose material facts, despite having all the knowledge of the material facts, but the Rosenberg Trust, who had no knowledge of anything, had a duty to play detective and discover facts it did not even know existed. This is an untenable position; one that cannot survive a summary judgment standard of review.

By all accounts, the Rosenberg Trust had every reasonable expectation that when it bought 590 Lairmont Place, the golf course would remain the way it looked, and Malek's lot lines would remain the way they looked.[34] The Rosenberg Trust had no reason to believe there had been (or would be) a change to the golf course. Defendants' contention that the Purchase Agreement states the Trust is "not relying on any representations," is not an absolute pass to withhold material and relevant information that was solely in Defendants' possession. But this is exactly what Defendants suggest it means.

Defendants also allege that "Plaintiff failed to perform the inspections it agreed to do." This allegation also fails because, as set forth above, the Rosenberg Trust had no a reason to believe there had been any changes to the golf course. In fact, even Defendants acknowledge that the Rosenberg Trust's duties of inspection pertained only to the ***subject property***.[35] As such, even if the Rosenberg Trust had gone to the City of Henderson to review the zoning of the subject property it would have seen

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[34] Exhibit 1-F, 212:12-16.
[35] Defendants' MSJ at 6:5-6.

the same zoning that was already in place for its property, but it would not have seen any zoning changes to the golf course because its search would not have been focused on that area. Additionally, the Rosenberg Trust did not have a survey of the subject property conducted because the boundary lines and the subject property had not been altered based on the preliminary title report it had obtained.[36] Therefore, because the Rosenberg Trust did not have knowledge of the sale of the golf parcel, the Rosenberg Trust had no reason to inspect any boundary lines or zoning outside of the property it was purchasing. Simply put, the Rosenberg Trust had no duty to inspect the zoning of the *golf course*, but Defendants had both common law and statutory duties to disclose both the re-zoning and the sale of the Golf Parcel. Because genuine issues of material fact exist on these issues, summary judgment in favor of Defendants must be denied.

B. Genuine Issues of Material Fact Exist Regarding Defendants' Misrepresentations to the Rosenberg Trust.

Defendants speciously argue that the Rosenberg Trust waived its claims against Defendants as brokers for the sale. This allegation cannot be sustained because the waivers referenced by Defendants pertain to the zoning and boundaries of the ***Rosenberg property only***.[37] This is a point Defendants conveniently continue to ignore. A walk through and inspections of the Rosenberg Property would not have revealed any facts about the Golf Parcel sale transaction. Likewise, research into easements and boundaries of the Rosenberg Property, and a survey of the Rosenberg Property would not have revealed any facts about the Golf Parcel sale transaction. The waivers are meaningless to any discussion about Defendants' failure to disclose facts about the Golf Parcel sale transaction. Even if the waivers included more (which they did not), then the waivers are no longer clear and unambiguous as required by the very case law cited by Defendants. Defendants also choose to ignore the case law they cite that states a party can only waive material facts that it knows. But the Rosenberg Trust did not have knowledge of the Golf Parcel sale transaction or the re-zoning of the Golf Parcel because Defendants either intentionally or negligently withheld this information. This is the crux of the Rosenberg Trust's claims against Defendants.

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[36] Exhibit 1-F 156:10-12.
[37] Defendants' MSJ at Exhibits G and H.

In addition to the statutory duties under NRS 645.252, NRS 645.259 also imposes duties upon Defendants. Specifically, NRS 645.259 states in relevant part:

> A licensee may not be held liable for:
>
> 1. A misrepresentation made by his or her client **unless the licensee**:
>
> (a) **Knew the client made the misrepresentation; *and***
>
> (b) **Failed to inform the person to whom the client made the misrepresentation that the statement was false.**

NRS 645.259 (Emphasis added).

Here, Defendants are liable for the misrepresentations made by Defendant, Bank of America, on the Seller's Real Property Disclosure Form ("Disclosure Form") because Defendants knew that some of the statements were false. Specifically, Bank of America responded as follows to some key questions:

- "Are you aware of . . . Previous or current moisture conditions and/or water damage? No."[38] This response is false because there was a prior leak in the subject property.[39]
- "Are you aware of . . . Whether the property is located next to or near any known future development? No."[40] This response is false because it is undisputed that Malek intends to construct a house on his lots.[41]
- "Are you aware of . . . Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? No."[42] This response is false because the sale of the Golf Parcel to Malek and the change in Malek's lot lines materially affect the subject property.[43]

Bank of America even responded "no" to the questions about whether the property was in a planned community development, and subject to a homeowners association.[44] It took the Trust's real estate agent to point out this obvious mistake.

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[38] *See* amended Seller's Real Property Disclosure Form attached as **Exhibit 1-I** to Barishman Decl.
[39] *See* Defendants' MSJ, Exhibit F wherein the email states that there was a leak.
[40] Exhibit 1-I
[41] Exhibit 1-F, 187:10-16.
[42] Exhibit 1-I
[43] Exhibit 1-F, 198:24-200:10.
[44] *See* Seller's Real Property Disclosure Form attached as **Exhibit 1-J** to Barishman Decl.

Because Defendants knew the answers to the above questions were false, they had a duty under NRS 645.259 to inform the Rosenberg Trust the statements were false. As such, the Rosenberg Trust has viable claims against Defendants based on Defendants' failure to disclose information it knew Bank of America falsely reported to the Rosenberg Trust, and therefore, summary judgment must be denied.

C. Genuine Issues of Material Fact Exist Regarding Defendants' Failure to provide the Rosenberg Trust with Accurate Zoning and Property Boundaries.

Defendants' claims that Defendant Doiron made disclosures to the Rosenberg Trust regarding zoning and property boundaries cannot be sustained because the Rosenberg Trust was not provided with accurate, current information regarding the lot lines of the Golf Course. As set forth above, the Rosenberg Trust only received information pertaining to the subject property. However, regarding the golf course and the subsequent change in zoning and lot lines of the golf course, the Rosenberg Trust never received information from Defendants. In fact, Defendants did not update the community map on its website to reflect the merger of the Golf Parcel with Malek's property.[45] Likewise, the topography table located in the MacDonald Realty office was not changed after the merger – and still was not changed as of March 6, 2015.[46] Additionally, the "final map of the neighborhood" Defendant Doiron provided the Rosenberg Trust was dated March 4, 2004 – **nine years before** the Rosenberg Trust's purchase.[47] Defendant Doiron also provided the Rosenberg Trust with a zoning map.[48] However, the zoning map was a map of Henderson and did not depict any lot lines of Lairmont Street.[49] Further, even if the Rosenberg Trust had some inkling that there had been a change to the lot lines for the golf course, the Rosenberg Trust would not have been able to discover that information until May or June of 2013 – months after the purchase of the subject property.[50] Because there are genuine issues of material fact regarding Defendants' failure to disclose the material change to the Rosenberg Trust's property caused by the sale of a portion of the golf course to Malek, summary judgment in favor of Defendants must be denied.

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[45] Exhibit 1-A, 166:2-11.
[46] Exhibit 1-A, 166:12-25.
[47] Exhibit 1-A, 175:18-21, 176:7-12, 177:12-16.
[48] Exhibit 1-A, 194:16.
[49] Exhibit 1-F, 272:22-273:3.
[50] Exhibit 1-H, 51:10-22.

D. Genuine Issues of Material Fact Exists as to Whether an Implied Restrictive Covenant Exists Over the Golf Parcel.

As detailed in the Rosenberg Trust's Opposition to Malek's Motion for Summary Judgment, the Rosenberg Trust does not seek an easement to light, air and view. Instead, the Rosenberg Trust seeks to preserve the use of land adjacent to its property. Specifically, the 1/3 acre of golf course land sold to Malek must remain golf course land in terms of its use. This concept of restricting/preserving land use has been recognized by Nevada since 1913. *See* Shearer v. City of Reno, 36 Nev. 443, 136 P. 705 (1913) (recognizing the concept of dedication or restrictive covenant). Nevada then recognized this concept again in 1965. *See* Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1965) (recognizing the concept of implied easement). *See also*, Meredith v. Washoe Cnty. Sch. Dist., 84 Nev. 15, 17, 435 P.2d 750, 752 (1968) (stating a restrictive covenant is an easement or a servitude in the nature of an easement). The Restatement Third defines "restrictive covenant" as "a negative covenant that limits permissible uses of land." Restatement (Third) of Property, Servitudes, § 1.3(3) (2000).

Interestingly, Defendants cite to Boyd as standing for the proposition that implied restrictive covenants are rejected by Nevada, but this case actually sets forth the elements for an implied restrictive covenant. Specifically, in Boyd, the Johnsons owned two parcels of land, Lot 22 and Lot 121. The Johnsons sold Lot 22 to the McDonalds. At the time of the sale, the Johnsons were using portions of Lot 121 for a sign, extended driveway and patio. Thereafter, the Johnsons sold Lot 121 to the Boyds. The Boyds eventually demanded that the McDonalds cease use of the sign, extended driveway and patio. The McDonalds argued they had an implied easement. The Boyd Court noted there are three essential elements to an implied easement: "(1) unity of title and subsequent separation by a grant of the dominant tenement; (2) apparent and continuous user; and (3) the easement must be necessary to the proper or reasonable enjoyment of the dominant tenement." *Id.* at 647. The Court further noted that necessity really means "intent," and explained that "the reason that absolute necessity is not essential is because fundamentally such a grant by implication depends on the intention of the parties." *Id.* at 648 *quoting* Marshall v. Martin, 139 A. 348 (Conn. 1927). The Court stated that the inquiry is "what a reasonable grantee would be justified in expecting as a part of his bargain when he purchases land under the

particular circumstances." *Id.* As such, the Court stated that "reasonable necessity may be restated in terms of reasonable expectation." *Id.* at 649.

The Court further recognized that "[i]f an easement is created by implication at the time of initial severance, it then vests, and, absent evidence of termination, it cannot be diminished or abridged." *Id.* at 650. Because the trial court found an easement existed, but made changes to the easement, the Nevada Supreme Court remanded the case for a new trial. The Court ruled that the question of fact was "whether the McDonalds, as reasonable purchasers knowing their boundary lines, had a right to expect, without further inquiry, that their purchase insured continued use in the added driveway and the patio, though these were not on their land." *Id.* at 652.

It is anticipated Defendants will argue easements and restrictive covenants are not one and the same, but they are. In fact, these terms are used so interchangeably in Nevada and other jurisdictions, that the Restatement Third has dropped the term "negative easement" and replaced it with "restrictive covenant."[51] This case is not just about views and privacy, although these are certainly by products of the violation of the implied restrictive covenant that occurred. But whether there is a loss of view or privacy is irrelevant to whether an implied restrictive covenant exists. The Rosenberg Trust incorporates by reference the legal arguments made in its Opposition to Malek's Motion for Summary Judgment as though fully set forth herein. As that Opposition proves, genuine issues of material fact exist regarding whether an implied restrictive covenant exists over the golf course land sold to Malek.

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[51] *See* Restatement (Third) of Property, Servitudes § 1.3 Comment (c) (2000). *See also*, Meredith v. Washoe Co. Sch. Dist., 84 Nev. 15, 17, 435 P.2d 750, 752 (1968) (noting that "our jurisprudence is in line with the Restatement (Third) of Property, and we see no reason to depart from it now.").

IV. CONCLUSION

Based on the foregoing, Defendants' Motion for Summary Judgment must be denied.

DATED this 4th day of May, 2015.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, PLAINTIFF'S OPPOSITION TO DEFENDANT MACDONALD REALTY, MICHAEL DORION AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT to the following parties:

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Jody Foote

An Employee of Howard Kim & Associates

EXHIBIT 1

DECLARATION OF MELISSA BARISHMAN, ESQ. IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT MACDONALD REALTY, MICHAEL DORION AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT

I, Melissa Barishman, 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 Michael Dorion's March deposition.

3. Attached hereto as Exhibit 1-B is a true and correct copies of excerpts from Paul Bykowski's deposition.

4. Attached hereto as Exhibit 1-C is a true and correct copy of DRFH Ventures Secretary of State printout.

5. Attached hereto as Exhibit 1-D is true and correct of City of Henderson Zoning Ordinance No. 2986.

6. Attached hereto as Exhibit 1-E is a true and correct copies of excerpts from Michael Tassi's deposition.

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

8. Attached hereto as Exhibit 1-G is a true and correct copy of Zoning Classification and Land Use Disclosure.

9. Attached hereto as Exhibit 1-H is a true and correct copy of the Purchase Agreement.

10. Attached hereto as Exhibit 1-I is a true and correct copy of the amended Seller's Real Property Disclosure Form.

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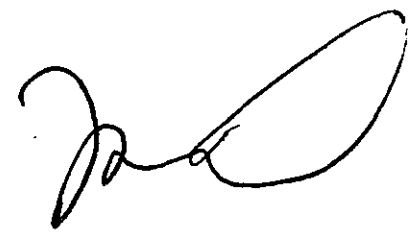
11. Attached hereto as Exhibit 1-J is a true and correct copy of the Seller's Real Property Disclosure Form.

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

Dated this 4th day of May, 2015.



MELISSA BARISHMAN, ESQ.

Ex. 1-A

EXHIBIT 1-A

Ex. 1-A

In The Matter Of:

The Frederic and Barbara Rosenberg Living Trust vs.
Bank of America, M.A., et al

Michael Ann Doiron Volume II
March 6, 2015

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moving forward today, giving truthful and accurate statements to my questions?
A No.
Q This is the second time we've had you here, so some of my questions are going to seem disjointed. There's going to be no real rhyme or reason to them in terms of following a same subject area.
I'm just going to pick up kind of in pieces where we left off in the first deposition, so please bear with me.
Did you have any involvement with the design review committee for MacDonald Highlands as it pertained to the approval of any plan submitted by Mr. Malek for 594 Lairmont Place, which is Lot 2?
A No.
Q But you have served on the design review committee at some point in time throughout your employment with MacDonald Realty; correct?
A Yes.
Q During the times that you did serve on the design review committee, if there was ever a question as to whether something should be approved or disapproved, did Richard MacDonald have the final say with respect to that issue, whatever that might

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be?
MR. GUNNERSON: Objection: Form.
Go ahead.
A I'm not quite sure. It's been several years. I think we needed a vote.
BY MS. HANKS:
Q And you say "several years," so it's been several years since you've served on the design review committee?
A It's been several years since I've met in the design review committee.
Q And what's the difference between serving on it and meeting?
A Well, we used to have meetings where we'd sit down with the owners, the builders, the architects, an outside architect, a gal that actually headed up the design review. And now Paul, who is our head of construction, oversees that.
Most owners and their builders and whatnot don't come in anymore.
Q So in terms of the function of the design review committee, it's sort of changed over the years, in terms of you don't have those formal meetings -- not formal, but those meetings where everyone attends -- anymore?

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A Correct.
Q Are you still involved in the voting with the design review committee, even though those meetings have stopped? Does that still happen?
A I was let go yesterday.
Q I apologize. Up until yesterday, did you still participate in any voting that had to happen, even though there weren't meetings taking place?
A I haven't done anything with the design review committee in years.
Q And just so I understand, though, to the best of your recollection, however, when you did have involvement with the design review committee, your recollection is that you had to put stuff to a vote if there was some discrepancy as to what should be done?
A Yes, but Rich would have the final say.
Q When you say "Rich," you mean Richard MacDonald?
A Yes.
Q Now, I read your deposition from the prior time that we deposed you, and you indicated that you wrote the contract for the golf course parcel that Mr. Malek purchased; is that correct?
A Yes.

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Q Who did you represent in that transaction?
A I represented, I believe -- I can't remember, but I believe I represented Rich MacDonald.
Q And would that be through his connection to DRFH Ventures, who owned the golf course?
A I don't remember the ownership title.
Q But it was in context because of his ownership of the golf course --
A Yes.
Q -- whichever of his multiple companies owns it?
A Yes.
Q When -- let me back up.
How did it come about that Mr. Malek wanted to purchase a portion of the golf course?
A Mr. Malek came to me and wanted to buy that piece of land.
Q Was this prior to him purchasing Lot 2, which is 594 Lairmont Place?
A I don't remember.
Q Did Mr. Malek explain to you what he wanted to do with the additional portion he was seeking to buy?
A He wanted to merge it with Lot No. 2.

Q Did he explain anything else about his intentions with that particular area of property?
MR. GUNNERSON: Objection: Form --
A I don't remember.
MR. GUNNERSON: -- speculation.
BY MS. HANKS:
Q When Mr. Malek approached you about purchasing a portion of the golf course to merge with the 594 Lairmont Place lot, what did you do next?
A I went to Rich MacDonald, to see what he wanted as far as a price and if he wanted to sell that.
Q And did Mr. MacDonald give you a price at that time?
A Yes.
Q And did he indicate that he -- I'm assuming -- it's an assumption, that he wanted to sell it, because he gave you a price?
A Yes.
Q What was that price?
A Offhand, I don't remember, but I believe it was 300,000.
Q In speaking with Mr. MacDonald, was there a discussion about exactly what portion of the golf

course he would agree to sell to Mr. Malek?
A I don't remember exactly, but it was the scrubbed area. It was the dirt area, not the green of the golf course, and our head of construction, Paul, would have had to draw it off as far as how much land that would include.
Q That was going to be my next question.
Was that the next step -- once you confirmed with Mr. MacDonald he was willing to sell a portion of the golf course to Mr. Malek, did the next step take place in terms of actually drawing, or at least mapping out in an informal way, what area was actually going to be sold to Mr. Malek?
A Yes.
Q And Mr. Bykowski did that informal kind of mapping out of the area that would be sold?
MR. GUNNERSON: Objection: Foundation.
A I don't remember, but I believe so.
Q Now, when you approached Mr. MacDonald or Mr. Bykowski was figuring out what actual sections of the parcel would be sold to Mr. Malek, was there any discussion about having to rezone that area?
A Yes, but I don't remember the details.
Q Would it be fair to state that at the time you represented -- we'll just say Richard MacDonald,

whatever, entity owned the golf course during this transaction.
You were aware that prior to the sale being completed, that area had to be rezoned?
A Yes.
Q Do you know if Mr. Bykowski met with Mr. Malek when he was trying to determine which portion of the golf course he would sell; in other words, where he was kind of mapping out the lot lines. Was there any meetings between those two individuals to confirm this is what Mr. Malek wanted?
A I don't believe so.
Q Did the individual who owned Lot 2, which is 594 Lairmont Place, prior to Mr. Malek ever approach you or anyone with MacDonald Realty about purchasing a portion of the golf course?
A I don't believe so, but I don't remember.
Q After the golf course parcel was rezoned, were you notified?
A I would have been notified by Paul, I believe --
Q And that's --
A -- that it was completed.
Q Sorry. And that's so you could know that

you could go to the next part of the -- I guess completing the sale contract?
MR. GUNNERSON: Objection: Foundation; form.
Go ahead, if you know.
A That would mean that we would be able to go forward with closing the escrow.
BY MS. HANKS:
Q Thank you. That's probably a better way to say it. That's what I was getting at.
So do you remember the approximate time the rezoning was approved by the City of Henderson?
A No.
Q But you were notified at some point because that was the trigger to you to know that now escrow could close on the deal between Mr. MacDonald and Mr. Malek; correct?
A Correct.
Q Did MacDonald Realty change the community map that's located on their website to reflect the new lot lines for Mr. Malek's lot?
A I don't believe so.
MR. GUNNERSON: Objection: Form, as to when.
MS. HANKS: And I'll correct that, then.

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BY MS. HANKS:
Q At any time after the rezoning for the golf course parcel that was merged with Mr. Malek's lot, 594 Lairmont Place, did MacDonald Realty change the community map on the MacDonald Highlands website?
A I don't believe so.
Q Is this the change that could have occurred? In other words, could you have changed the community map on the website if you wanted to?
A Yes.
Q How about the topo table? I think it's topography table.
A Topo.
Q The topo table that is located in the MacDonald Realty office; correct? And that's -- I'm sorry, is that a "yes"?
A Yes.
Q And that's like a 3D, I guess, model of the community?
A Yes.
Q Was that table ever changed from the time that Mr. Malek's golf course portion that was merged with his lot, 594 Lairmont Place?
A Not yet. It's being sent to California as

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we speak.
Q When was that sent to California?
A I don't know. I was fired yesterday. It's in the process of being sent to California. There's some major changes on there, and it's expensive, so it's done every once in a while.
Q Do you recall when the last time the topo table was changed?
A No.
Q But to your best recollection as you sit here today -- I understand you don't work for MacDonald Realty anymore, but it is in the process of being sent to California to be changed to incorporate some changes -- or you said "major changes"?
A What I said is I don't know. It's supposed to get sent to California. Those are not exact details, though. That's just a general overview --
Q Sure.
A -- of the community. Because they're not exact matches to any piece of land. It's generic.
Q Is the topo table still in the office as of yesterday?
A Yes.

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Q Will the topo table stay there until the new topo table comes with the changes, if you know? I know you are not there anymore.
A To the best of my ability, I can tell you that a man from California will come up with a van, pick the topo table up, take it back to California, and then Paul will send maps of whatever changes Mr. MacDonald wants.
Q Do you know if the maps that are going to be sent to the guy from California that will change the topo table includes the change to Mr. Malek's lot at 594 Lairmont Place?
A I have no idea.
Q At the time this transaction was taking place where Mr. Malek was going to purchase a portion of the golf course to merge with his lot at 594 Lairmont Place, were there any discussions about any impact that might have on Lot 3, which is 590 Lairmont Place?
A No.
Q Did you have any involvement with the sale of the golf course? And I say the "golf course" -- DragonRidge golf course, to -- I think it's Pacific Links.
A No, I did not know about it for a long

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time. It was not told to me.
Q So you did not represent any of the parties with respect to that transaction?
A No.
Q And when you say it was a long time, do you recall when you approximately learned that the DragonRidge golf course was sold to Pacific Links?
A I don't remember.
Q Do you know if that sale happened before Mr. MacDonald sold the portion of the golf course to Mr. Malek?
A In the middle of all this, my husband died March 9th. I don't remember.
Q Do you know if anyone submitted, for written approval from the board, the HOA board for MacDonald Highlands, to change the lot lines for 594 Lairmont Place?
A I don't know anything about the HOA.
Q Fair to say you didn't submit anything to the HOA board; correct?
A Correct.
Q And MacDonald Realty didn't submit anything to the HOA; correct?
A Correct.
Q Was there any discussions with anyone

MR. GUNNERSON: My problem is I don't have Mr. Bykowski's deposition with me. I want to make sure what we did mark, in fact, was what she's referring to here and there's no discrepancy. That's my concern.

MS. HANKS: Yeah. And what we can do, too, is we can just have her refer to the actual map. They have numbers on them. They say 2 of 4 sheets, 3 of 4 sheets, and this is Page 76 of Book 115, so if you want to refer to it that way...

MR. GUNNERSON: I guess my question would be, then -- or my request would be if we're going to refer to them that way, that's fine, but I would like these maps to become an exhibit then.

MS. HANKS: We can do that.

MR. GUNNERSON: So that we can reference them and make sure that they're exactly the same.

There's no -- page number of page numbers isn't necessarily a great identifier for documents, but as long as we can identify these as exhibits and have them included as exhibits, I'm fine.

MS. HANKS: So what we can is -- and, frankly, I'm not really going to talk about the exhibits too much. I just wanted to see why they were included. But I want to identify them as best

as I can with some of the identifiers here.

So the first page within this binder -- it's titled "Final Map, MacDonald Highlands Planning Area 10, AKA the Foothills at MacDonald Ranch, Lot 10, Planning Area 10. And it is Sheet No. 2 of four sheets.

MR. GUNNERSON: Is there a date on them?

MS. HANKS: There's a date: 10/6/03.

MR. GUNNERSON: Okay.

MS. HANKS: And then the next page -- it's titled, "Final Map, MacDonald Highlands Planning Area 10, AKA the Foothills at MacDonald Ranch, Lot 10, Planning Area 10," and it is Sheet 3 of 4, and it has the same date as 10/6/03.

And then the last sheet, which I'm not really concerned with, but we'll still mark it since it goes with the maps.

This is "Final Map, MacDonald Highlands Planning Area 10, AKA the Foothills at MacDonald Ranch, Lot 10, Planning Area 10," and it's dated March 4, 2004, and it says Book 115, Page 76.

MR. GUNNERSON: And those will be --

MS. HANKS: Exhibit 1.

MR. GUNNERSON: Exhibit 1, okay.

///

(Deposition Exhibit 1 was marked for identification.)

BY MS. HANKS:

Q Do you recall putting these maps in the binder prior to giving it to the Rosenbergs?

A No.

Q Is it the normal course and practice for those maps to be in the binder that's titled, "Governing Documents for MacDonald Highlands"?

A Yes.

Q And what do those maps typically entail?

A It's a final map of the neighborhood.

Q Who prepares the governing documents binder?

A It all depends on who's working that day. Could be me; could have been my partner; could have been an assistant; could have been a receptionist.

Q Are they prepared on a case-by-case basis, or are there multiple ones you can take off the shelf?

A There are multiple ones that you can take off the shelf for the governing docs. And then we try to update them whenever we can.

Q Do you know if the original binder that I have here was one that was prepared that day or

taken from a shelf somewhere in the office?

A Well, I'm going to assume that the book, because they're runoff -- we'll purchase 10 or 20 at a time to be runoff, so one of us put the maps in there.

Q Okay. So when --

A And the updated HOA financials.

Q So when the binder is run off, when you were ordering 10 to 20 at a time, it would not contain the maps?

A Correct.

Q When you -- anybody at MacDonald Realty would hand the book to a new homeowner, they would add the maps in and any updated budget with HOA; is that correct?

A Correct.

Q How does MacDonald Realty or the employees that work for MacDonald Realty know that when they're putting a map in the book, it's the most updated map for the community?

A Well, the maps are in a file cabinet, the final maps, and then you can also pull it off of the Internet.

Q When you say "the Internet," where would you go to pull off the final map?

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A I would go to Clark County Assessor.
Q Then what do you put in?
A Put in the address and then pull up the final map.
Q When you say "the address," what address do you put in to pull up the final map?
A Whatever address of property you need that book for.
Q Now, did you tell the Rosenbergs they could go to that website to do that?
A No.
Q After Mr. Malek's golf course portion was rezoned, did MacDonald Realty receive any updated final maps to insert in the binders?
MR. GUNNERSON: Objection: Facts not in evidence.
Final maps were created or finalized after a zoning approval, so I'll object to form, I guess is what I'm trying to say. Thank you.
BY MS. HANKS:
Q Do you want me to repeat the question?
A I want you to restate it, yeah.
Q After -- at any time after the golf course portion that was sold to Mr. Malek was approved for rezoning, did MacDonald Realty receive any updated

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maps?
A I don't remember.
Q Do you recall telling the Rosenbergs that the final map either was changed or may be in the process of being changed based on the rezoning that was approved for Mr. Malek's golf course parcel purchase?
A No. I didn't have very many conversations with the Rosenbergs.
Q In your prior deposition, you testified -- and correct me if I'm wrong -- that when you handed the Rosenbergs this binder, it was during their due diligence period -- correct? -- of their purchase contract?
A I don't remember what I said, but that would have been given to them during their due diligence. I don't remember if their real estate agent picked it up or they picked it up.
Q Regardless of who picked it up, what is the due diligence period?
A It is a period of time for the buyer to review everything in that book, the design guidelines book, talk to their agent, or have their agent help them find out everything they can on that property.

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Q And how long is the due diligence period? How long was it for the Rosenbergs?
A I don't remember. It would be in the contract.
Q If during that time the Rosenbergs looked at the governing documents binder that you or someone at MacDonald Highlands handed to them or their agent and reviewed the design guidelines and saw something they didn't like, whatever that might be, could they back out of the purchase contract at that time?
A At the due diligence period, yes.
Q And let's make that even more specific.
If the Rosenbergs had learned that the lot lines for Lot 2, 594 Lairmont Place, had changed during that due diligence period, they could have backed out of the contract?
MR. GUNNERSON: Objection: Foundation; form.
BY MS. HANKS:
Q And it bothered them. I'll add that.
If they found that out and they didn't like that, could they have backed out of the contract during the due diligence?
A I believe so, but I would have to read the

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contract. I don't have the contract in front of me.
Q Okay. So there are --
A I don't know what the limitations of the contract state.
Q Are there limitations in contracts during that due diligence period?
A I don't know what the contract says unless I read it. I don't have it in front of me to read it.
MR. GUNNERSON: Let her finish her question.
BY MS. HANKS:
Q I understand that. I guess I'm trying to generally understand, though, in purchase agreements for the residential property for MacDonald Highlands, are there only certain reasons why you can back out during the due diligence?
MR. GUNNERSON: Objection: Foundation; form.
A I don't know what was in their total contract, if there were terms in their contract because I'm not reviewing the contract.
BY MS. HANKS:
Q So there might be terms within their contract that prevented them from backing out during

the due diligence?
A Correct.
Q And you would have to review the contract to make sure?
A Correct. And the contract was not MacDonald Highlands Realty contract.
Q Okay.
A It was a contract from a real estate agent that represented them.
Q And so if there weren't -- let's assume hypothetically there were no restrictions for a reason why they could back out during the due diligence. Then that's a period they could back out?
MR. GUNNERSON: Objection: Foundation; calls for speculation; form.
A Well, you're asking me to speculate and assume, so I would assume, yes, they could back out.
BY MS. HANKS:
Q Sure. I understand. It's a hypothetical; right.
Now, who did you represent in the transaction between the Rosenbergs' purchase? When I say the "Rosenbergs," I mean the Rosenberg Trust, purchase of Lot 3, 590 Lairmont Place.

A Bank of America.
Q I know you indicated you had very little conversation with the Rosenbergs. Who did you specifically ever speak to? Because I know there's a couple of Rosenbergs. So if you spoke to anyone, who did you speak to?
A I spoke to Barbara once or twice on the phone before I listed the property. When I handed off the books and disclosures, I don't -- there was a whole group of people. I don't know who they were.
Q Do you recall the substance of your conversation with Barbara during the one or two times before you listed the property?
A She called, wanting to buy the property, and I told her I didn't have it listed yet.
And she kept saying, "I have a real estate agent."
And I said, "You need to talk to your real estate agent and have them contact us."
Q How about: Is that the only substance of those one or two conversations?
A Yep.
Q How about: On the day that you handed over the books, was there any substantive

conversation between any of those people?
A Basically, from what I remember, is their agent was supposed to pick up the documents and add her disclosures for her office also to that and sit with the Rosenbergs and go over everything.
Q So would it be fair to state that there were no conversations, either by you or on behalf of MacDonald Realty, with any of the Rosenbergs about Mr. Malek purchasing a portion of the golf course?
A I can't speak for my partner, who is now dead, but I was on-site with a customer when the Rosenbergs, a big group of them, came in and disturbed my office several times, looking for me.
Q I'm just making sure I understand, though, that as far as you can remember, you individually had no conversations with the Rosenbergs about Mr. Malek purchasing a portion of the golf course; correct?
A Correct.
Q Now, Jim Venable is your partner; correct? Or was your partner?
A Was my partner, yes.
Q He may have had conversations, but as you sit here today, you are not aware of any that he may have had?

A Correct.
Q Did you talk to Jim prior to his death as to whether he did have any conversations with the Rosenbergs?
A No.
Q How about Bank of America? Did you have any conversations with Bank of America or its agent -- as I understand REO management was its agent for purposes of listing this property -- about the sale of the golf course portion to Mr. Malek?
A I don't believe so.
Q Did you ever consider whether you, as a real estate agent/broker, had a duty to disclose the sale of the golf course portion to Mr. Malek to the Rosenbergs?
MR. GUNNERSON: Objection: Foundation; form.
Go ahead.
A It never occurred to me.
BY MS. HANKS:
Q How about the change in zoning? Did it ever occur to you whether that needed to be disclosed to the Rosenbergs, the rezoning of the golf course?
A Never occurred to me.

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A I don't know what it would require. They had their own real estate agent.
BY MS. HANKS:
Q Is it their real estate agent that's supposed to disclose the zoning changes?
A Well, their real estate agent is working for them, so I would assume they would go over everything with them. I don't sit down with them on this.
Q But this says the seller has knowledge -- "of which the seller has knowledge."
Do you have an understanding of whether the seller and/or the seller agent has a duty to disclose zoning with -- I'm sorry, zoning within proximity to the subject property?
A As I stated, I gave them a zoning map and a zoning disclosure which states if you need -- if you want further information on this, to contact the City of Henderson.
Q No, no, no. I know what you did. I'm asking what your understanding this provision requires you, as the agent for the seller.
Is it your understanding that you just have to disclose the zoning map and say, "If you want further information, you can go to the City of

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Henderson"?
MR. GUNNERSON: You can answer, but I'm going to object that it calls for a legal conclusion.
A I think I did my job for the seller well with the zoning and the other disclosures, and I think it's up to the buyer if they want further information to either find that out themselves, or they've hired a real estate agent to do that for them.
BY MS. HANKS:
Q And what you -- and just to clarify what you did in this case that you think you did well was the disclosure of the zoning map; correct?
A Correct.
Q We're getting that copied right now, so we'll talk about that in a minute.
MR. GUNNERSON: Objection: Misstates prior testimony.
MS. HANKS: Counsel, can we go off the record for a second?
(Discussion held off the record.)
BY MS. HANKS:
Q Let's talk about 4, since we just left off on the zoning, and get back to the written answers.

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MS. HANKS: So can you hand her 4.
(Deposition Exhibit 4 was marked for identification.)
BY MS. HANKS:
Q This map that's a colored zoning map, it's marked as Exhibit 4. It was located in the binder marked "Governing Documents," and it's behind Tab 3. According to the index for the binder, it says "Section 3, Existing Zoning Map and City of Henderson Gaming Overlay Map." And I only copied the zoning map because I'm not concerned about the gaming map.
Do you know on that map where MacDonald Highlands is located?
A Right here, this general area right here, Horizon Ridge Parkway, Stephanie.
Q Can your circle that on that exhibit so we know where we're talking? And do a big enough circle to include the area, if you could.
A Your pen is not writing very well.
MR. SHEVORSKI: Here, use mine.
BY MS. HANKS:
Q You indicated earlier that MacDonald Realty would get updated final maps to include in this "Governing Documents" binder.

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Did MacDonald Highlands also receive updated zoning maps to include in the binders?
A Can you restate the question?
Q Sure. If I recall correctly, your testimony was that MacDonald Realty would get -- from time to time would get updated final maps to include in these "Governing Documents" binders?
A I don't understand what you mean by we would "get." Nobody delivered those to us.
Q If the final map was updated in any way, how would MacDonald Realtors obtain it in order to put it in the binders?
MR. GUNNERSON: Objection: Asked and answered.
Go ahead.
A Before the Internet, I would have Paul get me a smaller version, because they came in sheets. When the Internet and the City of Henderson had a website for the Assessor's Office, we would pull it from the Assessor's Office and print it out.
Q Okay. So you would print it out.
So would the same be true for the zoning maps? If the zoning was altered, would you also go and print off updated zoning maps to insert into the binders?

Ex. 1-B

EXHIBIT 1-B

Ex. 1-B

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF PAUL BYKOWSKI

Taken at the Law Offices of
Howard Kim & Associates
1055 Whitney Ranch Drive
Suite 110
Henderson, Nevada 89014

Tuesday, February 3, 2015
8:57 a.m.

Reported by: Angela Campagna, CCR #495

Q. "Of the project owned by declarant or such transferee. Any such division boundary line change or re-platting shall not be in violation of the applicable subdivision and zoning regulations."

Now, the declarant which is Foothills did not own any portion of Dragon Ridge Golf Club in 2012, correct?

A. That calls for a legal conclusion.

Q. Do you know if Foothills Partners owned any part of the golf course property in 2012?

A. Foothills Partners did not.

Q. And when the term "board of directors" is used in this subsection, that's referring to the board of directors of the homeowner's association, correct?

A. Correct.

Q. Now, it's my understanding that the lot lines for 594 Lairmont Place were changed, correct?

A. Correct.

Q. And they were changed to include a portion of the golf course; is that correct?

A. Correct.

Q. Do you know if any prior written approval of the board of directors was received prior to those boundary lines being changed?

A. Board of directors, no.

Q. If someone were to back up -- sorry. Who is supposed to submit the request for written approval? It doesn't seem to indicate that in this section.

Do you know?

A. No.

Q. Do you know why written approval was not received from the board of directors for the change of boundary line for 594 Lairmont Place if it was required by the CC&R's?

A. It was done through the declarant, not through the board of directors.

Q. Why was it done through the declarant if 12.9 requires it to be done through the board of directors?

A. I don't read that it's required by the board of directors.

Q. It says "No unit shall be subdivided or it boundary line changed except with prior written approval of the board of directors."

A. That's not the entire section.

Q. And then it says, "Declarant, however, for itself and any transferee of developmental rights pursuant to section 15.1 hereby expressly

Rich.

Q. And how did you do that? Did you go out there and look at it, or did you just draw it on the map? How did you actually determine the new lot lines?

A. I believe I put together an exhibit based upon suggestions of Michael and Shane for the size of the area. And I discussed it with golf course operation's people to find out how much of the area there was playable, what was in-bound, out of bounds, and what was non golf-able area. And then I put together an exhibit that was reviewed by Michael, and we discussed it with Rich.

Q. Okay. So let me make sure I understand this. So Michael and Shane had an idea of what area they thought should be included in the additional lot line, correct?

A. I don't recall. I don't know what they did.

Q. I thought you said that they had given you some ideas and you took that and made an exhibit from. So I'm just trying to --

A. I got a request whether it was possible to remap that area based upon a discussion I wasn't privy to between Michael and Shane.

I said yes, and then I suggested an area that was possible. And then they might have had a further conversation as to the size or whether it was acceptable, but I was approached whether it was possible and put an exhibit together of what was possible.

Q. And were you approached by Michael or Shane about being possible?

A. I was e-mailed by Michael.

Q. Now, Mr. Malek testified that prior to his purchase of 594 Lairmont Place, he was told that the current owner of 594 Lairmont was in talks about getting the golf parcel.

Do you have any recollection of that happening?

A. No.

Q. So the first time you were aware that anyone wanted to increase 594 Lairmont to include a portion of the golf course was from when Mr. Malek expressed that through his, I guess, through Michael Doiron?

A. Was the e-mail I received from Michael.

Q. And do you remember about when that e-mail was received?

A. I believe it was July 2012.

Ex. 1-C

EXHIBIT 1-C

Ex. 1-C

DRFH VENTURES, LLC

Business Entity Information

Status:	Active	File Date:	12/22/2003
Type:	Domestic Limited-Liability Company	Entity Number:	LLC19977-2003
Qualifying State:	NV	List of Officers Due:	12/31/2015
Managed By:	Managers	Expiration Date:	12/22/2503
NV Business ID:	NV20031201643	Business License Exp:	12/31/2015

Additional Information

Central Index Key:	

Registered Agent Information

Name:	RICHARD C MACDONALD	Address 1:	552 S STEPHANIE ST
Address 2:		City:	HENDERSON
State:	NV	Zip Code:	89012
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent		
Status:	Active		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - RICHARD C MACDONALD

Address 1:	1730 W. HORIZON RIDGE PARKWAY, SUITE 120	Address 2:	
City:	HENDERSON	State:	NV
Zip Code:	89012	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization

Ex. 1-D

EXHIBIT 1-D

Ex. 1-D

APN: 178-28-520-001

(11)

Inst #: 20130107000122 6
Fees: $27.00
N/C Fee: $0.00
01/07/2013 10:52:44 AM
Receipt #: 1447649
Requestor:
HENDERSON CITY
Recorded By: GILKS Pgs: 11
DEBBIE CONWAY
CLARK COUNTY RECORDER

Type of Document:

City of Henderson Zoning Ordinance No. 2986
ZCA-06-660018-A-15 – MacDonald Highlands – Golf Hole 9

Recording requested by:

City of Henderson

Return to:

City Clerk
240 Water Street
PO Box 95050
Henderson, NV 89009-5050

This page added to provide additional information required by NRS 111.312 Sections 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

PLTF4601

ORDINANCE NO. 2986
(ZCA-06-660018-A15 – MacDonald Highlands - Golf Hole 9)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING ORDINANCE NO. 2869, THE ZONING MAP, TO RECLASSIFY CERTAIN REAL PROPERTY WITHIN THE CITY LIMITS OF THE CITY, DESCRIBED AS A PORTION OF SECTION 27, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D. & M., CLARK COUNTY, NEVADA, LOCATED WITHIN THE MACDONALD HIGHLANDS MASTER PLAN, OFF MACDONALD RANCH DRIVE AND STEPHANIE STREET FROM PS-MP-H (PUBLIC/SEMIPUBLIC WITH MASTER PLAN AND HILLSIDE OVERLAYS) TO RS-2-MP-H (LOW-DENSITY RESIDENTIAL WITH MASTER PLAN AND HILLSIDE OVERLAYS), AND OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Henderson, Nevada, on December 4, 2012, committed to the rezoning of certain real property totaling 0.34 acres, more or less, located in a portion of Section 27, Township 22 South, Range 62 East, located within the MacDonald Highlands master plan, off MacDonald Ranch Drive and Stephanie Street from PS-MP-H (Public/Semipublic with Master Plan and Hillside Overlays) to RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays); and

WHEREAS, MacDonald Properties has made application for a zone change; and

WHEREAS, the City Council finds that all of the following criteria have been met:

a. The proposal is consistent with the Comprehensive Plan.
b. The planned development addresses a unique situation, confers a substantial benefit to the city, or incorporates creative site design such that it achieves the purposes of this Code and represents an improvement in quality over what could have been accomplished through strict application of the otherwise applicable district or development standards. Such improvements in quality may include, but are not limited to: improvements in open space provision and access; environmental protection; tree/vegetation preservation; efficient provision of streets, roads, and other utilities and services; or increased choice of living and housing environments.
c. The planned development complies with the applicable standards of Section 19.4.4, Master Plan Development Overlay, or Section 19.4.5, Planned Unit Development Overlay.
d. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
e. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.

f. The same development could not be accomplished through the use of other techniques, such as rezonings, variances or administrative adjustments; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. Ordinance No. 2869 of the City of Henderson, Nevada, entitled "Zoning Map adopted" is hereby amended as follows:

The Zoning Map, adopted by reference as an integral part of the title that outlines and defines the various zoning districts that are described in detail and that indicate which land uses are permitted and which are prohibited, shall be amended to reclassify certain real property within the City limits of the City of Henderson, Nevada, as more particularly described below and as depicted in Exhibit A attached hereto, consisting of one page:

Being a portion of Lot 55-1 of Final Map of MacDonald Highlands Planning Area 3 as shown per Book 136, page 21 of Plats, Clark County, Nevada, located in the Northwest Quarter (NW ¼) of Section 27, Township 22 South, Range 62 East, M.D.M., in the City of Henderson, County of Clark, State of Nevada, more particularly described as follows:

Commencing at the centerline intersection of MacDonald Ranch Drive and Stephanie Street as shown per Book 92, page 100 of Plats, Clark County, Nevada;

Thence along the centerline of said Stephanie Street, North 04°03'35" East, 389.11 feet;

Thence departing said line, North 85°56'25" West, 40.00 feet, said point being the northeast corner of the exterior boundary line of "The Foothills at MacDonald Ranch, Lot 10" A.K.A., Planning Area 10" as per map recorded in Book 92, Page 100 of Plats;

Thence along the northerly exterior boundary line of said Book 92, page 100 of Plats, South 81°15'00" West, 20.51 feet to the POINT OF BEGINNING;

Thence along said line the following two (2) courses:

South 81°15'00" West, 106.47 feet;

Thence North 62°21'00" West, 73.00 feet;

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

Thence departing said line, North 36°04'33" East, 65.60 feet;

Thence North 80°02'19" East, 41.47 feet;

Thence North 68°55'54" East, 29.88 feet;

Thence North 46°00'15" East, 56.90 feet to a point on a curve to which a radial line bears, South 65°17'22" West;

Thence southeasterly, along the arc of a curve to the left, concave northeasterly, having a radius of 155.00 feet, through a central angle of 16°00' 58", an arc distance of 43.33 feet to a point on a curve to which a radial line bears, North 49°16'24" East;

Thence southerly, along the arc of a curve to the right, concave westerly, having a radius of 644.00 feet, through a central angle of 07°00' 16", an arc distance of 78.24 feet;

Thence South 04°03'35" West, 13.64 feet to the northerly line of the exterior boundary line of said Book 92, page 100 of Plats, said point being the POINT OF BEGINNING;

containing 0.34 acres, more or less, 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).

SECTION 2. That the above-described amendment to the zoning map is subject to the following conditions and waivers:

PUBLIC WORKS DEPARTMENT CONDITIONS

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits.
2. Applicant shall submit a drainage study for Public Works' approval.
3. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements and dedicate any necessary right-of-way.
4. Applicant shall construct full offsites per Public Works' requirements and dedicate any necessary right-of-way.

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

5. Applicant shall revert and/or merge acreage of existing parcels per Public Works' approval and provide proof of completed mapping prior to issuance of a certificate of occupancy.
6. Applicant must apply for and receive approval to vacate unnecessary rights-of-way and/or easements per Public Works' requirements and provide proof of vacation prior to issuance of a certificate of occupancy.
7. FHA Type B drainage shall be allowed only where lots drain directly to public drainage facilities, public parks, or golf courses.
8. Streets shall be privately owned and maintained.
9. Applicant shall show the limits of the flood zone and submit a letter of map revision to FEMA prior to the Shear and Tie inspection.
10. Applicant shall update the master traffic study.

DEPARTMENT OF UTILITY SERVICES CONDITIONS

11. Applicant shall submit a utility plan and a utility analysis for Utilities' approval.
12. Applicant shall comply with the requirements of the master utility plan established for the project location.
13. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings. (Amended A12)
14. Applicant shall finalize the access and maintenance agreement covering public utilities traversing Dragon Ridge Golf Course.
15. Applicant shall participate in the MacDonald Ranch 2370 Refunding Agreement. (A-14)
16. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings for Planning Area 18. (A-14)
17. Applicant may be required to provide a water and/or sewer system capacity analysis covering the overall water and/or sewer system providing service to the project, prior to submitting civil improvement plans to the City. Preparation of said capacity analysis shall be coordinated with the Department of Utility Services. (A-14)
18. Applicant may be responsible for performing water and/or sewer system upgrades in accordance with the results of the system capacity analysis or, at a minimum, applicant shall be responsible for participating in a proportionate share of the costs to complete these system upgrades. (A-14)

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the International Fire Code is NRS 477.030 and Ordinance Numbers 2649 and 2738 as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

19. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted), and any other fire apparatus access roadway obstructions.
20. Applicant shall submit fire apparatus access road (fire lane) plans for Fire Department review and approval.
21. Applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon the review of the civil improvement drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on site.
22. Projects constructed in phases shall submit a phasing plan describing the fire apparatus access roads and fire hydrant locations relevant to each phase.
23. Applicant shall provide a dual water source as approved by Public Works and the Fire Department.
24. Applicant shall provide a minimum turning radius of 52 feet outside and 28 feet inside for all portions of the fire apparatus access road (fire lane). This radius shall be shown graphically and the dimensions noted on the drawings.
25. Applicant shall install an approved sprinkler system in all buildings/homes per the Hillside Ordinance.
26. Applicant shall provide an approved Fire & Life Safety Report prior to submitting for building permits. This report shall address fire access issues for the proposed school site. (A-14)

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

27. All private open space, landscaped areas within public rights-of-way, landscaping along public rights-of-way, and landscaping within drainage channels (arroyos) shall be installed by the developer and maintained by a property owners association, unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.
28. Developer shall submit a revised master development plan report, after City Council approval, listing all conditions of approval and waivers.

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

29. Permitted uses, prohibited uses, restricted uses, limited uses (uses) and property development standards shall be as approved by this application. In the case of a conflict between the approved uses as referenced in the Master Plan and the Development Code in effect at the time of master plan approval, and property development standards and City ordinances, unless specifically approved as a waiver, the most restrictive shall prevail.
30. Developer shall conform with the multifamily provisions of Title 19 with a maximum build-out of 370 multifamily and 680 single-family dwelling units.
31. Approval does not endorse the site plan, uses or exhibits presented in support of this application.
32. Applicant shall submit two detailed private park plans for the Parks and Recreation Advisory Board, Planning Commission, and City Council approval. This condition is not a waiver of the park construction tax, which shall be collected from the individual homebuilders within the project. Specific improvements and timing for installation shall be determined as part of a park agreement.
33. Applicant shall comply with the current design standards for the development of all the RM-8-H zoned parcels to be consistent with the Hillside Ordinance and the adopted MacDonald Highlands Master Plan Design Guidelines.
34. All private open space, landscaped areas within private rights-of-way, landscaping along public or private rights-of-way and landscaping within drainage channels (arroyos) and slope easements shall be installed by the developer and maintained by the Property Owners Association unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.
35. The developer shall submit revised design guidelines (book form) for City Council approval. Any amendments to the guidelines that are determined to be minor by Community Development may be revised at staff level.
36. Each subdivision approved shall be credited with common usable open space from the development of the two proposed private park sites and trails to be provided by the master development. Each subdivision approved as a planned unit development shall attempt to provide the minimum amount of common usable open space within the physical boundaries of, or immediately adjacent to, the subdivision. Private open space improvements shall be determined through the approved development standards and design guidelines for the entire Master Plan Overlay District.

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37. The applicant shall work with staff to determine unit counts and that the percent of land disturbance is in accordance with the Hillside Ordinance, not only for the overall master plan but also on a planning area by planning area basis. If transfer of units and disturbance is proposed, applicant shall provide information on the sending and receiving planning areas to demonstrate that the site disturbance and unit counts balance for the overall master plan. Prior to any additional master plan amendments or subdividing any planning area, the applicant shall submit a Hillside Development Plan, which is subject to review and approval per Section 19.5.9.D.25 of the Development Code.
38. Planning Area 1 shall be permitted a maximum of 67 units; Planning Area 18 shall be permitted a maximum 150 units; and Planning Area 18A shall be permitted a maximum of 144 dwelling units. (Amended A-12)
39. Prior to issuance of building permits, applicant shall receive design review approval for Parcel 18A.
40. Total master plan site disturbance is limited to 713 acres. (Added A-12)
41. Parcel 20 shall be permitted a maximum of 236 dwelling units.

WAIVERS

a. Reduce front-yard setback to 14 feet for side-loaded garages and living areas of the house for Planning Areas 11 and 17.
b. Allow maximum building height of 59 feet for Parcel 18A.
c. Allow maximum cul-de-sac length of 2,530 feet for Parcel 18A.
d. Allow gated streets for Parcel 18A.
e. Allow Buildings 23 and 24 to be constructed within the sensitive ridgeline.
f. Allow two kitchens within a dwelling unit. (A-12)
g. Allow a maximum combined casita (guesthouse) area, with multiple structures allowed, of up to 25 percent of the gross living area of the primary residence. (A-12)
h. Allow a maximum cut height of 63 feet, a maximum fill height of 66 feet, and no maximum cut/fill length for Planning Areas 18 and 20. (A-12)
i. Allow fully vertical cut slopes with no additional stabilization in areas approved by a geotechnical report; allow 2-to-1 fills in areas approved by a geotechnical report. (A-12)
j. Allow natural undisturbed areas to include areas of disturbance with revegetation and varnishing. (A-12)

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k. Allow rockery walls a maximum height of 18 feet, with horizontal offsets to be determined by the geotechnical and structural engineers. (A-12)
l. Allow a reduced curve radius of 50 feet within a modified knuckle. (A-12)
m. Allow 12 percent maximum grade for all roadways within 50 feet of a house. (A-12)
n. Allow streetlights to be placed only at intersections. (A-12)
o. Allow a minimum of 125 feet between intersections, measured centerline-to-centerline. (A-12)
p. Allow 26 dwelling lots/dwelling units to be constructed within the sensitive ridgeline setback.
q. The maximum height of the cuts and fills shall not exceed 56 feet on the cut height and 48 feet on the fill height as shown on the grading plan. The maximum Cut/Fill length shall not exceed 950 feet. (A13)
r. The minimum centerline radius for roadways shall be 140 feet without super elevation. (A13)
s. Allow a maximum fill height (depth) of 85 feet for the school site.
t. Allow a private street section of 29 feet back-of-curbs without the 6.5-foot aprons for Planning Areas 18 and 20, and a public street section of 37 feet back-of-curbs without the 4-foot aprons to access the school site.

SECTION 3. If any section, subsection, paragraph, clause or provision of this Ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section or subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 4. All ordinances, or parts of ordinances, sections, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 5. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on December 21, 2012, in the Review Journal.

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

PASSED, ADOPTED, AND APPROVED THIS 18th DAY OF DECEMBER, 2012.

Andy Hafen, Mayor

ATTEST:

Sabrina Mercadante, MMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on December 4, 2012, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

"COUNCIL AS A WHOLE"

Thereafter on December 18, 2012, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held December 18, 2012, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:	Andy Hafen, Mayor Councilmembers: Sam Bateman Debra March John F. Marz Gerri Schroder
Those voting nay:	None
Those abstaining:	None
Those absent:	None

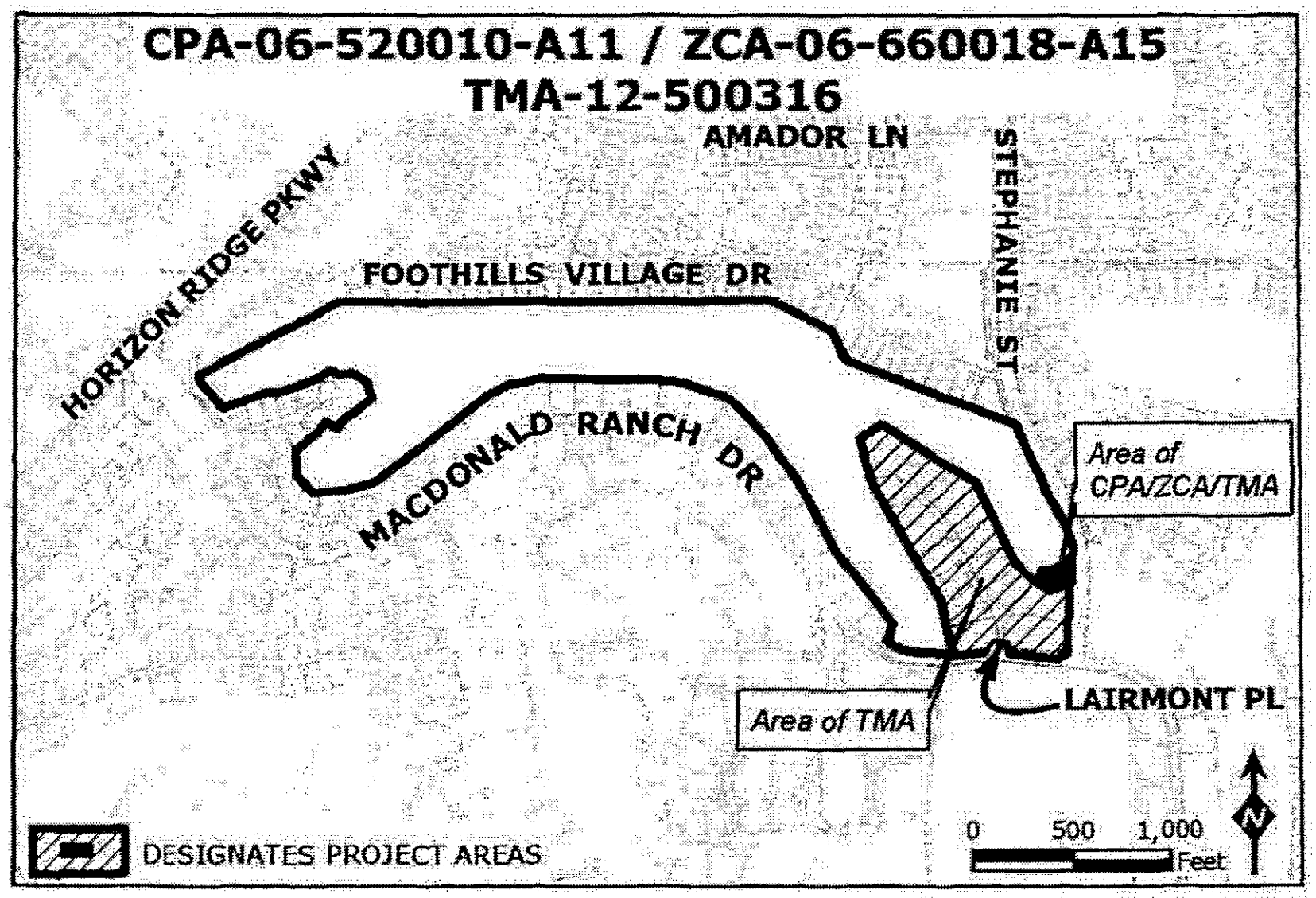
Andy Hafen, Mayor

ATTEST:

Sabrina Mercadante, MMC, City Clerk

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is enclosed in [bold brackets], and language proposed to be added is underscored.

EXHIBIT A
ZCA-06-660018-A15 – MacDonald Highlands (Golf Hole 9)



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Ex. 1-E

EXHIBIT 1-E

Ex. 1-E

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC. is a Nevada corporation; MACDONALD PROPERTIES, LTD., a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X, inclusive; ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	Case No. A689113 DEPT. NO. I

DEPOSITION OF MICHAEL TASSI

LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015

Reported by: Johanna Vorce, CCR No. 913

JOB NO.: 235400

A. Yes.

Q. And is that document, to your understanding, memorialized in Exhibit C and D that are in front of you?

A. Yes, it is.

Q. So particularly in this case then, when would the physical maps pertaining to the zoning change have been updated?

A. We updated the physical maps on this particular item on January 24th.

Q. What year was that?

A. 2013.

Q. After those physical maps were updated, as you stated previously, the process would have been to send them to the IT Department, correct?

A. That's correct.

Q. Do you know when the website was updated to incorporate those zoning changes?

A. I do not know.

Q. Do you have an approximate timeline as to when they were updated?

A. Approximately the typical process. Approximately, one to two weeks.

Q. Are you aware if it's ever taken longer than a month to update the website after physical maps have been changed?

A. I am not aware.

Q. Do you know if there's anybody at the City of Henderson who knows the exact date as to which those maps would have been updated online?

A. I don't know who that would be.

Q. As the planning manager of the City of Henderson, what is the longest amount of time you're aware it has taken to update zoning changes online once the physical map has been updated?

A. That's not something I prepared for. I don't know.

Q. But in your personal knowledge as someone who's worked on zoning changes, do you have an estimate of the amount of time which is the longest amount of time you understand it's taken to update those?

A. I -- I don't. I looked at our typical process. I thought that's what we were asked to do.

MR. KEMBLE: He just asked in your personal.

THE WITNESS: Okay. Yeah. I'm sorry. I don't. I don't know.

BY MR. GUNNERSON:

Q. So you had mentioned before that it takes one to two weeks to your understanding, correct?

A. For a map to be -- once we submit it to IT Department for a map to be online, yes, one to two weeks.

Ex. 1-F

EXHIBIT 1-F

Ex. 1-F

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. 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.	No. A-13-689113-C Dept. No. I

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

BY MR. GUNNERSON:
Q. I didn't mean that. It stated, "My buyers are very serious," correct?
A. Yes.
Q. And by "my buyers", she is referring to you, your family, the trust, correct?
A. Yes, uh-huh.
Q. And you were very serious, correct?
A. Yes.
Q. It also says you have no restrictions regarding seeing the interior, correct?
A. Yes, that is what she wrote.
Q. And that is true, right?
A. Yes.
Q. And then it says if you go down a little bit more, second to last line, "And they will take property as is." Is that correct?
A. That is what she wrote.
Q. But is she relaying what you understood you and your family and the trust position to be, that you would take the property as is?
A. It depends on how you define as is. I don't know how she was defining as is.
Q. But that is what she says here?

A. That is what she wrote, yes.
Q. Do you recall telling her that you would take the property as is?
A. I don't recall saying that.
Q. Do you recall having any discussions with any of your family about taking the property as is?
A. We understood from Bank of America that we would take it as is in terms of the structural problems that were inside the house, the cosmetic problems that were inside the house, and that was our understanding of what as is meant.
Q. As a real estate agent when somebody takes a property as is, what does that mean?
A. That means they take the property as they see it. If there are leaky faucets, they take them. If there is a problem with a wall that has cracks in it, the wood is warped, they take it that way. It deals with structural problems inside the house.
Q. What if there were environmental concerns with the dirt on the property, would that "as is" also include that?
A. Sometimes.

Q. Did you intend for it to cover that in this case?
A. I didn't write this.
Q. But you said you intended that you would take it as is as it pertains to structural parts, correct?
A. Yes.
Q. I am asking did it include some nonstructural parts such as any potential environmental concerns with the property?
A. We never discussed that.
Q. Did as is concern regarding any potential problems in the neighborhood?
A. My understanding of as is and the way I always functioned as a broker realtor is as is has to do with the house structure itself and when you take a property as is, you assume that the seller is going to make no remediation to the structural problems in the house.
Q. And in fact when you buy a property as is, that usually includes language in your agreement that states it as such, correct?
A. Yes.
Q. And usually in your agreement, you outline then in detail or a little more detail

then what as is means; is that correct?
A. Yes.
Q. But would you agree with me that the way Ms. McGill states it here, she doesn't make it clear what you meant by as is, correct?
A. I don't know what her idea of what as is was.
Q. I understand that. I am not asking what her idea was or what her thoughts were.
I am saying reading the letter, she doesn't give any further explanation as to what as is means in here, does she?
A. No, she doesn't explain.
Q. During this time that you were negotiating the property, do you recall having any verbal communications with anyone at Bank of America or their real estate agents?
A. Are you referring to Michael?
Q. Michael would have been one of the real estate agents, so yes, Michael would have been included in that group?
A. The negotiations were running through Siobhan. She was my agent. She was the one dealing with the appropriate people. That is what an agent is.

real estate transaction, correct?
A. Yes.
MS. CLINE: I'm sorry. What was that last question?
(Record read as follows:
"Q. Again, you would have read this document as you read all documents pursuant to a real estate transaction, correct?
A. Yes.")
BY MR. GUNNERSON:
Q. The last paragraph, the third sentence starts with you.
A. Uh-huh.
Q. It says, "You may obtain more current information regarding the zoning and master plan information from the City of Henderson, Planning Department, 240 Water Street, Henderson, Nevada, 89015," and it gives a telephone number. The Henderson city information is bolded and underlined. Do you see that?
A. Yes.
Q. Did you or to your knowledge did anyone else associated with you go to the City of Henderson Planning Department to look at

zoning or master planned information?
A. There would have been no reason to. It says here this information is current. It says on the top of it when they gave it to me that it is the most recent zoning and land use information. So as of April 13th, they were telling me you don't have to go there. If after you close there is a -- you want to know if something happened, fine. But as of this date, here is your current zoning information, and nobody told us about what was going on with the lot next door.
Q. Ms. Rosenberg, my question was really simple. I understand you have an explanation. If your attorney wants you to explain further the response to the question, she can do that. That is fine. My question that I am asking is this states you may obtain current information regarding the zoning master planned information from the City of Henderson. Did you or are you aware of anyone associated with you go to the City of Henderson Planning Department to get further information?
A. There was no need.
Q. That is not the question. Yes or no,

did you or anyone associated with you go to the City of Henderson Planning Department to get current information?
A. No. Had they gone, it was not recorded and they would not have found it out anyway.
(Deposition Exhibit W marked.)
THE WITNESS: If I could just add something. It says this information is current and it says if you want more current. There is no such thing as more current. Current by definition means something that as of this moment, this is the situation.
BY MR. GUNNERSON:
Q. What is the moment on that?
A. It is April 13th.
Q. That is not what the document says. The first line of the last paragraph, what does it say it is current on?
A. It says this information is current and then it says it was plotted on February 2010, but it doesn't say -- it says this is information is current. It is two parts of the sentence.
Q. It says, and I will read it word for

word, "This information is current and plotted as of February 2010." Isn't that correct, isn't that what it states?
A. Well, that is not how I read it.
Q. Is that what it states?
A. That is what it says, but the way I read it is as a two-part sentence. Also, it says on top -- if you feel that that is confusing, it says on top that this is the most recent zoning and land use information, so you clarified it on top and you said don't worry about it, this is the most recent zoning and land use information that you can get.
Q. First of all, I didn't do anything because I am just the attorney in this case.
Secondly, I just asked you for that, and again, if your attorney wants you to clarify this, she can. Unfortunately right now, I am trying to get through this as quickly as I can and if you want to add more, have your attorney ask you more questions at the end. That is permissible. My question was what that read and you agreed that that is how that reads and that is what I was looking for, so I thank you.
I would like to go to the next exhibit

which is marked as Exhibit W --

MS. CLINE: I want to object to your last statement because it misstates the prior testimony, but we could go ahead and go forward now.

MR. GUNNERSON: I disagree.

BY MR. GUNNERSON:

Q. We will go ahead and go to the next one which is Duties Owed by a Nevada Real Estate Licensee. Do you see that?

A. Yes.

Q. Again, at the bottom, I see signatures.

A. Yes.

Q. It appears to have your signature and your husband's; is that correct?

A. That's correct.

Q. This is a true and correct copy of the Duties Owed by a Nevada Real Estate Licensee?

A. Yes.

Q. And this is to state what your -- am I correct in that this is stating what duties your real estate agent holds to you; is that correct?

A. This is approved by the Nevada Real Estate Division, so it is a boilerplate that

they give to you when you employ them.

Q. So outlining what their duties are, correct?

A. Yes.

Q. If you look down towards the bottom half of the page, Item Number 6, do you see that?

A. I do.

Q. It says advise -- this is again your real estate agent's duty is to "advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee". Do you see that?

A. I do.

Q. Did your real estate agent ever discuss neighboring lot lines with you?

A. No.

Q. Did she ever advise you to seek an appraisal regarding lot lines of the properties or a survey of lot lines regarding the properties?

A. No.

Q. If she didn't give you this advice to obtain experts regarding these issues, why is she included as a party to this lawsuit?

A. Because she had done nothing wrong. Had she told us to go get these people, she could have looked up the lot lines and they would not have found anything because it is not recorded. They would have seen the same lot lines as my son David saw and that we saw in the preliminary title, so she did absolutely nothing wrong. There is nothing that set off an alarm that said you should go get a survey done -- Bank of America should have told us if there was a problem where we needed to get a survey, but there was absolutely no indication that we needed to get a survey and that anything had changed. As I said before, even had we done a survey, it was not discoverable.

Q. Did your real estate agent know how important the view was to you?

A. Yes.

Q. Did she know how important privacy was to you?

A. Yes.

Q. How important it was that you had a complete and expanding view of everything around you?

A. Yes.

Q. And yet knowing this and how important that was to you, you are telling me she did not advise you to obtain an expert opinion as to the lot lines surrounding your property; is that correct?

A. That is correct. That is not the norm. I have been doing this for 25 years. I never tell people to get a survey of the property because you have a preliminary title and when you get the title report, it tells you the outlines of the property. There is absolutely no reason.

When the title company did this, they didn't discover it because it was not discoverable because it had not been recorded, so she did absolutely nothing wrong.

(Deposition Exhibit X marked.)

BY MR. GUNNERSON:

Q. I am handing you what we marked as Exhibit X. This is entitled Walk-Through Inspection and Release. Do you see that?

A. I do.

Q. There are signatures at the bottom of the first page. Do you see that?

A. Yes.

Q. And for the record, this is marked as Exhibit X. And then there are signatures as well as initials at the bottom of the second page, correct?
A. Uh-huh.
Q. Are these yours and your husband's initials and signatures?
A. They are.
Q. As far as you could tell, this is a true and correct copy of the Walk-Through Inspection and Release?
A. Yes.
Q. It appears in the middle of the first page and the top of the second page, there is a line through the inspection with the word handwritten waived. Do you see that?
A. Yes.
Q. Do you recognize whose handwriting that is that says waived?
A. It is an assumption. I think it is Michael, but I don't know. I don't know. I am guessing.
Q. It is not yours, correct?
A. That is not my handwriting, no.
Q. And is this true that you waived the

Walk-Through Inspection and Release?
A. It looks like it.
Q. And you did say, however, you did conduct an inspection; is that correct?
A. Yes.
Q. When you conducted the inspection, you said you didn't really notice Malek's property, it was a bare lot, correct?
A. Yes.
Q. Do you recall seeing any stakes in the bare lot?
A. No.
Q. Because you don't remember looking at the bare lot at all, correct?
A. I would assume in the course of normal looking I might have glanced over at the lot, but it was not on my mind that I needed to look at the lot because I didn't have any idea there was any problem.
Q. Again, you don't recall looking at a lot or seeing anything on the lot; is that correct?
A. That is correct.
Q. If you waived the walk-through inspection, why did you then go forward with an

inspection?
A. We went through an inspection because we needed to know what the problems were. Just like with the other house, the other Lairmont house, we needed to know how pervasive the problems were and we also did try to get them to pay for some of the problems, which they -- you saw there was a letter where we tried to ask them to fix some of the problems, and so basically I needed to know how bad it was.
Q. When you asked them to fix the problems, what was their response?
A. Well --
Q. Do you recall?
A. I don't recall.
Q. In going through this process of getting ready to close, do you recall -- we talked about communications you had with Michael or her office or MacDonald Highlands Realty during the negotiation phase. We will call it the due diligence phase or the pre-close of escrow phase. Do you recall having any conversations with Michael or Jim or anyone at their office?
A. Yes.

Q. Who did you have a conversation with?
A. We had a very lengthy conversation with Michael.
Q. Who is we?
A. My husband, David, his wife. We were all in her office together.
Q. And you are in Michael's office?
A. Yes.
Q. And do you recall when this was?
A. It was the day of the inspection.
Q. The day of the inspection. So it was -- did she attend the inspection with you?
A. Yes. She came over to the inspection.
Q. Do you recall what day the inspection occurred on?
A. I think it was April the 13th. Is that when it was? Yeah, April the 13th. That is when she gave us this.
MS. CLINE: I am showing her Exhibit B. It is the disclosure.
THE WITNESS: That is the date she gave us that paper.
BY MR. GUNNERSON:
Q. Exhibit B, which is the zoning disclosure, you are saying she gave that to you

on the day you inspected the property?
A. Yes, when we went to the office afterward.
Q. Did you go to her office after the inspection or before?
A. After.
Q. Who met you at the property to do the inspection?
A. She was at the property and the inspector was there.
Q. Was your real estate agent there?
A. Yes.
Q. And your husband was there, correct?
A. Yes.
Q. And David and his wife were there, correct?
A. Yes.
Q. And so my count, there were seven people, is that correct, two real estate agents and an inspector?
A. Uh-huh, seven.
Q. Who was the inspector?
A. I don't remember his name.
Q. And who let you into the property?
A. Siobhan arrived first and let the

inspector in.
Q. And how far along were you through the inspection when you say Michael showed up?
A. I don't remember exactly.
Q. You don't remember exactly?
A. I don't remember exactly when she came.
Q. You do recall, however, seeing her in the property?
A. Yes.
Q. Or was it just that you recall talking with her after the inspection?
A. No. She was in the property.
Q. And afterwards -- during that inspection, did you have any conversations with Michael?
A. Yes.
Q. What conversations did you have with Michael during the inspection?
A. She was out with us by the pool when they were inspecting the pool and she looked out and she was telling us how beautiful this is, what a wonderful view, you are so lucky to have this property, my God, you are on the 9th hole and right across from the driving range, it is

such a beautiful property. She was very, very auditory about the property and how smart we were to get this property.
Q. It is a beautiful property.
A. It is, yes.
Q. It has spectacular views.
A. Yes, but she neglected to mention what Mr. Malek was intending to do and that they had sold him a piece of the golf course, and she had every opportunity to do so.
Q. You are saying she did not mention it?
A. She did not mention it.
Q. And did you talk with her anymore, have any other conversations with her during the inspection that you recall?
A. Well, what we did is she said she was going to go back to her office, to come over after the inspection and we would all talk at her office.
Q. And so did she leave right then and you finished the inspection or did she stay with you through the inspection?
A. No, we didn't stay the whole time. We finished the inspection and then we all went across the street.

Q. Just as a reminder, let me finish the questions because it is harder on the court reporter than it is on me.
And so do you recall any other conversations? I don't recall what you said. Did you have any other conversations with her at the property during the inspection?
A. I am sure we did chitchat.
Q. Nothing that you recall?
A. No. I remember being outside by the pool and having that conversation.
Q. So she is there at the inspection, you chitchat with her, but the only conversation you recall is the one where she talks about the beautiful view?
A. And how wonderful the house is.
Q. And then you went back to her office?
A. Right.
Q. And what was the purpose of the discussion at the office?
A. She asked us to come back to the office. She took us in. There is a big room that has sort of a diagram of all of the lots, and we all stood around the lots, and she said here is your lot and she showed us all of the

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delineation and possible lots, none of which showed Mr. Malek's piece. Everything was delineated exactly. It is still that way. If you go to the office today, it doesn't show Mr. Malek's land piece jutting out.

She was telling us how wonderful the community was and we were so lucky to be in it, and we all went into her office and it was so crowded where my son David had to stand by the door. She told us all about the people living in the community and they are all rich, there was one lady who had this very, very big, long house and she got very angry at her neighbor who wouldn't allow her to raise her RV garage thing, so she went to her CC & R's, and she said we really care about our CC & R's here. She researched with a lawyer and she found out she could put in very low trees, and she put in those low trees and they grew like crazy and she obliterated the man's view, and when the guy came and said what did you do, she said I did it legally, that is what the CC & R's said.

So she was basically telling us this was a community that had restrictions, that it had covenants, and you could depend on what they

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told you. She told us all tremendous gossip about a lot of people. She told us that the people whose house it was -- she had listings on the two houses across the street from us. She said both of them are way overpriced, she couldn't believe they had her put them up for those prices, it is ridiculous, which is not the way an agent speaks about your own listings. Being an agent myself, I know you don't speak like that. She told me she was going to be my best friend, she was going to introduce all of us to all of the people in the community, it was such a wonderful community, my husband was so lucky, we lived across the street, he had his 9th hole, he could walk, he had his driving range, oh, my God, he had the 9th hole and he had this gorgeous view, and she went on and on. We were there a very, very long time and we walked out feeling very, very good.

Q. Other than discussions about how wonderful the property is and what is going on in the community, and I understand that during that, you said what you recall her saying and then what it means. The part where you talked about what that means, that is your

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interpretation, correct?

A. That was what she was trying to tell us.

Q. You don't know what she was trying to do, do you? You are not Michael, right?

A. Right. If not, then she was --

Q. You are not Michael, correct?

A. Right.

Q. So you don't know what she was tying to do, correct?

A. I don't know what she was trying to do.

Q. When you state what she was trying to do, you don't know if that is true or not?

A. I do not know.

Q. After those discussions talking about the community and how beautiful your home is and so on and so forth, what else did you talk about?

A. She gave us the CC & R's, she gave us the design booklets.

Q. The zoning disclosure, correct?

A. The zoning disclosure, no.

Q. Do you recall --

A. That was in the CC & R book.

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Q. Do you recall receiving any other documents?

A. The CC & R book by the way has plot maps. She gave us this and --

Q. I am going to cut you off because this is going really long and we are going to run out of time --

MS. CLINE: She is trying to explain to you what she did.

MR. GUNNERSON: Would you re-ask my question, please?

(Record read as follows:

"Q. Do you recall receiving any other documents?")

MS. CLINE: She was explaining what documents she was given.

BY MR. GUNNERSON:

Q. Do you recall receiving any other documents?

A. Yes.

Q. What other documents did you receive?

A. I received the book of the CC & R, I received the design plans. Inside the CC & R book, there were plot maps that showed the land, the Lairmont land exactly as we have seen it,

MR. GUNNERSON: Let's take a quick break and go off the record.

(Discussion held off the record.)

BY MR. GUNNERSON:

Q. My question is who put in on Number 18 that the golf parcel had certain easements?

MS. CLINE: Objection. Form.

THE WITNESS: This is written by my lawyer.

BY MR. GUNNERSON:

Q. So your lawyer put that in the complaint; is that correct?

A. Yes.

Q. Thank you.

So if I wanted to find out what those certain easements are, I would have to ask your lawyers, right?

A. You could ask my lawyer, you could ask Paul Bykowski because he asked for them to be vacated, you could ask DragonRidge Properties. I don't know who you could ask, but there are several people you could ask.

Q. I am not interested in what other people think the easements are. I am interested in what you and your lawyers think they are.

That was the purpose of the question.

If you could go to Paragraph Number 55, Paragraph 55 states, "Michael Doiron, seller's representative, knew, or should have known, that the adjacent Malek Property lot lines were other than as presented to Plaintiff and had been amended in such a way to materially effect the value of the subject property or its use in an adverse manner." Do you see that?

A. I do.

Q. Malek Property says lot lines were other than what were presented to Plaintiff. Who presented those lot lines to you?

A. Michael.

Q. And are you referring back to then the conversation you had both during the inspection and at her office or are you referring to somewhere else?

A. Also in her literature, in her listing agreement, she shows plot lines, I believe; and in her conversations, she never talked about anything having changed with the Malek property. She absolutely knew about it because she was the broker on it. She sold it to Malek so she knew that this had happened, and she failed to

disclose to us. She had multiple opportunities to tell us as Bank of America's representative that there had been a material change to the property line, and she didn't do it. That is what we are alleging here.

Q. I see that. I understand when you said before that Michael had conversations when she talked about the view, how wonderful the property was, where she told you all of these wonderful things about what you could see and all of that, where she handed you the CC & R's, which they had in the office a layout of the properties.

Did anyone present to you lot lines, specific lot lines, not an assumption of lot lines but actual lot lines?

MS. CLINE: Objection. Form.

Go ahead and answer if you understand the question.

THE WITNESS: I told you there was a plot line map in the CC & R's and there was the display of all of the lots and exactly what their lines were, the plot lines were.

BY MR. GUNNERSON:

Q. Thank you. Just to be clear just to

check, when you are talking about lot lines were other than what was presented and I am asking how were the lot lines presented to you, you are talking about the plot lines or the lot lines that were in the CC & R's and on the display table in or near Michael's office?

A. And the title company.

Q. The title company presented you lot lines?

A. They gave us a preliminary title that showed lot lines and it did not show the Malek property.

Q. You are stating that your view of the title report provided lot lines?

A. Yes.

Q. Did it provide Malek's lot lines, the title report?

A. The original ones.

Q. So you are saying your title report showed Malek's lot lines?

A. It shows the adjacent property lot lines, I think. I am not sure. I am not sure.

Q. I don't recall seeing that. I don't have them with me, so I can't pull them up and ask you.

A. I am not sure.

Q. So you are not sure they do, but you think they might?

A. I thought they might.

Q. We could always go back and look at those and see if they are actually in the title report. I used to be an attorney for a title company for many years, and I don't recall seeing lot lines for adjacent properties in the title reports, but it may be in this one. I am not saying it is not. I appreciate that.

MS. CLINE: Just a point of clarification, when she says the CC & R's, I believe, and you could ask her about it, there is a binder that was handed that included the CC & R's and also maps. I don't think the maps were actually a part of the CC & R's.

BY MR. GUNNERSON:

Q. Did the CC & R's include maps?

A. Yes, in the binder.

Q. Did the binder include something more than CC & R's?

A. It had the maps.

Q. So were the maps a part of the CC & R's or were the maps separate from the CC & R's

in the binder?

A. I don't remember if they were separate.

MR. GUNNERSON: That is the binder, Counsel, you said you have --

MS. CLINE: I have them in my car and I could grab them later if you went.

MR. GUNNERSON: That would be helpful. They were not produced or they were just produced?

MS. CLINE: They were just produced, but it is easier to look at the binder format. It is a little bit confusing when they are all just scanned.

BY MR. GUNNERSON:

Q. How did you find out that the bare lot was being sold to Malek?

A. A friend of David's told him.

Q. Do you remember when that was?

A. That was after we bought the property.

Q. Do you remember how far past after you bought the property?

A. It would be a guess. Maybe a month or two. I don't know.

Q. Do you recall anything about the

manner in which David found out about it? Was there a conversation, was it an email, do you remember how David found out?

A. One of his friends approached Malek about possibly selling his property for him. In discussing that he would possibly sell the property, he mentioned I have three pieces, and the agent said to him what do you mean three pieces, you have two pieces. He said no, I have this third piece that is not recorded.

Q. Who was that that was the friend that was talking to --

A. Bob Diamond.

Q. Bob Diamond?

A. Yeah.

Q. And Bob Diamond was having this conversation with Malek because Malek was interested in using him as an agent or Bob Diamond approached Malek about buying the property?

A. They were having -- no. They were having a friendly conversation, and Malek was talking about possibly selling his land.

Q. So this is just Bob and Malek are friends, is that what you are saying?

A. They are not friends. They are acquaintances.

Q. And they just happened to have a discussion about this property?

A. They had a discussion about possibly selling his land.

Q. Bob Diamond is also friends with your son?

A. Yes.

Q. And Bob Diamond is the one who informed your son?

A. Yes.

Q. On Number 83 -- actually, I could have picked a lot of paragraphs because a lot of paragraphs make this statement -- strike that.

I think what I am going to do is I noticed that generally speaking, the claims against my clients are basically the same between the original complaint and the amended complaint.

Would you agree, Counselor?

MS. CLINE: Yes.

MR. GUNNERSON: I am going to mark as Exhibit Z, and we are going to go through them together and look at them both, and I don't

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value to Plaintiff if Malek builds a structure on the golf course parcel or modifies the fence line to incorporate the golf course parcel." Do you see that?

A. Yes.

Q. Is that still your position that the property has zero value if he builds on the lot?

A. It has zero value to us. We wouldn't stay there.

Q. Where would you go?

A. We would either reposition the house if we had to or buy an analogous house hopefully on Lairmont if something shows up or if we could find something that would even in some ways be equivalent to it. No, we would not stay there. We would not have bought the house if we had known this.

We are too old. We are at a stage in life where we just can't go through this kind of stuff. Basically, you want peaceful enjoyment of the house, you want to just move in. If there is a couple of leaky faucets, I don't care about it. I don't want to deal with litigation like we are right now.

Q. When you say the property has zero

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value --

A. To us.

Q. You are not saying the property has no value, right?

A. No. It says zero value to Plaintiff.

Q. In reality, you just told me you believe the replacement value or the insurance company believes the replacement value is over $4 million, right?

A. For the house, yeah, 3 1/2. It says zero value to us.

Q. I got that.

In Interrogatory Number 3, which is on the same page, Line 21, do you see that?

A. Yes.

Q. It says, "Plaintiff purchased the subject property based on its unique characteristics." Do you see that?

A. What line?

Q. Line 21 on the same page.

A. Okay, yeah.

Q. "Plaintiff purchased the subject property based on its unique characteristics including, but not limited to, its location in a Henderson golf course community," right?

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A. Yes.

Q. Even if Malek purchases the property, do you still have that with the subject property?

A. It is located in a golf course --

Q. That remains, right?

A. Yes.

Q. Its proximity to the 9th hole of the golf course, Malek's purchase of the bare lot and building whatever he does with those lots, that does not change your proximity to the 9th hole of the golf course, does it?

A. It absolutely does because they have to reconfigure the golf course. It is not the 9th hole that we bought. I don't know what he is building there. If he is building something obstructive, there is going to be fencing and a house and the 9th hole will not look like the way it does right now. It is going to look completely different.

Q. It doesn't say the look of the 9th hole. It says your proximity to the 9th hole. Your proximity of the home to the 9th hole is the same distance as it was previously, correct?

A. I don't know if they will have to

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modify the 9th hole if he builds. I don't know.

Q. You are saying maybe --

A. Hypothetically, I don't know because he has not given us any papers to show what his plans are.

Q. He has. Nonetheless --

A. No. My attorneys told me they requested it, they keep requesting and they don't get any plans to show them what his intention is.

Q. They may have received them by now. I don't know if they have.

A. They did not.

MS. CLINE: I have not received all of the plans and I also have not received anything that says this is the final version that is going to be approved. It is not one that they said in any way this is definitely the way we want to build.

BY MR. GUNNERSON:

Q. But as far as you have not seen anything to indicate that the 9th hole is being moved, correct?

A. As of yet.

Q. Right. All you know is what happened

obstruct your view of the grass part of the 9th hole. Are those all correct statements?

A. Yes.

Q. And yet, you are making a claim that your view of the 9th hole is being obstructed even though you don't know any of those things; is that correct?

A. I am saying that these are all possibilities and if these possibilities --

Q. I am sorry to interrupt. I need you to answer yes or no.

Could you repeat the question?

(Record read as follows:

"Q. And yet, you are making a claim that your view of the 9th hole is being obstructed even though you don't know any of those things; is that correct?")

THE WITNESS: Yes.

MS. CLINE: I am going to object as argumentative. And, Counsel, could you tone it down a little bit?

MR. GUNNERSON: My tone is not going anywhere. I don't know what you are saying.

BY MR. GUNNERSON:

Q. Number 3, Page 3, Number 24, it also says the view, it says the golf course and the mountains; is that correct?

A. Yes.

Q. What mountains are you referring to there?

A. The mountains that you see from the house.

Q. When I looked out of your house, I saw mountains in the distance straight back behind the house and then around us towards the front of the house are a lot of foothills. When you say mountains, are you also including the foothills or are you referencing the mountains in the distance?

A. I am referencing the views from the back of the house.

Q. And then it says you also bought the property because of the living room. Does that remain the same if in fact Malek purchases and builds on the bare lot?

A. Well, the living room has this beautiful view. So if he builds into the view, then it is damage to the living room.

Q. I am not sure exactly. What you are saying is what you could see out the living room is what you mean here when you say the living room is unique. You are talking about the view from the living room is unique?

A. This says we bought it based on -- it still has a very nice living room; but if he builds something, it could have an obstructed view which doesn't have that.

Q. Even if he didn't buy the bare lot, he is still going to build on that property which you would still be able to see out your living room window, correct?

A. Yes, but you would see it peripherally.

Q. It also says you bought it because of the kitchen?

A. Yes.

Q. And the dining room?

A. Uh-huh.

Q. Do the kitchen and dining room change if Malek purchases the property and builds on it?

A. Not the kitchen, but possibly the dining room.

Q. Because of the view?

A. Yeah.

Q. And it says also the master bedroom, right, that is something that was unique?

A. Major league, yeah.

Q. Are you saying that -- has that changed as a result of him purchasing the property, the master bedroom?

A. That would be the most impacted if he builds on that piece of land.

Q. You are not talking about the master bedroom itself won't change, that remains the same as far as the carpet and the color of the walls and the furniture and the layout. What you are saying is the view from the master bedroom changes?

A. Yes.

Q. And you also talk about then the privacy created by the lack of residential building lots to the rear of the property, correct?

A. Yes.

Q. What lack of -- To the rear of the property is the 9th hole.

A. Yes.

understanding is that it is concerns about view and privacy alone and there is nothing else that is damaging you, the trust, or the property, the subject property?

MS. CLINE: Objection. Form, misstates prior testimony.

MR. GUNNERSON: Let me rephrase it then because your counsel is objecting. I want to make sure I get a question that she doesn't feel she needs to object to.

BY MR. GUNNERSON:

Q. Other than the concerns for view and privacy, whether it is your lack of disclosure of the purchase to affect your view and privacy -- strike that.

Other than view and privacy, how else has your property been damaged as a result of these claims against the Defendants?

A. Well, according to this, if you went out to try to resell it, you would have to sell it at a very, very reduced price.

Q. And why is that?

A. It tells you it went down in value by almost a million dollars.

Q. As a result of what?

A. As a result of if he builds.

Q. And --

A. If he doesn't build, that is a whole other thing.

Q. If he builds, it takes away what from you?

A. Read the report.

Q. I have. I want to know your thoughts. It takes away what from you?

A. It takes away the reason we bought this thing. We bought this thing because we wanted to be -- it is our dream. It was my husband's dream to be on the 9th hole, to be across the street from the driving range, to be in this beautiful gated community, to have peaceful enjoyment of the property, not to have another house with somebody staring from their window into your master bedroom. That was never the idea behind this.

Q. If your expert's report at BB is based entirely upon damages resulting from view and privacy, is that your understanding as to the basis for your damages?

A. I would have to think about it some more.

Q. Go ahead.

A. Right now? I would think that is the primary concern, privacy and view. It is also emotional distress. We have been spending so much time and effort on this thing, and fees for the attorneys and all of the fees and all of that. Those are the main damages.

Q. Sitting here today, and I think I will tell you your expert even talks about damages related to the purchase of the property like fees, title fees, recording fees, those kinds of things. Other than what you just said and what is contained in his report, are you aware of anything else that has damaged your property?

A. Well, that it has become public knowledge.

Q. But that hasn't damaged your property, right?

A. On resale it would. We would disclose to the next person. So as I said, it completely damages the value of the property.

Q. Because it takes away view and privacy?

A. Right.

Q. I just want to make sure. It seems to

me that everything is based on view and privacy. That is the basis of your damages, and I just wanted to make sure that that was it. So I thank you for your responses to that.

A. And the obstruction of the 9th hole. I am not an expert on golf courses so I can't tell you exactly what it would do to the 9th hole, but in preserving the integrity of the golf course the way it is now --

Q. But you don't own the golf course, correct?

A. No. But you had a reasonable expectation that when you bought the house that the golf course was going to remain the way it looked at that time and that is what we were represented.

Q. We have gone the rounds on this one already. I won't go again other than just to ask as far as your view goes, where Malek's property is and where the bare lot is, when you look out towards those, what view do you see? I am not talking about the 9th hole itself, meaning the green part of the 9th hole. I am not talking about the view of the valley or the Strip or the mountains in the distance.

A. **Yes.**
Q. Have you ever had clients who encountered litigation as a result of selling the bare land that they built a new house on?
MS. CLINE: Objection to form.
THE WITNESS: Not really.
BY MR. DEVOI:
Q. Not really, so it has happened?
A. **No. Not to my memory, no.**
MR. DEVOI: I don't think I have anything more at this time. Anybody else?
MR. GUNNERSON: I just have a few follow up questions.

FURTHER EXAMINATION
BY MR. GUNNERSON:
Q. Spencer Gunnerson again. Just as I was finishing my questions earlier, your counsel handed me these binders you say you received when you met with Michael Doiron. I am going to hand you first what appears to be the Design Guidelines. I don't know how we are going to mark this as an exhibit since I am not aware of what exhibit numbers these are.
MS. CLINE: I could figure out what

the Bates numbers are for these.
MR. GUNNERSON: Do you have that front cover -- Did you produce the front covers of these?
MS. CLINE: I don't know if I do. If you want, I can mark it separately and disclose it again.
MR. GUNNERSON: Let's mark it as next in line, the Design Guidelines. If we could, Counsel, if you could get me those numbers and put a blank in the transcript, is that okay?
MS. CLINE: Yes.
MR. GUNNERSON: And we could insert it in. What is the next exhibit number?
COURT REPORTER: II.
(Deposition Exhibit II marked.)
BY MR. GUNNERSON:
Q. I handed you what we marked as Exhibit II. We will mark it as Exhibit II. It is Design Guidelines that you claim were provided to you. Can you state to me when those appear to be revised as of?
A. **The last one?**
Q. Yes.
A. **September 1, 2006.**

(Deposition Exhibit JJ marked.)
BY MR. GUNNERSON:
Q. In addition to that, I am going to hand you we are going to mark as JJ. It is the Governing Documents, and that binder I believe if you open it up to the first page, there is, I believe, three maps on the front of that binder. Do you see that?
A. **Yes.**
Q. Those three maps we will mark JJ as the cover page, if we could, of the binder, and then Exhibit KK will be the first page of that plot map.
Could you open up that map you have right there and tell me the date on the bottom right-hand corner?
A. **10/06/03.**
Q. So October 6, 2003.
Could you turn to the second map and we will mark the second map as LL. Also, could you tell me the date it says on the bottom right-hand corner?
A. **11/06/03.**
Q. That is November 6, 2003, correct?
A. **Yes.**

Q. Turn to the next one, which we will mark as MM. Can you tell me on that map what the date is on the bottom right-hand corner?
A. **3/04/04.**
Q. Go ahead and close that. Is that all of the maps there at the front?
I didn't see any other maps in this binder. Do you see the one at the very end there? The one at the very end, if you open it up, it is not a plat map. It doesn't show the properties specifically, does it? It is a map of the valley; is that correct?
A. **It says gaming overlay area.**
Q. It doesn't show the lot lines for the properties, correct?
A. **No.**
Q. We will mark that as NN.
And then the next map at the end of the binder, which I believe is the last map, we will mark this as OO. That is a map it appears of the valley?
A. **It is a zoning map of Henderson.**
Q. And that does not show any lot lines as well, correct?
A. **It shows zoning.**

Q. But no lot lines on Lairmont Street, correct?
A. No.
Q. Is that correct?
A. Yes, that is correct.
Q. Are there any other maps that you could see in that binder?
A. I don't think so.
Q. I didn't see any either. I have no further questions.
MS. CLINE: Natalie, did you have any follow-up?
MS. WINSLOW: No.
MS. CLINE: If we could take a couple-minute break and I will have a couple of follow-up questions.
(Recessed from 7:07 p.m. to 7:17 p.m.)
(Deposition Exhibits KK - OO marked.)

EXAMINATION

BY MS. CLINE:
Q. Just a couple of things I want to clarify with you. When did your son, David, get

married?
A. He got married in 2010, got engaged in 2009.
Q. I am going to show you again what was previously marked as Exhibit P. The page that is Bates stamped BANA 000005, can you tell me what Paragraph 10 is?
A. Disclosures. Shall I read it?
Q. Yes.
A. "Within five calendar days of acceptance of this agreement, seller will provide the following disclosure and/or documents, each of which is incorporated herein by this reference. Check applicable boxes."
Q. Is there any box that is checked?
A. Buyer Real Property Disclosure Form.
Q. Buyer?
A. I'm sorry. Seller. It is late. Seller Real Property Disclosure Form.
Q. Is it your understanding that the Seller Real Property Disclosure Form if it was provided would be incorporated into this agreement?
A. Yes.
Q. Was a Seller Real Property Disclosure

Form ever provided to you?
A. Yes.
Q. I am going to hand you a document that we will mark as Exhibit PP.
(Deposition Exhibit PP marked.)
BY MS. CLINE:
Q. Have you seen this document before?
A. Yes.
Q. And what is it?
A. It is a Seller's Real Property Disclosure Form.
Q. If you look at the bottom of each of the pages, do you see initials?
A. Yes.
Q. On the right-hand side of each of the pages over buyer's initials, are those your initials?
A. That is mine and my husband.
Q. And just make sure on each of the pages that that is correct.
A. Yes.
Q. Can you tell me what this form is?
A. A Seller's Real Property Disclosure Form tells you basically everything you need to know about the property and they disclose their

knowledge of it.
Q. Can you tell me what it says on Number 11 on the pages that are Bates stamped MHR 000051?
A. It says are you aware of any of the following, and it says, "Any other conditions or aspects of the property which materially affect its value or use in an adverse manner."
Q. And what box was checked?
A. No.
Q. Is it your understanding that that was correct?
A. No, it is not correct.
Q. Is it your understanding that Bank of America who was the seller had knowledge of another adverse condition or aspect of the property which materially affects its value or use in an adverse manner?
A. Yes.
Q. Is there any other things provided within the seller's disclosures that you believe was answered incorrectly by the seller? You can take a second to look at it.
A. Whether the property was located next to or near any known future development.

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Q. And what was the answer?
A. And the answer was no.
Q. Is there anything else that you see?
A. Any encroachments, easements, zoning violations, or nonconforming uses, possibly.
MS. WINSLOW: What paragraph?
THE WITNESS: 2, land or foundation.
BY MS. CLINE:
Q. Paragraph 9 talks about common interest communities. Can you tell me what that says and which box was checked?
A. "Any common areas, facilities like pools, tennis courts, walkways or other areas co-owned with others, or homeowner association which has any authority over the property," and the box checked is no.
Q. Is that accurate?
A. Yes.
Q. Is it accurate that --
A. Is it accurate that they didn't know?
Q. Is there a common interest community?
A. Yes, there is a common interest community.
Q. If you go a little bit further to MHR 000372, do you recognize that page?

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A. Yes.
Q. What is it?
A. Property conditions, same page.
Q. Is there a change to that page?
A. Yes.
Q. From the first one that was marked as MHR 00051?
A. Yes.
Q. What is the change?
A. There were three changes, Number 9, (a), (b), and (c).
Q. When is that dated?
A. 5/10/13.
Q. Do you know who signed that or initialed it?
A. No.
Q. It wasn't you?
A. No, it wasn't me.
Q. Is it your understanding that the seller amended part of the disclosure form?
A. Yes.
Q. On the amended disclosure form or that amended page marked MHR 372, did they change Paragraph 11?
A. No.

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Q. So that still reads they are unaware of any other conditions or aspects of the property which materially affect its value or use in an adverse manner?
A. Yes.
Q. You have talked some about what you believe is important and what you appreciate about the property. Are you aware of what, if anything, was important about this property to your husband?
A. Yes. My husband grew up very poor and the money we have we worked for and he worked very, very hard all his life, and one of the things that he really wanted was to have a golf community, be on his street of dreams, and be able to enjoy his old age or our old age actually because we are heading to 70, in a nice, quiet, beautiful place.
He loved -- when we saw the house, not only did he love the fact that it was on the driving range -- it was across from the driving range and it was on the 9th hole, he loved when he looked out the flow of the land and it was so beautiful. He is very aesthetic. I am from Brooklyn and I have no aesthetic sense at all.

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He is extremely aesthetic. When he found out about this, he was so appalled that his dream was shattered. Now we are in litigation and we have to deal with all of this. Basically, this was the perfect house. It was the fulfillment of all of his dreams, and this is a big mess. It is really a mess.
The other thing is he is so committed to golf that our little grandson who is 15 months old, he took him across the street to see if he could get him fitted for golf clubs, and of course at 15 or 16 months you don't get fitted for golf clubs. He is in the house with the little golf club and showing him. His dream was he would finish out his medical practice and we would come out here and stay with the grandchildren and doing all of the things that it took him all of those years to accomplish. It has been a very long haul. We are very, very fortunate. A lot of very good things happened to us, but this is sort of a culmination of all of his hard work.
Q. You said earlier, you were asked the question before when Mr. Gunnerson was asking you questions about did you ever go to the

Ex. 1-G

EXHIBIT 1-G

Ex. 1-G

ZONING CLASSIFICATIONS AND LAND USE DISCLOSURE

Pursuant to NRS 113.070, requires that all purchasers of property in Clark County, Nevada receive a disclosure that contains the most recent zoning and land use information. That certain property is commonly known as Lot 3, Planning Area 10, address 590 LAIRMONT PLACE and located within MacDonald Highlands (formerly known as The Foothills at MacDonald Ranch).

Zoning Classifications and Master Plan Designations Information Required by NRS 113.070 (4), (5): The zoning classifications and master plan designations and the general land uses described therein, for the parcels of land adjoining the Subdivision are as follows:

North of the Subdivision:	Zoning: RS-6 & RS-2;	Master Plan: The Foothills at MacDonald Ranch
East of the Subdivision:	Zoning: DH Development Holding;	Master Plan: The Foothills at MacDonald Ranch
South of the Subdivision:	Zoning: RS-2;	Master Plan: The Foothills at MacDonald Ranch
West of the Subdivision	Zoning: RS-6 & RS-2;	Master Plan: The Foothills at MacDonald Ranch

Zoning classifications describe the land uses currently permitted on a parcel of land. Designations in the master plan regarding land use describe the land uses that the governing city or county proposes for a parcel of land. Zoning classifications and designations in the master plan regarding land use are established and defined by local ordinances. If the zoning classification for a parcel of land is inconsistent with the designation in the master plan regarding land use for a parcel, the possibility exists that the zoning classification may be changed to be consistent with the designation in the master plan regarding land use for the parcel. Additionally, the local ordinances that establish and define the various zoning classifications and designations in the master plan regarding land use are also subject to change.

The master plan if for the general, comprehensive and long-term development of land in the area and the designations in the master plan regarding land use provides the most probable indication of future development, which may occur on the surrounding properties.

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

RECEIPT

Purchaser(s) hereby ACKNOWLEDGES RECEIPT of this disclosure document as of the date set forth below.

Dated: 9-13-13

Purchaser: [signature]

Purchaser: [signature]

Deft EXHIBIT V
WITNESS B. Rosenberg
DATE: 12/8/14
CINDY HUEBNER, CCR

MHR000038

APP00116

Ex. 1-H

EXHIBIT 1-H

Ex. 1-H

87011512?

RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions and Earnest Money Receipt)

Date: March 13, 2013

Barbara and Fredrio Rosenberg ("Buyer"), hereby offers to purchase 590 Lairmont Place. ("Property"), within the city or unincorporated area of Henderson, County of Clark, State of Nevada, Zip 89012, A.P.N. # 178-27-218-003 for the purchase price of $ 2,160,000.00 (Two million one hundred sixty thousand dollars) ("Purchase Price") on the terms and conditions contained herein:

BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

$ 325,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☒ presented with this offer -OR- ☐ to escrow company with in 24 hours of acceptance

(NOTE: It is a felony in the State of Nevada-punishable by up to four years in prison and a $5,000 fine-to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

$ _____ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) _____. The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

$ _____ C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN ON THE FOLLOWING TERMS AND CONDITIONS:
☐ Conventional, ☐ FHA, ☐ VA, ☒ Other (specify) CASH
Interest: ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to exceed _____ %. Initial monthly payment not to exceed $ _____, not including taxes, insurance and/or PMI or MIP.

$ _____ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____
Interest: ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to exceed _____ %. Monthly payment not to exceed $ _____, not including taxes, insurance and/or PMI or MIP.

$ _____ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM."

$ 1,835,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

$ 2,160,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredrio Rosenberg BUYER(S) INITIALS: BR / FR

Property Address: 590 Lairmont Place SELLER(S) INITIALS: _____ / _____

2. **ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:**

A. **NEW LOAN APPLICATION:** Within N?A business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice; (2) authorize ordering of the appraisal (per lender's requirements); and (3) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer ☐ does -OR- ☐ does not authorize lender to provide loan status updates to Seller's and Buyer's Brokers, as well as Escrow Officer. Buyer agrees to use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. **CASH PURCHASE:** Within ONE business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

C. **APPRAISAL:** If an appraisal is required as part of this agreement, or requested by Buyer, and if the appraisal is less than the Purchase Price, the transaction will go forward if (1) Buyer, at Buyer's option, elects to pay the difference and purchase the Property for the Purchase Price, or (2) Seller, at Seller's option, elects to adjust the Purchase Price accordingly, such that the Purchase Price is equal to the appraisal. If neither option (1) or (2) is elected, then Parties may renegotiate; if renegotiation is unsuccessful, then either Party may cancel this Agreement upon written notice, in which event the EMD shall be returned to Buyer.

3. **SALE OF OTHER PROPERTY:**

This Agreement

☒ is not -OR-

☐ is contingent upon the sale (and closing) of another property which address is _____.

Said Property

☐ is currently listed

☐ is not -OR- ☐ is presently in escrow with _____.

Escrow Number: _____. Proposed Closing Date: _____.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

4. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(B) of this Agreement, all items are transferred in an "AS IS" condition.

A. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s), window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(s), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

B. The following additional items of personal property: Per MLS listing terms

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after execution of this Agreement ("Opening of Escrow"), at seller's choice title or escrow company ("Escrow Company" or "ESCROW HOLDER") with _____ ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement and receipt of the EMD (if applicable). ESCROW HOLDER is instructed to notify the Parties (through their respective Brokers) of the opening date and the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited per the Earnest Money Receipt Notice and Instructions contained herein.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on (date) 4/30/2013 or sooner. If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation which became effective January 1, 1987, that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

E. FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to ESCROW HOLDER a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by ESCROW HOLDER in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the ESCROW HOLDER the necessary documents, to be provided by the ESCROW HOLDER, to determine if withholding is required. (See 26 USC Section 1445).

6. TITLE INSURANCE: Upon COE, Buyer will be provided with the following type of title insurance policy:
☐ CLTA; ☒ ALTA-Residential; -OR- ☐ ALTA-Extended (including a survey, if required).

7. PRORATIONS, FEES AND EXPENSES (Check appropriate box):

A. TITLE AND ESCROW FEES:

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	N/A
Escrow Fees	☐	☐	☑	☐
Lender's Title Policy	☐	☐	☐	☑
Owner's Title Policy	☑	☐	☐	☐
Real Property Transfer Tax	☑	☐	☐	☐
Other: _____	☐	☐	☐	☐

B. PRORATIONS:

TYPE	PAID BY SELLER	PRORATE	N/A
CIC (Common Interest Community) Assessments	☐	☑	☐
CIC Periodic Fees	☐	☑	☐
SIDs / LIDs / Bonds / Assessments	☐	☐	☑
Sewer Use Fees	☐	☑	☐
Trash Service Fees	☐	☑	☐
Real Property Taxes	☐	☑	☐
Other: _____	☐	☐	☐

All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____

C. **INSPECTIONS AND RELATED EXPENSES** (See also Section 12): Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water) are turned on and supplied to the Property within two (2) business days after execution of this Agreement, to remain on until COE. (It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.)

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED	N/A
Appraisal	☐	☐	☐	☒	☐
CIC Capital Contribution	☐	☒	☐	☐	☐
CIC Transfer Fees	☐	☒	☐	☐	☐
CLUB Report ordered by Seller	☐	☐	☐	☒	☐
Energy Audit	☐	☐	☐	☒	☐
Fungal Contaminant Inspection	☐	☐	☐	☒	☐
Home Inspection	☐	☒	☐	☐	☐
Mechanical Inspection	☐	☒	☐	☐	☐
Oil Tank Inspection	☐	☐	☐	☒	☐
Pool/Spa Inspection	☐	☐	☐	☒	☐
Roof Inspection	☐	☐	☐	☒	☐
Septic Inspection (requires pumping)	☐	☐	☐	☒	☐
Septic Lid Removal	☐	☐	☐	☒	☐
Septic Pumping	☐	☐	☐	☒	☐
Soils Inspection	☐	☐	☐	☒	☐
Structural Inspection	☐	☐	☐	☒	☐
Survey _____ (type)	☐	☐	☐	☒	☐
Termite/Pest Inspection	☐	☐	☐	☒	☐
Well Inspection (Quantity)	☐	☐	☐	☒	☐
Well Inspection (Quality)	☐	☐	☐	☒	☐
Wood-Burning Device/Chimney Inspection (includes cleaning)	☐	☐	☐	☐	☒
Other: _____	☐	☐	☐	☐	☐
Re-Inspections	☐	☐	☐	☐	☐

If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, *except* as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice).

D. **CERTIFICATIONS: Notwithstanding the elections below, in the event an inspection reveals problems with any of the foregoing, Buyer reserves the right to require a certification.**

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED
Fungal Contaminant	☐	☐	☐	☒
Roof	☐	☐	☐	☒
Septic	☐	☐	☐	☒
Well	☐	☐	☐	☒
Wood-Burning Device/Chimney Certification	☐	☐	☐	☒
Other: _____	☐	☐	☐	☐

The foregoing expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

E. **SELLER'S ADDITIONAL COSTS AND LIMIT OF LIABILITY:** Seller agrees to pay a maximum amount of $ zero to correct defects and/or requirements disclosed by inspection reports, appraisals, and/or certifications. It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request additional repairs, which may exceed the above-stated amount, based upon the Seller's Real Property

BANA000004

Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this section. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

F. **LENDER AND CLOSING FEES:** In addition to Seller's expenses above, Seller will contribute $ ZERO to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

G. **HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with _____. ☐ Seller -OR- ☒ Buyer will pay for the Home Protection Plan at a price not to exceed $ 790.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for ordering the Home Protection Plan.

8. **TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

9. **COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

10. **DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents (each of which is incorporated herein by this reference). Check applicable boxes.

- ☐ **Construction Defect Claims Disclosure,** if Seller has marked "Yes" to Paragraph 1(d) of the Seller Real Property Disclosure Form (NRS 40.688)
- ☐ **Fungal (Mold) Notice Form** (not required by Nevada law)
- ☐ **Lead-Based Paint Disclosure and Acknowledgment,** required if constructed before 1978 (24 CFR 745.113)
- ☐ **Pest Notice Form** (not required by Nevada law)
- ☐ **Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer**
- ☐ **Open Range Disclosure** (NRS 113.065)
- ☒ **Seller Real Property Disclosure Form** (NRS 113.130)
- ☐ Other (list) _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____

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11. **ADDITIONAL DISCLOSURES:**

A. LICENSEE DISCLOSURE OF INTEREST (BUYER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Barbara Rosenberg is a licensed real estate agent in the State(s) of California, and has the following interest, direct or indirect, in this transaction: ■ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) _____.

B. In addition, for NEW CONSTRUCTION, to the extent applicable, Seller will provide: Public Offering Statement (NRS 116.4103); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridors (NRS 113.070); Water/Sewage (NRS 113.060); Impact Fees (NRS 278B.320); Surrounding Zoning Disclosure (NRS 113.070); FTC Insulation Disclosure (16 CFR 460.16); and Other: _____.

C. AIRPORT NOISE: Buyer hereby acknowledges the proximity of various overflight patterns, airports (municipal, international, military and/or private) and heliports. Buyer also fully understands that existing and future noise levels at this location, associated with existing and future airport operations, may affect the livability, value and suitability of the Property for residential use. Buyer also understands that these airports have been at their present location for many years, and that future demand and airport operations may increase significantly. For further information, contact your local department of aviation or the Federal Aviation Administration.

D. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, ancestry, handicap or familial status and any other current requirements of federal or state fair housing law.

12. **BUYER'S DUE DILIGENCE:**

A. DUE DILIGENCE PERIOD: Buyer shall have 12 calendar days from Acceptance to complete Buyer's Due Diligence. Buyer shall ensure that all inspections and certifications are initiated in a timely manner as to complete the Due Diligence in the time outlined herein. (If utilities are not supplied by the deadline referenced herein or if the disclosures are not delivered to Buyer by the deadline referenced herein, then Buyer's Due Diligence Period will be extended by the same number of calendar days that Seller delayed supplying the utilities or delivering the disclosures, whichever is longer.) During this period Buyer shall have the exclusive right at Buyer's discretion to cancel this Agreement. In the event of such cancellation, unless otherwise agreed herein, the EMD will be refunded to Buyer. If Buyer provides Seller with notice of objections, the Due Diligence Period will be extended by the same number of calendar days that it takes Seller to respond in writing to Buyer's objections. If Buyer fails to cancel this Agreement within the Due Diligence Period (as it may be extended), Buyer will be deemed to have waived the right to cancel under this section.

B. PROPERTY INSPECTION/CONDITION: 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 insurable 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. During such Period, Buyer shall have the right to have non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on 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. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Leimont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

C. **PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such other matter as aforesaid, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

13. **WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was signed by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door openers/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ COE -OR- ☐ _____. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser and shall be liable to Buyer for the sum of $ 150.00 per calendar day in addition to Buyer's legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. **ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable by Buyer.

17. **CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein).

18. **DEFAULT:**

A. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Not withstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply.

B. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Leimont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

C. **IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, Seller shall have one of the following legal recourses against Buyer (initial one only):

[____] [____] As Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

-OR-

[BR] [JR] Seller shall have the right to recover from Buyer all of Seller's actual damages that Seller may suffer as a result of Buyer's default including, but not limited to, commissions due, expenses incurred until the Property is sold to a third party and the difference in the sales price.

Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than $5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will -OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself, as to the condition of the Property, prior to COE. Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: BR / JR

Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: ____ / ____

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

Other Matters

23. DEFINITIONS: "Acceptance" means the date that both parties have consented to and received a final, binding contract by affixing their signatures to this Agreement and all counteroffers. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "CLUE" means Comprehensive Loss Underwriting Exchange. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the escrow. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented.

C. Except as otherwise provided in Section 9, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Any cancellation notice shall be contemporaneously faxed to Escrow.

25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 590 Lalmont Place Henderson, NV 89012 SELLER(S) INITIALS: _____ / _____

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26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

NO REAL ESTATE BROKER/AGENT MAY SIGN FOR A PARTY TO THIS AGREEMENT UNLESS THE BROKER OR AGENT HAS A PROPERLY EXECUTED POWER OF ATTORNEY TO DO SO.

THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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27. ADDENDUM(S) ATTACHED: _____

28. ADDITIONAL TERMS: _____

Earnest Money Receipt

BUYER'S AGENT ACKNOWLEDGES RECEIPT FROM BUYER HEREIN of the sum of $ 325,000.00
evidenced by ☐ Cash, ☐ Cashier's Check, ☒ Personal Check, or ☐ Other _____
payable to Title Co., Upon Acceptance, Earnest Money to be deposited within ONE (1) business day, with ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, - OR - ☐ Seller's Broker's Trust Account.

Date: March 13, 2013 Signed: [signature] Buyer's Agent: Stephen McGill

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: _____ / _____

Property Address: 520 Lairmont Place SELLER(S) INITIALS: _____ / _____

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Buyer's Acknowledgement of Offer

Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Barbara Rosenberg — Barbara Rosenberg — 3/13/13 ____:____ ☐ AM ☐ PM
Buyer's Signature — Buyer's Printed Name — Date — Time

Fredric Rosenberg — Fredric Rosenberg — 3/13/13 ____:____ ☐ AM ☐ PM
Buyer's Signature — Buyer's Printed Name — Date — Time

Seller must respond by: _____ ☐ AM ☐ PM on (month) _____, (day) _____, (year) _____. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect.

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Kathryn Bovard — Agent's Name: Siobhan McGill
Company Name: Realty ONE Group — Agent's Public ID: 214400
Phone: 702-898-7575 — Office Address: 2831 St. Rose Parkway # 100
Email: siobhanmcgill@gmail.com — City, State, Zip: Henderson, NV 89052
Fax: 702-637-7210

Seller's Response

☐ ACCEPTANCE: Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.
☐ COUNTER OFFER: Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.
☐ REJECTION: In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

FIRPTA DECLARATION: Pursuant to Section 5.B. herein, Seller declares that he/she
☐ is not -OR-
☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Mary Fontenot Bank of America — 3/13/13 — 3:33 ☐ AM ☒ PM
Seller's Signature — Seller's Printed Name — Date — Time

_____ — _____ — _____ ____:____ ☐ AM ☐ PM
Seller's Signature — Seller's Printed Name — Date — Time

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Michael Dolron — Agent's Name: Michael Dolron
Company Name: MacDonald Highlands Realty — Office Address: 552 S Stephanie Street
Phone: 702-614-9100 — City, State, Zip: Henderson, NV 89012
Email: _____ — Fax: 702-614-9400

LICENSER DISCLOSURE OF INTEREST (SELLER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. _____ is a licensed real estate agent in the State(s) of _____, and has the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship) _____.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg — BUYER(S) INITIALS: _____ / _____
Property Address: 590 Lairmont Place Henderson, NV 89012 — SELLER(S) INITIALS: _____ / _____

Ex. 1-I

EXHIBIT 1-I

Ex. 1-I

Property conditions, improvements and additional information:	YES	NO	N/A
Are you aware of any of the following?:			
1. Structure:			
(a) Previous or current moisture conditions and/or water damage?	☐	☑	
(b) Any structural defect?	☐	☑	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?	☐	☑	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)?. (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)	☐	☑	
2. Land / Foundation:			
(a) Any of the improvements being located on unstable or expansive soil?	☐	☑	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?	☐	☑	
(c) Any drainage, flooding, water seepage, or high water table?	☐	☑	
(d) The property being located in a designated flood plain?	☐	☑	
(e) Whether the property is located next to or near any known future development?	☐	☑	
(f) Any encroachments, easements, zoning violations or nonconforming uses?	☐	☑	
(g) Is the property adjacent to "open range" land? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)	☐	☑	
3. Roof: Any problems with the roof?	☐	☑	
4. Pool/spa: Any problems with structure, wall, liner, or equipment?	☐	☑	☐
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)?	☐	☑	
6. Environmental:			
(a) Any substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property?	☐	☑	
(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health?	☐	☑	
7. Fungi / Mold: Any previous or current fungus or mold?	☐	☑	
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?	☐	☑	
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?	☑	☐	
(a) Common Interest Community Declaration and Bylaws available?	☑	☐	
(b) Any periodic or recurring association fees?	☑	☐	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?	☐	☑	
(d) Any litigation, arbitration, or mediation related to property or common area?	☐	☑	
(e) Any assessments associated with the property (excluding property taxes)?	☐	☑	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?	☐	☑	
10 Any problems with water quality or water supply?	☐	☑	
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?	☐	☑	
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? (If yes, additional Federal EPA notification and disclosure documents are required)	☐	☑	

13. Water source: Municipal ☑ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Wastewater disposal: Municipal Sewer ☑ Septic System ☐ Other ☐

15. This property is subject to a Private Transfer Fee Obligation?	☐	☐

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

S 10.3
S 10.5
S 10.13

Seller(s) Initials _____ Buyer(s) Initials _____

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Ex. 1-J

EXHIBIT 1-J

Ex. 1-J

SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner *(see NRS 113.130 and 113.140).*

Date 3-12-13

Property address 590 Laixmont Place, Henderson,

Do you currently occupy or have you ever occupied this property? YES ☐ NO ☒

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form.
[Sec. 34(3), SB314, 2011 Leg. Session]

Type of Seller: ☑ Bank (financial institution); ☐ Asset Management Company; ☐ Owner-occupier; ☐ Other: _____

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW *(see NRS 113.150).*

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System	☐	☑	☑
Plumbing	☐	☑	☐
Sewer System & line	☐	☑	☑
Septic tank & leach field	☐	☑	☑
Well & pump	☐	☑	☑
Yard sprinkler system(s)	☐	☑	☐
Fountain(s)	☐	☑	☑
Heating system	☐	☑	☐
Cooling system	☐	☑	☐
Solar heating system	☐	☑	☑
Fireplace & chimney	☐	☑	☐
Wood burning system	☐	☑	☑
Garage door opener	☐	☑	☐
Water treatment system(s) owned ☐ leased ☐	☐	☐	☑
Water heater	☐	☑	☐
Toilet(s)	☐	☑	☐
Bathtub(s)	☐	☐	☑

	YES	NO	N/A
Shower(s)	☐	☑	☐
Sink(s)	☐	☑	☐
Sauna / hot tub(s)	☐	☐	☑
Built-in microwave	☐	☑	☑
Range / oven / hood-fan	☐	☑	☐
Dishwasher	☐	☑	☐
Garbage disposal	☐	☑	☐
Trash compactor	☐	☑	☐
Central vacuum	☐	☑	☐
Alarm system owned ☐ leased ☐	☐	☐	☐
Smoke detector	☐	☑	☐
Intercom	☐	☑	☑
Data Communication line(s)	☐	☑	☐
Satellite dish(es) owned ☐ leased ☐	☐	☑	☑
Other _____	☐	☐	☐

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

AM
Seller(s) Initials

Buyer(s) Initials

MacDonald Highlands Realty 552 S Stephanie St Henderson, NV 89012 Phone: (702)614-9100 Fax: (702)614-9200 590 Laixmont Place
Michael Dobron

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BANA000034

Property conditions, improvements and additional information:	YES	NO	N/A
Are you aware of any of the following?:			
1. **Structure:**			
(a) Previous or current moisture conditions and/or water damage?	☐	☑	
(b) Any structural defect?	☐	☑	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?	☐	☑	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)	☐	☑	
2. **Land / Foundation:**			
(a) Any of the improvements being located on unstable or expansive soil?	☐	☑	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?	☐	☑	
(c) Any drainage, flooding, water seepage, or high water table?	☐	☑	
(d) The property being located in a designated flood plain?	☐	☑	
(e) Whether the property is located next to or near any known future development?	☐	☑	
(f) Any encroachments, easements, zoning violations or nonconforming uses?	☐	☑	
(g) Is the property adjacent to "open range" land? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)	☐	☑	
3. **Roof:** Any problems with the roof?	☐	☑	
4. **Pool/spa:** Any problems with structure, wall, liner, or equipment?	☐	☑	☐
5. **Infestation:** Any history of infestation (termites, carpenter ants, etc.)?	☐	☑	
6. **Environmental:**			
(a) Any substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property?	☐	☐	
(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health?	☐	☑	
7. **Fungi / Mold:** Any previous or current fungus or mold?	☐	☑	
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?	☐	☑	
9. **Common Interest Communities:** Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?	☐	☑	
(a) Common Interest Community Declaration and Bylaws available?	☐	☑	
(b) Any periodic or recurring association fees?	☐	☑	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?	☐	☑	
(d) Any litigation, arbitration, or mediation related to property or common area?	☐	☑	
(e) Any assessments associated with the property (excluding property taxes)?	☐	☑	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?	☐	☑	
10. Any problems with water quality or water supply?	☐	☑	
11. **Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?**	☐	☑	
12. **Lead-Based Paint:** Was the property constructed on or before 12/31/77? (If yes, additional Federal EPA notification and disclosure documents are required)	☐	☑	

13. **Water source:** Municipal ☑ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. **Wastewater disposal:** Municipal Sewer ☑ Septic System ☐ Other ☐

15. This property is subject to a Private Transfer Fee Obligation? ☐ ☐

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

What did you do to confirm this?

VSeller(s) Initials _____ Buyer(s) Initials _____

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Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
(a) Upon the closure of any escrow opened for the conveyance; or
(b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
(a) Upon personal delivery of the document to the person being served; or
(b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
(a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
(b) That the disclosures set forth in the form are made by the seller and not by his agent.
(c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions.

1. Except as otherwise provided in subsections 2 and 3:
(a) At least 10 days before residential property is conveyed to a purchaser:
(1) The seller shall complete a disclosure form regarding the residential property; and
(2) The seller or his agent shall serve the purchaser or his agent with the completed disclosure form.
(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or his agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or his agent shall inform the purchaser or his agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
(1) Rescind the agreement to purchase the property; or
(2) Close escrow and accept the property with the defect as revealed by the seller or his agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
(a) By foreclosure pursuant to chapter 107 of NRS.
(b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
(c) Which is the first sale of a residence that was constructed by a licensed contractor.
(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
(a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
(b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

(Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598)

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Buyer(s) Initials _____ _____

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NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.
2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or his agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or his agent informs the purchaser or his agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or his agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or his agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or his agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this state or any political subdivision of this state in the ordinary course of his duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this state at the time the information was provided.

6. A purchaser of residential property may waive any of his rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1) and two (2) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE** ***(See NRS 113.130(1)(b)).***

Seller(s): _____ Bank of America NA Date: 2-12-13

Seller(s): _____ Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages three (3) and four (4).

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

_____ _____ _____ _____

Seller(s) Initials Buyer(s) Initials

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