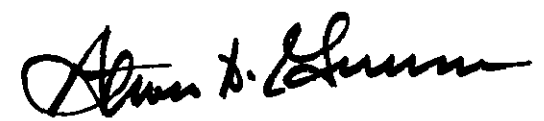


TAB 26



CLERK OF THE COURT

OPPM
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-689113-C

Dept. No. I

**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

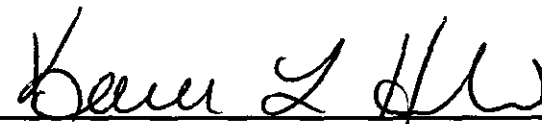
1 not recognize implied restrictive covenants. In reality, Nevada does recognize implied restrictive
2 covenants; it has done so since 1913. Because Nevada does recognize implied restrictive covenants,
3 and issues of material fact exist regarding whether an implied restrictive covenant exists over the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

5 This Opposition is based on the following Memorandum of Points and Authorities, the papers
6 and pleadings on file herein, the Declaration of Karen L. Hanks attached hereto as Exhibit A, and any
7 exhibits attached thereto, and any oral argument the Court permits at the hearing of this matter.
8

9 DATED this 4th day of May, 2015.

10
11 Respectfully submitted by:

12 HOWARD KIM & ASSOCIATES

13 

14 KAREN L. HANKS, ESQ.

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20 *Attorneys for Plaintiff,*

21 *The Fredric and Barbara Rosenberg Living Trust*

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. PREFATORY STATEMENT**

24 The Rosenberg Trust does not seek an easement to light and air. The Rosenberg Trust seeks to
25 preserve the use of land adjacent to its property. Specifically, the 1/3 acre of golf course land sold to
26 Malek must remain golf course land in terms of its use. This concept of restricting/preserving land use
27 has been recognized by Nevada since 1913. *See Shearer v. City of Reno*, 36 Nev. 443, 136 P. 705
28 (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

1 750, 752 (1968) (stating a restrictive covenant is an easement or a servitude in the nature of an
2 easement). The Restatement Third defines “restrictive covenant” as “a negative covenant that limits
3 permissible uses of land.” Restatement (Third) of Property, Servitudes, § 1.3(3) (2000).

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

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

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

26 It is these facts that support the existence of an implied restrictive covenant, a concept long
27 recognized by Nevada law. Once again, this is not a case about a claim to air and light; it is a case about a
28

¹ Justice Anthony M. Kennedy.

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

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

11 **II. STATEMENT OF RELEVANT, UNDISPUTED FACTS²**

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

14 2. The manager of DRFH Ventures is Richard MacDonald.⁴

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

17 4. FHP Ventures is the developer of MacDonald Highlands.⁶

18 5. Dragon Ridge Golf Course was open for play in 2000.⁷

19 6. The portion of golf course property sold to Malek was part of the in-bound play for the
20 9th hole, and consisted of a desert palate approved by MacDonald Highlands.⁸

21 //

22 //

23 //

25 ² The Statement of Relevant, Undisputed Facts is supported by the Declaration of Karen L. Hanks (Hanks Decl.), attached
26 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.

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

28 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.

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

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

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

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

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

15 11. The Design Review Committee is tasked with the authority “to protect and enhance owner
16 value,” and “preserve the natural character of the desert environment.”¹⁴

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

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

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

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

25 ⁹ Exhibit A-4, 20:11-13.

26 ¹⁰ Exhibit A-4, 18:9-15; Exhibit A-5, 12:8-19.

27 ¹¹ Exhibit A-5, 17:18-22.

28 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.

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

3 17. The City of Henderson found that the “proposal is consistent with the Comprehensive
4 Plan.”²⁰

5 18. The City of Henderson found that “[t]he planned unit development is necessary to
6 address a unique situation...”²¹

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

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

12 20. Mr. Bykowski testified that there are “no changes proposed for the area.”²⁴

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

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

17 22. The third severance involved planning area 20, and occurred in 2013 and 2014.²⁷

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

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

22
23
24 ¹⁹ See Notice of Henderson City Council Final Action, attached as **Exhibit A-11** to Hanks Decl.

25 ²⁰ Exhibit A-11.

26 ²¹ Exhibit A-11.

27 ²² See excerpts from Paul Bykowski’s February Deposition, 139:1-3; 145:13-18, attached as **Exhibit A-12** to Hanks Decl.

28 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.

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

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

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

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

6 **III. LEGAL ARGUMENT**

7 **A. Nevada Recognizes Implied Restrictive Covenants.**

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

22 In Shearer, the plaintiff sought to quiet title to a triangular piece of property bordering three
23 streets in Reno, which he had purchased. This land, as well as the surrounding land, was owned by
24 C.C. Powning. When Powning began selling off the property he induced buyers by assuring them that
25 the land in dispute would remain undeveloped. The City of Reno contended that an implied restrictive
26

27 ³⁰ See website pages from MacDonald Highlands attached as **Exhibit A-14** to Hanks Decl.

28 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.

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

5 The sale by the map, or with reference to the streets upon it, was a sale not
6 merely for the price named in the deed, but for the further consideration that the streets
7 and public grounds designated on the map should forever be open to the
8 purchaser...This was an essential part of the consideration. The purchaser took not
9 merely the interest of the grantor in the land described in the deed, but, as appurtenant
10 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 than he could recall any other
party of the consideration. They added materially to the value of every lot purchased.

11 Id. at 708 (emphasis added).

12 In Boyd, the Johnsons owned two parcels of land, Lot 22 and Lot 121. The Johnsons sold Lot
13 22 to the McDonalds. At the time of the sale, the Johnsons were using portions of Lot 121 for a sign,
14 extended driveway and patio. Thereafter, the Johnsons sold Lot 121 to the Boyds. The Boyds
15 eventually demanded that the McDonalds cease use of the sign, extended driveway and patio. The
16 McDonalds argued they had an implied easement. The Boyd Court noted there are three essential
17 elements to an implied easement: “(1) unity of title and subsequent separation by a grant of the
18 dominant tenement; (2) apparent and continuous user; and (3) the easement must be necessary to the
19 proper or reasonable enjoyment of the dominant tenement.” Id. at 647. The Court further noted that
20 necessity really means “intent,” and explained that “the reason that absolute necessity is not essential is
21 because fundamentally such a grant by implication depends on the intention of the parties.” Id. at 648
22 *quoting* Marshall v. Martin, 139 A. 348 (Conn. 1927). The Court stated that the inquiry is “what a
23 reasonable grantee would be justified in expecting as a part of his bargain when he purchases land
24 under the particular circumstances.” Id. As such, the Court stated that “reasonable necessity may be
25 restated in terms of reasonable expectation.” Id. at 649.

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

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

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

11
12 **B. Genuine Issues of Material Fact Exists as to Whether an Implied Restrictive
Covenant Exists Over the Golf Parcel.**

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

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

26
27
28 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.

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

4 With regard to the second element, apparent and continuous use, Dragon Ridge Golf Course
5 was open for play in 2000.³⁹ In other words, Dragon Ridge Golf Course was in use for 13 years prior
6 to Malek purchasing a portion of it. Contrary to Malek's contention, the portion sold to him was not
7 some after-sight or left over land having nothing to do with the golf course; instead, the portion sold to
8 him was part of the in-bound play for the 9th hole, and consisted of a desert palate approved by
9 MacDonald Highlands.⁴⁰ Having lived in MacDonald Highlands since 2006, this use was readily
10 apparent to Malek. In fact, Malek cannot deny the continuous use of this land because he went
11 through a lengthy re-zoning process knowing the area was not even zoned for residential use.
12 Moreover, both the community map and the plat map show the golf course.⁴¹

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

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

24 ³⁶ Exhibit A-2.

25 ³⁷ Exhibit A-3.

26 ³⁸ Exhibit A-5, 17:6-9.

27 ³⁹ Exhibit A-5, 16:8.

28 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.

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

12 Just like that in Shearer, the Rosenberg Trust bought more than just the lot and house located at
13 590 Lairmont Place. They bought the surrounding area, and paid a premium for it. This surrounding
14 area, the Dragon Ridge Golf Course, was used to induce the Rosenberg Trust to purchase property
15 within MacDonald Highlands, and as such, was an “essential part of the consideration” paid for 590
16 Lairmont Place. In fact, this same covenant that applies to Malek also applies to all other portions of
17 the golf course, and protects Malek from someone buying a portion of the golf course located in front
18 of the portion he purchased. In other words, had DRFH Ventures sold off another 1/3 acre of the 9th
19 Hole that ran continuous with the portion Malek purchased, he most definitely would be arguing
20 restrictive covenant. Otherwise, if no restrictive covenant exists on the portion sold to Malek, then the
21 whole golf course could have been severed and sold off in increments to any interested party.
22 Certainly, this is not what any buyer who purchased property along the Dragon Ridge Golf Course
23 anticipated.

24 That is the crux of this case: getting what you paid for, and ensuring what you paid for remains
25 that way. But Malek incorrectly argues that the Rosenberg Trust lacks tangible losses i.e. view and
26 privacy, and therefore no restrictive covenant can exist. Although the Rosenberg Trust contends these
27 losses are real, and not fictional as Malek suggests, the Nevada Supreme Court has held that
28

⁴⁶ Exhibit A-8.

1 “restrictive covenants may be enforced irrespective of the amount of damages which will result from a
2 breach. Actual damages need not be shown.” Zupanic v. Sierra Vista Recreation, Inc., 97 Nev. 187,
3 193-94, 625 P.2d 1177, 1181 (1981). As such, while the Rosenberg Trust does contend that it will
4 suffer damages if the restrictive covenant is not upheld, whether actual damages will be realized is not
5 a factor in determining whether a restrictive covenant exists.

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

16 The Court explained that

17 The rationale of the rule is that a grantor, who induces purchasers, by use of a plat, to
18 believe that streets, squares, courts, parks, or other open areas shown on the plat will be
19 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.

20 Id.

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

26 Nebraska also dealt with the issue of an implied restrictive covenant existing over a golf course
27 property. Skyline Woods Homeowners Association, Inc. v. Broekemeier, 758 N.W.2d 376 (Neb.
28 2008). In Skyline, Liberty Building Corporation purchased a golf course in a chapter 11 bankruptcy.

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

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

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

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

10 This concept of imposing implied restrictive covenants where there is a common scheme of
11 development has also been recognized by Georgia and Maryland. *See Walker v. Duncan*, 223 S.E.2d
12 675, 676 (Ga. 1976) (“It is well-established that where a developer sells lots according to a recorded
13 plat, the grantees acquire an easement in any areas set apart for their use.”); Supervisor of Assessments
14 of Anne Arundel County v. Bay Ridge Properties, Inc., 310 A.2d 773, 775 (Md. 1973) (finding that if
15 such a scheme or plan is intended, restrictive covenants may be enforced in equity, and that
16 enforcement may be had by or against a grantee even though the restriction does not appear in his
17 chain of title).

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

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

28 ⁴⁷ Exhibit A-5, 6:3-6.

⁴⁸ Exhibit A-5, 16:1-5.

⁴⁹ Exhibit A-6, p. 1.1-1.2.

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

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

21
22 **C. The Implied Restrictive Covenant Has Never Been Terminated, Waived or
Abandoned.**

23 The Boyd Court recognized that “[i]f an easement is created by implication at the time of initial
24 severance, it then vests, and, absent evidence of termination, it cannot be diminished or abridged.”
25 Boyd, at 650. Here, Malek argues that by virtue of the re-zoning of the Golf Parcel, Plaintiff waived
26 its right to a restrictive covenant. This is contrary to Nevada law, which requires termination. There is
27

28 ⁵⁰ Exhibit A-7, Section 13.6.

⁵¹ Exhibit A-5, 12:16-20.

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

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

15 Additionally, the findings made by the City of Henderson indicate that the application
16 misrepresented the facts of the proposed change. By way of example, the City of Henderson found
17 that the “proposal is consistent with the Comprehensive Plan.”⁵⁴ This is an error as the Comprehensive
18 Plan envisioned Dragon Ridge Golf Course, not portions of it being sold to individuals. The City of
19 Henderson also found that “[t]he planned unit development is necessary to address a unique
20 situation...”⁵⁵ There was nothing unique about this situation; Malek wanted to increase his lot size and
21 purchase golf course property to achieve this goal, and DRFH Ventures wanted to make money. There
22 is nothing unique about this. Finally, the City of Henderson found that “[t]he proposal mitigates any
23 potential significant adverse impacts to the maximum practical extent.”⁵⁶ This is equally false. A
24 restrictive covenant existed over the Golf Course, and selling off 1/3 acre of it adversely impacts the
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27 ⁵² Exhibit A-9, No. 15.

⁵³ Exhibit A-10.

⁵⁴ Exhibit A-11.

28 ⁵⁵ Exhibit A-11.

⁵⁶ Exhibit A-11.

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

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

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

19 While Malek does not address the issue of prior severances of the Golf Course, he does suggest
20 in his statement of facts that other portions of the Golf Course were sold and re-zoned, and somehow
21 this constitutes a waiver of the restrictive covenant. This is not true. The Nevada Supreme Court dealt
22 squarely with this issue, and held that prior violations of a restrictive covenant is not grounds to
23 abandon the covenant; "it must be shown that the lot owners acquiesced in substantial and general
24 violations of the covenant within the restricted area." Tompkins v. Buttrum Const. Co. of Nevada, 99
25 Nev. 142, 145, 659 P.2d 865, 867 (1983) *citing* Western Land Co. Ltd. v. Truskolaski, 88 Nev. 200,
26 495 P.2d 624 (1972) (finding that "[e]ven if the alleged occurrences and irregularities could be
27 construed to be violations of the restrictive covenants they were too distant and sporadic to constitute
28 general consent by the property owners in the subdivision and they were not sufficient to constitute an

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

7 In the present case, Malek misstates the nature of the other severances. According to the
8 testimony of Paul Bykowski and Richard MacDonald there were three instances of severances. The
9 first was in planning area 15 and 16, which occurred in 2013 or 2014, and involved an out-of-play area
10 located on a hill.⁵⁷ Interestingly, it is Richard MacDonald’s property, and he testified, “I had an area of
11 the golf course that I basically moved into, moved into with my yard so to speak. It was technically
12 part of the golf course, but I haven’t bothered to subdivide it, move it in...”⁵⁸ Most importantly, Mr.
13 Bykowski testified that there are “no changes proposed for the area.”⁵⁹ The second instance took place
14 in 2004 or 2005, and involved a hill-like area that was blocking the view to the Golf Course for three
15 houses.⁶⁰ MacDonald Highlands leveled the hill, but this area was never sold to the property owners,
16 and is still owned by the Golf Course.⁶¹ The third, and final instance, involved planning area 20, and
17 occurred in 2013 and 2014.⁶² This area has not been sold, but included the addition of a corner of non-
18 playable area between two T boxes to a lot so the owner could adequately fit his house on the lot.⁶³

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

25
26 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.

1 **D. The Restrictive Covenant Supersedes the Design Guidelines.**

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

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

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⁶⁴ Exhibit A-6, p. 1.1.

1
2 **E. Genuine Issues of Material Fact Exists as to Whether an Express Restrictive
3 Covenant Exists Over the Golf Parcel.**

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

7 SUBJECT TO:

- 8 1. Taxes for the current fiscal year, not delinquent, including personal property
9 taxes of any former owner, if any:
10 2. **Restrictions, conditions, reservations, rights, rights of way and easements
11 now of record, if any, or any that actually exist on the property.**⁶⁵

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

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

28 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.

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

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

8 **F. Public Policy Supports Implied Restrictive Covenants.**

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

22
23 Most objections to upholding covenants as running with the land stem from the
24 seeming incongruity that permits a man, by making a promise, to bind another who
25 subsequently succeeds to land held by the first. Such covenants, it was thought, would
26 seem to run against the public policy favoring the free alienability of land. This
27 difficulty, however, would seem to be more imagined than real when dealing with the
28 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.'

⁷⁰ Exhibit A-16.

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

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

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

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

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

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28 ⁷¹ Exhibit A-7, 12.9.

⁷² Exhibit A-12, 28:23-25 through 29:1.

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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

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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 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	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Akerman LLP	Name	Email		Select
	Akerman Las Vegas Office	akermanlas@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Natalie L. Winslow, Esq.	natalie.winslow@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Steven G. Shevorsi, Esq.	steven.shevorsi@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

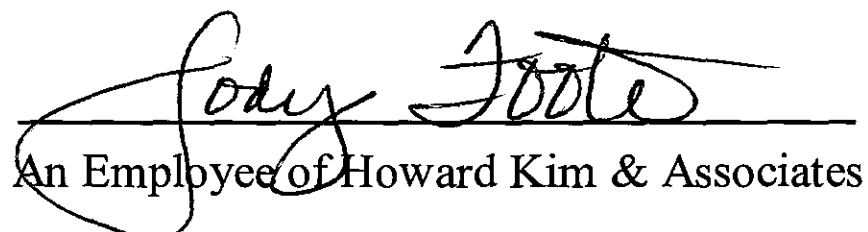
Kemp Jones & Coulthard	Name	Email		Select
	Ian P. McGinn	ipm@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Kemp, Jones & Coulthard	Name	Email		Select
	J. Randall Jones	rrj@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Janet Griffin	janetjamesmichael@gmail.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Janet Griffin	jlg@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Matthew Carter	m.carter@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Kemp, Jones & Coulthard, LLP	Name	Email		Select
	Pamela Montgomery	p.montgomery@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

The Firm	Name	Email		Select
	Jay M. DeVoy	jay@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

The Firm, P.C.	Name	Email		Select
	Jacqueline Martinez	jacqueline@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Preston P. Rezaee, Esq.	preston@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	Ryan E. Alexander, Esq.	ryan@ryanalexander.us	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>


An Employee of Howard Kim & Associates

Ex. A

EXHIBIT A

Ex. A

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

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

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

7 2. Attached hereto as Exhibit A-1 is a true and correct copy of the Grant, Bargain Sale
8 Deed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
11 CORRECT.

12
13 Dated this 4th day of May, 2015.

14
15
16 
17 KAREN L. HANKS, ESQ.

Ex. A-1

EXHIBIT A-1

Ex. A-1

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

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

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*
Richard C. MacDonald, Manager

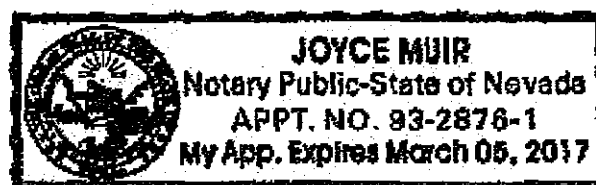
Richard C. MacDonald

State of NEVADA)
County of Clark) ss:

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
#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 998.21 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:

~~THE CERTAIN AREA TO BE ADDED TO LOT 2, BLOCK 1 MACDONALD HIGHLANDS A.K.A. FOOTHILLS @ MACDONALD RANCH PLANNING AREA 10, 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:~~
~~AND STEPHANIE STREET AS SHOWN PER BOOK 92, PAGE 100 OF PLATS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.~~
THENCE ALONG THE CENTERLINE OF SAID STEPHANIE STREET,
NORTH 04°03'35" EAST, 998.21 FEET;
THENCE DEPARTING SAID LINE, NORTH 89°58'25" WEST, 40.00 FEET, SAID POINT
BEING THE NORTH-EAST 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

~~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~~

C:\Documents and Settings\bryant\Local Settings\Temporary Internet
Files\Content.Outlook\FJRMOPVC\PA10 Additional Area.docx
5740 S. Arville Street, Suite 206, Las Vegas, Nevada 89118, Ph: 702.212.3967 Fx: 702.212.3967

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 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 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 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;

Page 2 of 2

x: 702.212.3963

C:\Documents and Settings\bryant\Local Settings\Temporary Internet
Files\Content.Outlook\FJRMOPVC\PA10 Additional Area (2).docx
5740 S. Arville Street, Suite 206, Las Vegas, Nevada 89118, Ph: 702.212.3967

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.**

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. ☒ 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
i. ☐ Other

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

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
City: Henderson
State: NV Zip: 89012

Address: 544 Regents Gate
City: Henderson
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)

**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. ☒ 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 **BUYER (GRANTEE) INFORMATION**
(REQUIRED) (REQUIRED)

Print Name: DRFH Ventures, LLC, a Nevada
limited liability company f/k/a
Dragonridge Properties, LLC, a
Nevada limited liability company

Address: 552 S. Stephanie Street
City: Henderson
State: NV Zip: 89012

Print Name: Shahin Shane Malek

Address: 544 Regents Gate
City: Henderson
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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Page 17	Page 19
<p>1 the Laramont property.</p> <p>2 MR. GUNNERSON: Objection. Form.</p> <p>3 Foundation.</p> <p>4 BY MS. CLINE:</p> <p>5 Q Do you understand what I am asking?</p> <p>6 A Kind of. Are you asking the relationship</p> <p>7 between Foothills Partners, the declarant and the</p> <p>8 Foothills at MacDonald Ranch Master Association?</p> <p>9 Q Correct.</p> <p>10 A Yes, I could explain that.</p> <p>11 Q Will you?</p> <p>12 A Sure.</p> <p>13 Q Thank you.</p> <p>14 A The MacDonald Highlands project was</p> <p>15 originally named the Foothills at MacDonald Ranch. So</p> <p>16 sometimes you will hear it referred to as both. For</p> <p>17 marketing reasons they changed it to MacDonald</p> <p>18 Highlands. But the reason the association is Foothills</p> <p>19 at MacDonald Ranch and the developer is Foothills</p> <p>20 Partners is because the initial master plan name was</p> <p>21 Foothills at MacDonald Ranch.</p> <p>22 Foothills Partners was the declarant that</p> <p>23 recorded the CC&Rs over the property and established</p> <p>24 the Foothills at MacDonald Ranch Master Association to,</p> <p>25 I guess, manage the CC&Rs and collect the HOA dues and</p>	<p>1 Q And what are your responsibilities as</p> <p>2 president of the association?</p> <p>3 A I run the homeowners association meetings. I</p> <p>4 am a signature on maps, applications, checks and any</p> <p>5 other legal documents.</p> <p>6 Q What kind of applications?</p> <p>7 A Could be an insurance application. I know I</p> <p>8 fill out bank forms.</p> <p>9 Q Okay. So, like, when the association is</p> <p>10 doing business, they might get insurance, they might</p> <p>11 get a bank account and you would sign?</p> <p>12 A Yes.</p> <p>13 Q Is there anything else that you have the</p> <p>14 responsibility as a president of the association?</p> <p>15 A Exclusively as president or as a member of</p> <p>16 the board?</p> <p>17 Q Well, let's go with exclusively as president</p> <p>18 first, and then we can talk about as member of the</p> <p>19 board. How about that?</p> <p>20 A Okay. I believe exclusively as president you</p> <p>21 mainly run the homeowners association meetings and sign</p> <p>22 things.</p> <p>23 Q Okay. So as a member of the board?</p> <p>24 A As a member of the board, I would vote -- or</p> <p>25 I don't know if I vote because I am the president. So</p>
Page 18	Page 20
<p>1 run the association. There is an association manager</p> <p>2 that does most of the work, but the Foothills at</p> <p>3 MacDonald Ranch Master Association is still developer</p> <p>4 controlled, as the declarant appoints three of the</p> <p>5 current five members on the board. The association</p> <p>6 still votes on everything. But because three of the</p> <p>7 five are appointed and not voted, it's technically</p> <p>8 developer controlled.</p> <p>9 Q Is there a point when it may become</p> <p>10 controlled by someone other than the developer?</p> <p>11 A Yes.</p> <p>12 Q Do you know when that is or what conditions</p> <p>13 would need to happen for that to happen?</p> <p>14 A I do. I believe there are two conditions.</p> <p>15 Either a time, which I am not sure what it is, or at</p> <p>16 50 percent of the allotted units, which I believe there</p> <p>17 were 2,000. So I think once we pass 1,000 units, the</p> <p>18 association gets another elected member and then would</p> <p>19 technically have control of the board. I am not</p> <p>20 positive, but I believe that is how it works.</p> <p>21 Q Okay. Do you have a position within the</p> <p>22 homeowners association now?</p> <p>23 A Yes.</p> <p>24 Q What is that?</p> <p>25 A I am the president.</p>	<p>1 I mostly abstain from the voting. As a member I have</p> <p>2 input on the expenditures of the association, the post</p> <p>3 orders for the guards, the landscape maintenance. I am</p> <p>4 on the Compliance Committee, which is a committee that</p> <p>5 reviews any violations and the Modifications Committee.</p> <p>6 Q What does a Modifications Committee do?</p> <p>7 A The Modifications Committee reviews any</p> <p>8 modifications to completed properties within the</p> <p>9 community, such as patio covers, paint changes,</p> <p>10 landscape changes, pool additions and other</p> <p>11 architectural changes to a completed property.</p> <p>12 Q Okay. So besides having input on</p> <p>13 expenditures, posting orders for the guards,</p> <p>14 landscaping for the Compliance Committee and</p> <p>15 Modifications Committee, is there anything else that</p> <p>16 you have responsibility for as a member of the board?</p> <p>17 A I think I may, but I can't recall anything</p> <p>18 specific right now.</p> <p>19 Q That's okay. If you think of it later, just</p> <p>20 let me know. Later if we take a break for lunch and</p> <p>21 you think of something over lunch, you can always bring</p> <p>22 it back up again, or when we do your deposition as the</p> <p>23 30(b)(6) witness for the association, we can talk about</p> <p>24 it then.</p> <p>25 Can you tell me about the design review</p>

Ex. A-5

EXHIBIT A-5

Ex. A-5

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 THE FREDRIC AND BARBARA)
ROSENBERG LIVING TRUST,)
5)
Plaintiff,)
6)
vs.) CASE NO.
7) A-13-689113-C
8)
BANK OF AMERICA, N.A.; BAC HOME)
LOANS SERVICING, LP, a foreign)
9 limited partnership; MACDONALD)
HIGHLANDS REALTY, LLC, a Nevada)
10 limited liability company;)
MICHAEL DOIRON, an individual;)
11 SAHAHIN SHANE MALEK, an)
individual; PAUL BYKOWSKI, an)
12 individual; THE FOOTHILLS AT)
MACDONALD RANCH MASTER)
13 ASSOCIATION, a Nevada limited)
Liability company; THE FOOTHILLS)
14 PARTNERS, a Limited Partnerships;)
DOES I through X; and ROE)
15 CORPORATIONS I through X,)
inclusive)
16)
17 Defendants.)

18 DEPOSITION OF RICHARD C. MACDONALD
19

20 Taken at the Law Offices of
Howard Kim & Associates
21 1055 Whitney Ranch Drive
Suite 110
22 Henderson, Nevada 89014

23
Monday, February 2, 2015
24 9:50 a.m.

25 Reported by: Angela Campagna, CCR #495

1 occupation?

2 **A. I'm a real estate developer.**

3 Q. What is MacDonald Highlands?

4 **A. MacDonald Highlands is a two square**
5 **mile of luxury community, planned community, master**
6 **planned community.**

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

9 **A. Henderson.**

10 Q. Who is the developer for that
11 community?

12 **A. I am.**

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

15 **A. A company that I own.**

16 Q. What is the company that you own?

17 **A. Foothills Partners basically which is**
18 **now FHP Ventures.**

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

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

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

1 **A. They did.**

2 Q. So they bought the whole package?

3 **A. They did.**

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

7 **A. Yes.**

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

11 **A. What they could do with it?**

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

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

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

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

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

25 MR. GUNNERSON: Objection. Foundation.

1 BY MS. HANGS:

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

5 A. It was an amenity.

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

8 A. Either 2000 or 2001.

9 Q. When was it opened for play?

10 A. Sometime in April.

11 Q. Of that same year, 2000-2001?

12 A. Sometime in there.

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

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

19 THE WITNESS: Repeat that again.

20 BY MS. HANKS:

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

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

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

3 **A. No. It's not her.**

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

9 MR. GUNNERSON: Same objections.

10 THE WITNESS: I believe that we control that.

11 BY MS. HANKS:

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

14 **A. Well, the company.**

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

17 **A. Would be probably FHP Ventures.**

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

22 **A. Yes.**

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

25 MR. GUNNERSON: Objection. Form. Vague.

1 BY MS. HANKS:

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

4 MR. GUNNERSON: Same objection.

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

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

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

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

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

5 BY MS. HANKS:

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

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

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

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

20 Do you see that?

21 A. Yes.

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

25 A. Yes.

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

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

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

13 A. Correct.

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

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

1 any other lot purchasers?

2 A. Yes.

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

5 A. There may have been three or four.

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

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

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

18 Q. What happened with your lot?

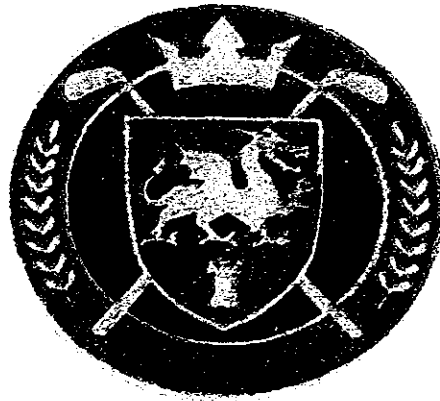
19 A. I had an area of the golf course that I
20 basically moved into, moved into with my yard so to
21 speak. It was technically part of the golf course,
22 but I haven't bothered to subdivide it, move it in,
23 it's just one of the things that I took care of when
24 the sale was negotiated.

25 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 *****

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

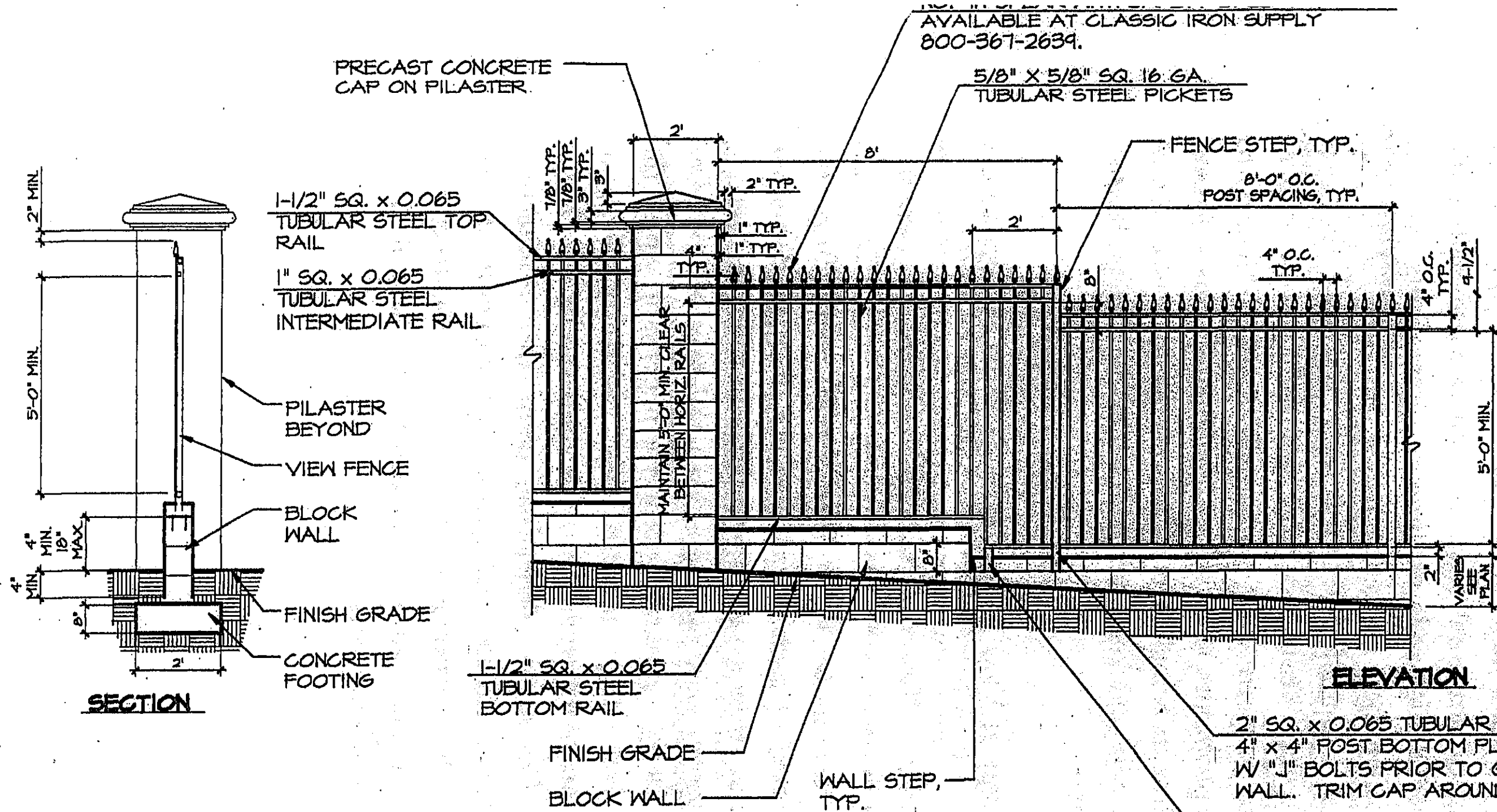
Within the MacDonald Highlands community, the term Perimeter Wall will be used to identify those walls used around the exterior perimeter of the MacDonald Highlands community. Typically, such perimeter walls will be 5 to 6 feet with the standard height being 6 feet, except for short sections where the 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.



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.

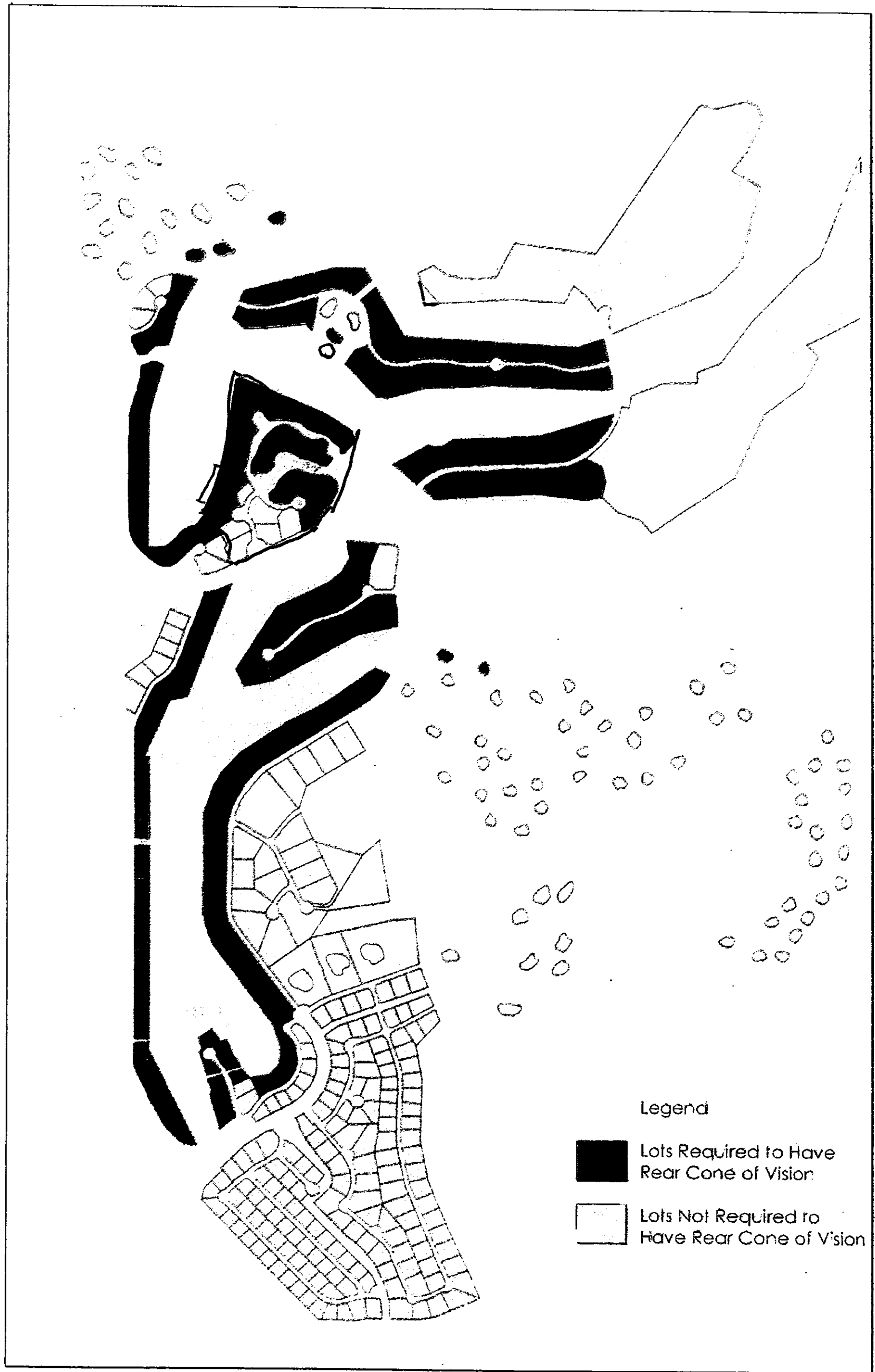
EACH OCCURRENCE THAT EXCEEDS THE STANDARD
WALL HEIGHT FOR THE CITY OF HENDERSON IN
ORDER TO MEET POOL SAFETY REQUIREMENTS WILL
HAVE TO GO TO THE CITY FOR APPROVAL OF A
VARIANCE.

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
				
Manor Estate: Planning Areas: 5B and 12	1 Ac.	25'	15'	35'
				
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'	30' **
			Corner Side One-Story: 15' Corner Side Two-Story: 20'	

* 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.

** Single-story elements, including but not limited to patios, sun decks 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

970820.0149



**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE FOOTHILLS AT MACDONALD RANCH**

BANA000128

"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.

7-1301-42

"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

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

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 or construction upon all of any portion of the Properties, and all such persons 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, ~~for itself and 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 Project owned by Declarant or such transferee. Any such division, boundary line change or replating 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 Strip. 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 to be used 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

870115123



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

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 Fredric Rosenberg

BUYER(S) INITIALS: BR, FR

Property Address: 590 Lairmont Place

SELLER(S) INITIALS: ML

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Page 1 of 11

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

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

7 ☐ does -OR- ☐ does not

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

10
11 B. **CASH PURCHASE:** Within ONE business days of Acceptance, Buyer agrees to provide written evidence
12 from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the
13 written evidence within the above period, Seller reserves the right to terminate this Agreement.

14
15 C. **APPRAISAL:** If an appraisal is required as part of this agreement, or requested by Buyer, and if the
16 appraisal is less than the Purchase Price, the transaction will go forward if (1) Buyer, at Buyer's option, elects to pay the
17 difference and purchase the Property for the Purchase Price, or (2) Seller, at Seller's option, elects to adjust the Purchase Price
18 accordingly, such that the Purchase Price is equal to the appraisal. If neither option (1) or (2) is elected, then Parties may
19 renegotiate; if renegotiation is unsuccessful, then either Party may cancel this Agreement upon written notice, in which event
20 the EMD shall be returned to Buyer.

21
22 3. **SALE OF OTHER PROPERTY:**

23 This Agreement

24 ☒ is not -OR-

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

26
27 Said Property

28 ☐ is currently listed

29 ☐ is not -OR- ☐ is

30 presently in escrow with

31 Escrow Number: Proposed Closing Date:

32
33 When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to
34 Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will
35 terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a
36 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
37 written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and
38 closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver
39 of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's
40 ability to obtain financing is not contingent upon the sale and/or close of any other property.

41
42 4. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of
43 the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(B) of this Agreement,
44 all items are transferred in an "AS IS" condition.

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

51
52 B. The following additional items of personal property: Per MLS listing terms

53
54 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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

Rev. 12/11

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Page 2 of 11

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1 5. ESCROW:

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

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

13 C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on (date) 4/30/2013 or sooner

14 If the designated date falls on a weekend or holiday, COE shall be the next business day.

16 D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation which became effective January
17 1, 1987, that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known
18 only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is
19 required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by
20 federal law.

22 E. FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and
23 deliver to ESCROW HOLDER a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the
24 Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign
25 corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a
26 foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller
27 understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by ESCROW
28 HOLDER in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the ESCROW
29 HOLDER the necessary documents, to be provided by the ESCROW HOLDER, to determine if withholding is required. (See
30 26 USC Section 1445).

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

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

36 A. TITLE AND ESCROW FEES:

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	N/A
Escrow Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lender's Title Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Owner's Title Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Real Property Transfer Tax	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

44 B. PRORATIONS:

TYPE	PAID BY SELLER	PRORATE	N/A
CIC (Common Interest Community) Assessments	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CIC Periodic Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SIDs / LIDs / Bonds / Assessments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sewer Use Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash Service Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Real Property Taxes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

57 Each party acknowledges that he/she has read, understood, and agree 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: [Signature]

Property Address: 590 Lairmont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 3 of 11
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1 C. INSPECTIONS AND RELATED EXPENSES (See also Section 12): Acceptance of this offer is subject to
 2 the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building
 3 inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas,
 4 power and water) are turned on and supplied to the Property within two (2) business days after execution of this Agreement, to
 5 remain on until COB. (It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.)

6	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED	N/A
7	Appraisal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8	CIC Capital Contribution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9	CIC Transfer Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10	CLUE Report ordered by Seller	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11	Energy Audit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12	Fungal Contaminant Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13	Home Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14	Mechanical Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15	Oil Tank Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16	Pool/Spa Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17	Roof Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18	Septic Inspection (requires pumping)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19	Septic Lid Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20	Septic Pumping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21	Soils Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22	Structural Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23	Survey (type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24	Termite/Pest Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
25	Well Inspection (Quantity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
26	Well Inspection (Quality)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
27	Wood-Burning Device/Chimney Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
28	(Includes cleaning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
29	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
30	Re-Inspections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

41	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED
42	Fungal Contaminant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
43	Roof	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
44	Septic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
45	Well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
46	Wood-Burning Device/Chimney Certification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
47	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

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

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, FR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: NR

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Page 4 of 11

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

7
8 **F. LENDER AND CLOSING FEES:** In addition to Seller's expenses above, Seller will contribute
9 \$ zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding
10 costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have
11 different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

12
13 **G. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home
14 Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with
15 ☐ Seller -OR- ☒ Buyer will pay for the Home Protection
16 Plan at a price not to exceed \$ 750.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make
17 any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for
18 ordering the Home Protection Plan.

19
20 **8. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall
21 tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes,
22 (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public
23 utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the
24 Property may be reassessed after COE which may result in a real property tax increase or decrease.

25
26 **9. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"),
27 Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale
28 package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's
29 receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the
30 date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of
31 Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement
32 pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his
33 authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation,
34 Buyer shall promptly receive a refund of the BMD. The parties agree to execute any documents requested by ESCROW
35 HOLDER to facilitate this refund. If written cancellation is not received within the specified time period, the resale package
36 will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

37
38 **10. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the
39 following Disclosures and/or documents (each of which is incorporated herein by this reference). Check applicable boxes.

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

49
50
51 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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 5 of 11

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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 116.4108); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridor (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 helipads. 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 BMD 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: [Signature]

Property Address: 590 Lalmont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 6 of 11

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

10
11 13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of
12 the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances,
13 heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure
14 Statement, and that the Property and improvements are in the same general condition as when this Agreement was signed by
15 Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on. If any
16 systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right
17 to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or
18 power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have
19 been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-
20 through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer
21 releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection,
22 except as otherwise provided by law.

23
24 14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door
25 opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees
26 to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than
27 COE-OR- ☐ . In the event Seller does not vacate the Property by this time, Seller shall be
28 considered a trespasser and shall be liable to Buyer for the sum of \$ 150.00 per calendar day in addition to
29 Buyer's legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be
30 considered abandoned by Seller.

31
32 15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any
33 material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and
34 Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift
35 to Buyer.

36
37 16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable by
38 Buyer.

39
40 17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the
41 terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any
42 expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction
43 (unless otherwise provided herein).

44
45 18. DEFAULT:

46
47 A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the
48 parties agree to engage in mediation, a dispute resolution process, through OLVAR. Notwithstanding the foregoing,
49 in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply.

50
51 B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal
52 and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual
53 damages incurred by Buyer due to Seller's default.

54
55 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
56 particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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Page 7 of 11

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1 C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, Seller shall have one of the
2 following legal recourses against Buyer (initial one only):
3

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

9 OR-
10 [] [] Seller shall have the right to recover from Buyer all of Seller's actual damages that Seller may
11 suffer as a result of Buyer's default including, but not limited to, commissions due, expenses incurred until the
12 Property is sold to a third party and the difference in the sales price.
13

Instructions to Escrow

14
15 19. ESCROW: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy,
16 Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER harmless from any loss or expense, except
17 losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are
18 made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is
19 entitled to file a suit in Interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such
20 documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their
21 several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER
22 shall be fully released and discharged from any obligations imposed upon it by this Agreement, and ESCROW HOLDER shall
23 not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor
24 as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with
25 any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein.
26 ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents
27 received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event
28 an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise
29 compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur
30 in said action, shall be the responsibility of the parties hereto.
31

32 20. UNCLAIMED FUNDS: In the event that funds from this transaction remain in an account, held by ESCROW
33 HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada
34 Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge
35 shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation.
36 ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the
37 funds are held by ESCROW HOLDER.
38

Brokers

39
40 21. BROKER FEES: Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay
41 Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum
42 and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready,
43 willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and
44 agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue
45 all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or
46 Seller's Broker, Buyer ☐ will OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined
47 between the Buyer and Buyer's Broker.
48

49 22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers
50 or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations
51 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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 8 of 11
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1 Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to
2 make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims
3 against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c)
4 environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's
5 proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to
6 Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to
7 conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is
8 limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.
9

Other Matters

10
11 23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to and received a final, binding
12 contract by affixing their signatures to this Agreement and all counteroffers. "Agent" means a licensee working under a Broker
13 or licensee working under a developer. "Agreement" includes this document as well as all accepted counteroffers and
14 addenda. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the
15 Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real
16 estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means
17 a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means
18 Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means
19 a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees"
20 means the administrative service fee charged by a CIC to transfer ownership records. "CLUE" means Comprehensive Loss
21 Underwriting Exchange. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default"
22 means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means
23 personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or
24 mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money
25 deposit. "Escrow Holder" means the neutral party that will handle the escrow. "FHA" is the U.S. Federal Housing
26 Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable
27 form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue
28 Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada
29 Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller.
30 "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means
31 Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title
32 Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt"
33 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
34 Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance.
35 "USC" is the United States Code. "VA" is the Veterans Administration.
36

24. SIGNATURES, DELIVERY, AND NOTICES:

37 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each
38 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be
39 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.
40

41 B. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for
42 Seller or Buyer if represented.
43

44 C. Except as otherwise provided in Section 9, when a Party wishes to provide notice as required in this
45 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the
46 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read
47 receipt confirmed in the case of email. Any cancellation notice shall be contemporaneously faxed to Escrow.
48

49
50 25. **IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party
51 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost
52 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.
53

54 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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 9 of 11

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

10
11 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review
12 the terms of this Agreement.

13
14 NO REAL ESTATE BROKER/AGENT MAY SIGN FOR A PARTY TO THIS AGREEMENT UNLESS THE
15 BROKER OR AGENT HAS A PROPERLY EXECUTED POWER OF ATTORNEY TO DO SO.

16
17 THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS®
18 (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY
19 PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO
20 ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN
21 APPROPRIATE PROFESSIONAL.

22
23 This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®.
24 REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL
25 ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

26
27 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 _____, 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: [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: [Signature]

Property Address: 590 Laimont Place

SELLER(S) INITIALS: [Signature]

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Page 10 of 11
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Buyer's Acknowledgement of Offer

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

4 Barbara Rosenberg 3/13/13 ☐ AM ☐ PM
5 Barbara Rosenberg
6 Buyer's Signature Buyer's Printed Name Date Time

7
8
9 Buyer's Signature Freddie Rosenberg Buyer's Printed Name 3/13/13 Date Time ☐ AM ☐ PM

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

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

17 Buyer's Broker: <u>Kathryn Bovard</u>	Agent's Name: <u>Slobhan McGill</u>
18 Company Name: <u>Realty ONE Group</u>	Agent's Public ID: <u>214400</u>
19 Phone: <u>702-898-7575</u>	Office Address: <u>2831 St. Rose Parkway # 100</u>
20 Email: <u>slobhanmcgill@gmail.com</u>	City, State, Zip: <u>Henderson, NV 89052</u>
21 Fax: <u>702-637-7210</u>	

Seller's Response

24 ☐ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement,
25 and all signed addenda, disclosures, and attachments.

26 ☐ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

27 ☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

29 **FIRPTA DECLARATION:** Pursuant to Section 5.B. herein, Seller declares that he/she

30 ☐ Is not OK.

31 ☒ Is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Seller's Signature _____ Seller's Printed Name Mary Furness
BANK OF AMERICA Date 3/8/13 Time 3:33 ☐ AM ☒ PM

35 Seller's Signature Seller's Printed Name Date Time
36
37
38
39 Seller's Signature Seller's Printed Name Date Time ☐ AM ☐ PM

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

43	Seller's Broker: <u>Michael Dolron</u>	Agent's Name: <u>Michael Dolron</u>
44	Company Name: <u>MacDonald Highlands Realty</u>	Office Address: <u>652 S Stephanie Street</u>
45	Phone: <u>702-614-9100</u>	City, State, Zip: <u>Henderson, NV 89012</u>
46	Email: _____	Fax: <u>702-614-9400</u>

48 **LICENSER DISCLOSURE OF INTEREST (SELLER):** Pursuant to NRS 645.252(1)(c), a real estate licensee must
49 disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction.

50 _____ is a licensed real estate agent in the State(s) of _____, and has the following interest,
51 direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest
52 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: BR

Property Address: 590 Lalmonl Place Henderson, NV 89012 SELLER(S) INITIALS: [Signature]

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Page 11 of 11
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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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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.

{30230959;5}

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

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

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

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

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

23 **INTERROGATORY NO. 1:**

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

26 ///

27 ///

1 **ANSWER:**

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

5 **INTERROGATORY NO. 2:**

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

11 **ANSWER:**

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

15 **INTERROGATORY NO. 3:**

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

21 **ANSWER:**

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

25 ///

26 ///

27 ///

28

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.

///

1 **ANSWER:**

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

6 **INTERROGATORY NO. 7:**

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

9 **ANSWER:**

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

17 **INTERROGATORY NO. 8:**

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

20 **ANSWER:**

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

26 **INTERROGATORY NO. 9:**

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

1 **ANSWER:**

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

7 **INTERROGATORY NO. 10:**

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

9 **ANSWER:**

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

11 **INTERROGATORY NO. 11:**

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

14 **ANSWER:**

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

16 **INTERROGATORY NO. 12:**

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

18 **ANSWER:**

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

21 **INTERROGATORY NO. 13:**

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

25 **ANSWER:**

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

27 **INTERROGATORY NO. 14:**

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

1 **ANSWER:**

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

3 **INTERROGATORY NO. 15:**

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

6 **ANSWER:**

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

8 **INTERROGATORY NO. 16:**

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

11 **ANSWER:**

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

15 **INTERROGATORY NO. 17:**

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

18 **ANSWER:**

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

23 **INTERROGATORY NO. 18:**

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

26
27
28 **ANSWER:**

{30230959;5}

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

14
15 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*

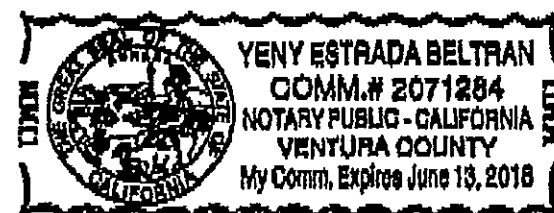
AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572**VERIFICATION**STATE OF California :
COUNTY OF Ventura : ssScott Horowitz being first duly sworn upon oath, deposes and says:That Scott Horowitz is the AJP Operations Team Manager 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 [Signature]Name Scott HorowitzTitle AJP Operations Team ManagerDate 2/3/15A 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 VenturaSubscribed 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 [Signature] 2/3/15 (Seal)

{30230959;5}

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2015 and pursuant to NRCP 5(b), 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

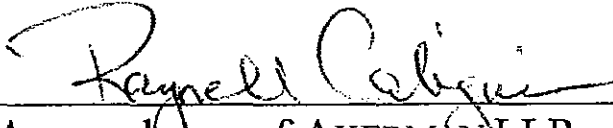
Attorneys for Plaintiff The Fredric and Barbara Rosenberg Living Trust

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

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Ryan E. Alexander, Esq.
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104

Attorneys for Defendant Shahin Shane Malek


An employee of AKERMAN LLP

Ex. A-10

EXHIBIT A-10

Ex. A-10

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

DATE: Monday, October 22, 2012

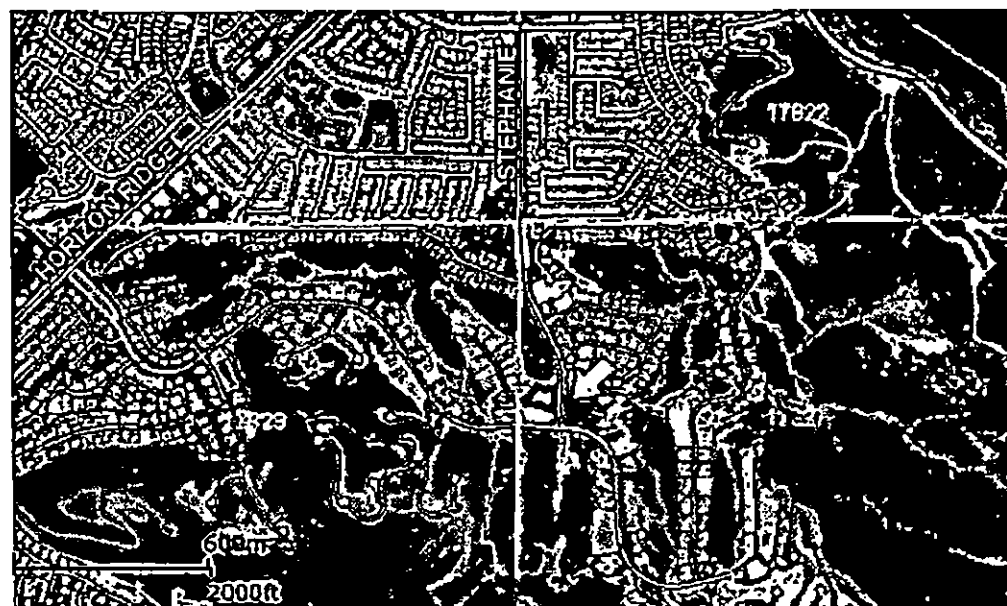
TIME: 5:30 p.m.

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.

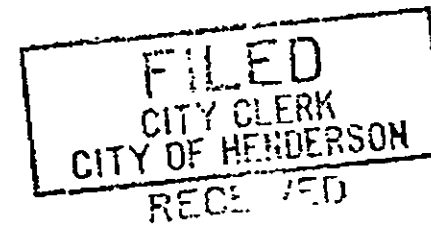
We look forward to addressing any comments or questions that you may have. A representative from the City of Henderson Community Development Department will also be available to answer your questions. Please contact B2 Development Services (451-3510) if you are unable to attend the meeting but would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



Ex. A-11

EXHIBIT A-11

Ex. A-11



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 techniques, 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 varnishing. (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.

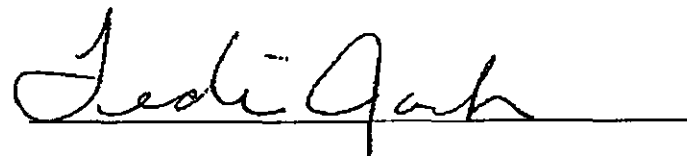
TMA-12-500316

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).



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.

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

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

APPEAL

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

JOINT APPENDIX VOLUME 6

Respectfully submitted by:

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

KAREN HANKS, ESQ.
Nevada Bar No. 9578

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Attorneys for Frederic and Barbara Rosenberg Living Trust

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
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/ 10/1 1	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
1	1	9/23/13	Complaint	JA_0001
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497

12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
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
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
1	9	1/28/14	MacDonald Highland Realty's Answer to Plaintiff's Complaint	JA_0060
1	18	2/2/15	MacDonald Highland's and Michael Dorion's Answer to Amended Complaint	JA_0126
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805

8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
12/13	47	9/2/15	Motion for Attorney's Fees and Costs	JA_2526
7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
13	54	12/9/15	Notice of Appeal	JA_2801
13	62	5/23/16	Notice of Appeal	JA_2854
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
13	57	1/20/16	Notice of Entry of Order	JA_2817
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086

13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
1	7	1/10/14	Order Granting in Part DRFH Ventures, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0052
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
4/5/ 6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13/1 4	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898

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

Vol.	Tab	Date Filed	Document	Bates Number
1	1	9/23/13	Complaint	JA_0001
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
1	7	1/10/14	Order Granting in Part DRFH Ventures, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0052
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
1	9	1/28/14	MacDonald Highland Reality's Answer to Plaintiff's Complaint	JA_0060
1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086
1	13	1/12/15	Amended Complaint	JA_0089
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110

1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
1	18	2/2/15	MacDonald Highland's and Michael Doriron's Answer to Amended Complaint	JA_0126
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
4/5/6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215

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

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

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

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

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

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
Darren Brenner	Darren.Brenner@akerman.com	<input checked="" type="checkbox"/>
Deb Julien	debbie.julien@akerman.com	<input checked="" type="checkbox"/>
Natalie Winslow	natalie.winslow@akerman.com	<input checked="" type="checkbox"/>

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		
Name	Email	Select
Erica Bennett	e.bennett@kempjones.com	<input checked="" type="checkbox"/>
J. Randall Jones	jri@kempjones.com	<input checked="" type="checkbox"/>
Janet Griffin	janetjamesmichael@gmail.com	<input checked="" type="checkbox"/>
Janet Griffin	jlg@kempjones.com	<input checked="" type="checkbox"/>
Spencer Gunnerson	s.gunnerson@kempjones.com	<input checked="" type="checkbox"/>

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

Snell & Wilmer, LLP		
Name	Email	Select
Justin A. Shiroff	jshiroff@swlaw.com	<input checked="" type="checkbox"/>
Patrick G. Byrne	pbyrne@swlaw.com	<input checked="" type="checkbox"/>

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

Exhibit 17



The City of Henderson

Comprehensive Plan Amendment

Application
FormProject Name MacDonald Highlands Golf Hole #9Project Location NW of MacDonald Ranch Road & Stephanie StreetAssessor'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 <u>Dragonridge Properties, LLC</u>	<u>pbykowski@macdonaldproperties.com</u>	
	Address <u>522 S. Stephanie Street</u>	City <u>Henderson</u>	
	State <u>NV</u> Zip Code <u>89012</u> Phone (<u>702</u>) <u>458-0001</u>	E-mail <u>See Above</u>	
Applicant	Name <u>Paul Bykowski</u>	Company <u>MacDonald Properties</u>	
	Address <u>522 S. Stephanie Street</u>	City <u>Henderson</u>	
	State <u>NV</u> Zip Code <u>89012</u> Phone (<u>702</u>) <u>458-0001</u>	E-mail <u>See Above</u>	
Contact Person	Name <u>Barbara Baird</u>	Company <u>B2 Development Svcs.</u>	
	Address <u>209 S. Stephanie Street #B-128</u>	City <u>Henderson</u>	
	State <u>NV</u> Zip Code <u>89012</u> Phone (<u>702</u>) <u>451-3510</u>	E-mail <u>barbara@b2ds.com</u>	
	Fax (<u>702</u>) <u>451-4988</u> Alternate Phone (<u>702</u>) <u>604-5966</u>		
The person listed as contact will be contacted to attend staff reviews, answer questions regarding this application, provide additional information when necessary, and will receive 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
	<u>Richard C. MacDonald</u>	<u>Manager</u>	<u>100%</u>

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 [Signature]Print Name Richard C. MacDonald

NOTARY	This instrument was acknowledged before me on <u>9-10-2012</u>	
	Signature <u>[Signature]</u>	

For Office Use Only	
CCPA#	<u>2004520010</u>
Accepted by	<u>[Signature]</u>
Date	<u>9/25/12</u>

CDCP-0003 (04/12)

BANA 00735

JA_1106

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

DATE: Monday, October 22, 2012

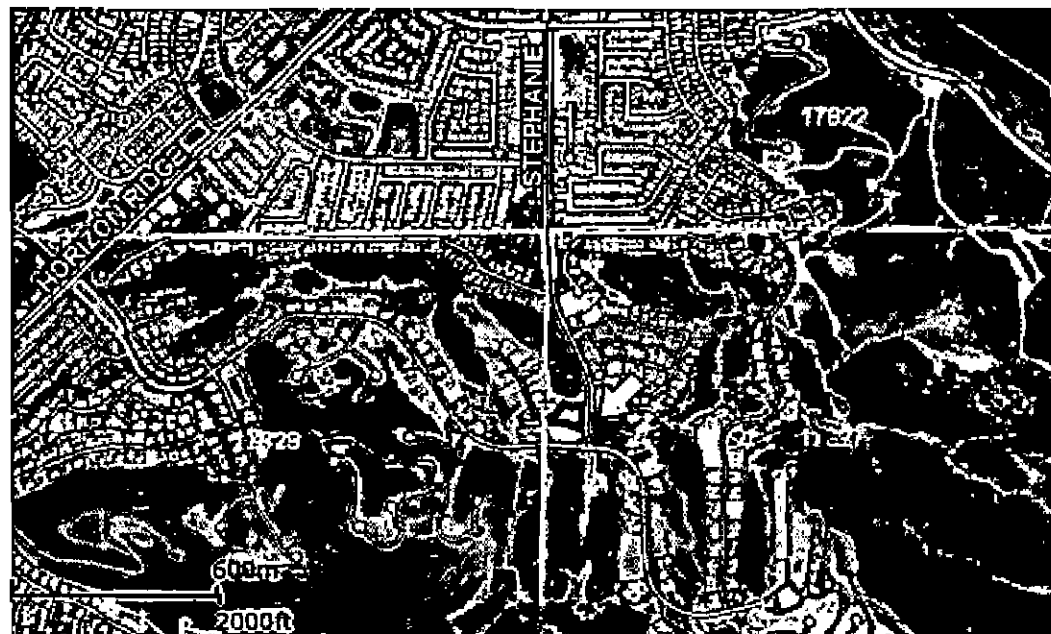
TIME: 5:30 p.m.

**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.





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

AFFIDAVIT OF COMPLIANCE NEIGHBORHOOD MEETING NOTIFICATION

PROJECT NUMBER(S): CCPA 2012 500313, CZCA 2012 500314, CTMA 2012 500316

PROJECT NAME: MacDonald Highlands - PA 10, 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

240 Water Street, Henderson, NV 89015
Phone: (702) 267-1500 • Fax: (702) 267-1501

CDCP 0011 Rev. 01/08



The City of Henderson
Vacation
 Application
 Form

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

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 easements over a .34-acre portion of parcel.

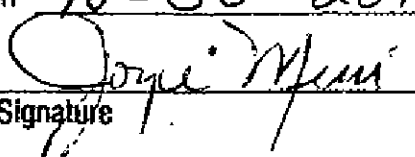
Related Applications CPA-12-500313, ZCA-12-500314, TMA-12-500316


Applicant	Name <u>Paul Bykowski</u>	Company <u>MacDonald Properties</u>									
	Address <u>552 S. Stephanie St.</u>	City <u>Henderson</u>									
Surveyor or Contact Person	State <u>NV</u> Zip Code <u>89012</u> Phone <u>(702) 458-001</u>	E-mail <u>pbykowski@macdonaldproperties.com</u>									
	Name <u>Barbara Baird</u>	Company <u>B2 Development Services</u>									
Ownership Affidavit	Address <u>209 S. Stephanie St. #B-128</u>	City <u>Henderson</u>									
	State <u>NV</u> Zip Code <u>89012</u> Phone <u>(702) 451-3510</u>	E-Mail <u>barbara@b2ds.com</u>									
Fax <u>(702) 451-4988</u> Alternate Phone <u>(702) 604-5966</u> 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.											
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.											
<table border="1"> <thead> <tr> <th>NAME</th> <th>ADDRESS</th> <th>PHONE/FAX/EMAIL</th> </tr> </thead> <tbody> <tr> <td>Dragonridge Properties, LLC</td> <td>552 S. Stephanie St. Henderson, NV 89012</td> <td>458-0001</td> </tr> <tr> <td>Richard C. MacDonald</td> <td>Manager</td> <td></td> </tr> </tbody> </table>			NAME	ADDRESS	PHONE/FAX/EMAIL	Dragonridge Properties, LLC	552 S. Stephanie St. Henderson, NV 89012	458-0001	Richard C. MacDonald	Manager	
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 _____
 PWSR-0501 (2/11)


 JOYCE MUIR
 Notary Public-State of Nevada
 APPT. NO. 93-2878-1
 My App. Expires March 05, 2013

For Office Use Only

CVAC#	<u>2012500376</u>
Accepted by	<u>upjx</u>
Date	<u>10/30/12</u>
Type I	Type II

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

Nanci Waters
Custodian of Records [Print Name]

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

Notary Public of and for said County and State

Nanci Waters
Custodian of Records [Signature]

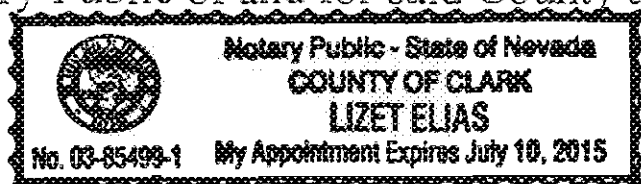


Exhibit 18

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**.

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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.

///

///

///

///

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

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

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

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

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

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

6. Rule 30(b)(6) witness for
MacDonald Highlands Realty, LLC
c/o J. Randall Jones, Esq.
Spencer H. Gunnerson, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Pkwy., 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

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

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

6 COMPUTATION OF DAMAGES

7
8 Defendant claims attorneys' fees and costs as an element of his damages for his counterclaim.
9 **To date, Defendant has incurred more than \$45,000.00 in reasonable attorneys' fees and costs in**
10 **the above-titled action.** Defendant reserves the right to supplement this disclosure as additional
11 attorneys' fees and costs are incurred while the case progresses through dispositive motions, trial, and
12 final judgment.

13 INSURANCE AGREEMENTS THAT MAY APPLY IN THIS MATTER

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

17 DATED this 16th day of March, 2015.

18 /s/ Jay DeVoy
19 Jay M. DeVoy, Esq., of counsel
20 Nevada Bar No. 11950
21 THE FIRM, P.C.
22 200 E. Charleston Blvd.
23 Las Vegas, NV 89104
24 Telephone: (702) 222-3476
25 Facsimile: (702) 252-3476
26 *Attorney for Defendant,*
27 **SHAHIN SHANE MALEK**
28

1 **CERTIFICATE OF SERVICE**

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

7 Howard C. Kim, Esq.
8 Email: Howard@hkimlaw.com

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9 Email: Diana@hkimlaw.com

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11 *Attorneys for Plaintiff*

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15 *Attorneys for Bank of America, N.A.*

16 Erica Bennett
17 Email: E.bennett@kempjones.com

J. Randall Jones
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19 Janet Griffin
Email: janetjamesmichael@gmail.com

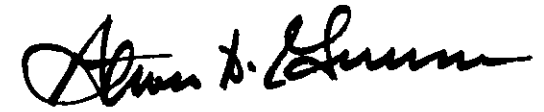
20 Email: jlg@kempjones.com
Spencer Gunnerson

21 Email: S.gunnerson@kempjones.com

22 *Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC*

23
24 */s/ Jacqueline Martinez*
25 *Employee of The Firm, P.C.*

TAB 24



CLERK OF THE COURT

1 KAREN L. HANKS, ESQ.
2 Nevada Bar No. 009578
3 E-mail: karen@hkimlaw.com
4 MELISSA BARISHMAN, ESQ.
5 Nevada Bar No. 12935
6 E-mail: melissa@hkimlaw.com
7 HOWARD KIM & ASSOCIATES
8 1055 Whitney Ranch Drive, Suite 110
9 Henderson, Nevada 89014
10 Telephone: (702) 485-3300
11 Facsimile: (702) 485-3301
12 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

9 THE FREDRIC AND BARBARA
10 ROSENBERG LIVING TRUST,

Case No. A-13-689113-C

Dept. No. I

11 Plaintiff,

12 vs.

**NOTICE OF VOLUNTARY DISMISSAL OF
PAUL BYKOWSKI AND THE FOOTHILLS
AT MACDONALD RANCH MASTER
ASSOCIATION**

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

27 Defendants.

28 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:

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

11 (emphasis added).

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

14 DATED this 22nd day of April, 2015.

15 HOWARD KIM & ASSOCIATES

16 

17 Karen L. Hanks, Esq.

18 Nevada Bar No. 009578

19 1055 Whitney Ranch Drive, Suite 110

20 Henderson, Nevada 89014

21 Telephone: (702) 485-3300

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23 *Attorneys for Plaintiff,*

24 *The Fredric and Barbara Rosenberg Living Trust*

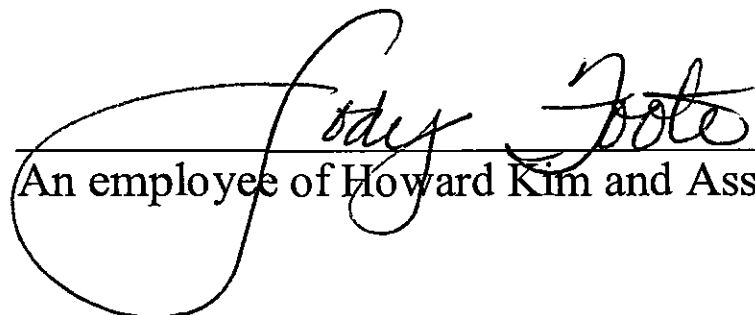
CERTIFICATE OF SERVICE

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:

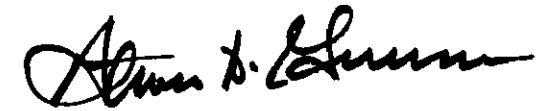
THE FIRM, P.C.
Preston P. Rezaee, Esq.
Preston.the-firm-lv.com
Attorneys for Shahan Shane Malek

AKERMAN LLP
Natalie L. Winslow, Esq.
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*Attorneys for Michael Doiron and MacDonald
Highlands Realty LLC*


An employee of Howard Kim and Associates

TAB 25



CLERK OF THE COURT

OPPM

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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

**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

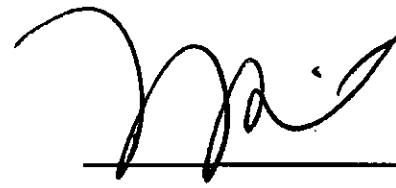
1 Highlands Realty, Michael Dorion, and FHP Ventures'¹ ("Defendants") Motion for Summary Judgment.

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

5 DATED this 4th day of May, 2015.

7 Respectfully submitted by:

8 HOWARD KIM & ASSOCIATES

9 

10 _____
11 Melissa Barishman, Esq.

12 Nevada Bar No. 12935

13 1055 Whitney Ranch Drive, Suite 110

14 Henderson, Nevada 89014

15 Telephone: (702) 485-3300

16 Facsimile: (702) 485-3301

17 *Attorneys for Plaintiff,*

18 *The Fredric and Barbara Rosenberg Living Trust*

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

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

28 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.

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

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

12 II. STATEMENT OF DISPUTED AND UNDISPUTED FACTS²

13
14 Defendants' statement of undisputed facts 1-20, (while factually correct) include argumentative
15 language, rather than a neutral recitation of the facts in this case. The Rosenberg Trust disputes any use of
16 argumentative language which mischaracterizes the fact. With regard to fact No. 22, the Rosenberg Trust
17 disputes that the testimony cited by Paul Bykowski is fact. This is inadmissible opinion testimony. With
18 regard to fact No. 23, Defendants take a statement made by Mrs. Rosenberg concerning the *possibility* that
19 a golfer could look into her home, and leap to the conclusion that the Rosenberg's entire privacy is
20 compromised. This unfounded, conclusory statement is not fact. Also, Defendants cite to Richard
21 MacDonald's outlandish testimony that anyone who lives on a golf course has zero privacy. This is not fact.
22 This is just conjecture, and constitutes inadmissible opinion testimony.

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

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

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

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

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

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

10 5. Richard MacDonald is the manager of DRFH Ventures.⁷

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

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

14 8. The physical maps reflecting the zoning changes to the Golf Parcel were updated on or about
15 January 24, 2013.¹⁰

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

18 10. After the rezoning was approved, MacDonald Highlands Realty did not update its disclosure
19 records to include current zoning and community maps that reflected the change made to the Golf Parcel,
20 did not change the community map on its website to reflect the anticipated boundary line changes to 594
21

22
23
24
25 ³ See excerpts from Michael Doiron's March Deposition, 161:17-25, attached as **Exhibit 1-A** to Barishman Decl.

26 ⁴ See excerpts from Bykowski deposition, 130:6-13, attached as **Exhibit 1-B** to Barishman Decl.

27 ⁵ Exhibit 1-A, 168:14-20.

28 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.

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

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

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

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

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

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

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

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

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

20 19. The Rosenberg Trust subsequently learned that Malek had purchased a portion of the golf
21
22
23
24

25 ¹² Exhibit 1-A, 165:19-22; 166:2-7; 166:22-25.

26 ¹³ See excerpts from Rosenberg Deposition, 136:21-137:2, attached as **Exhibit 1-F** to Barishman Decl.

27 ¹⁴ Exhibit 1-A, 176:12; 179:16-17; 183:8-9. See also, Exhibit 1-F, 272:22-273:3.

28 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.

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

2 III. LEGAL ARGUMENT

3 A. **Genuine Issues of Material Fact Exist Regarding Defendants Failure to Disclose** 4 **Material and Relevant Information Pertaining to the Rezoning of the Golf Parcel** 5 **and Change in the Lot Lines of 594 Lairmont Place.**

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

8 A **licensee** who acts as an agent in a real estate transaction:

9 1. **Shall disclose to each party** to the real estate transaction as soon as is
10 practicable:

11 (a) **Any material and relevant facts**, data or information **which the**
12 **licensee knows**, or which by the exercise of reasonable care and diligence should have
13 known, **relating to the property which is the subject of the transaction.**

14 NRS 645.252 (emphasis added).

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

²¹ Exhibit 1-F, 158:16-24.

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

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

15 Defendants attempt to side-step the duties imposed by NRS 645.252, by focusing on the fact that
16 590 Lairmont Place was sold "As Is." This is nothing but a red-herring because the as-is condition relates
17 to 590 Lairmont Place, not the surrounding area. Of course the sale of 590 Lairmont Place was an as-is
18 sale; it was a bank owned property. Every single "AS-IS" provision in the documents pertain to the
19 condition of the subject property only and not the golf course and/or Golf Parcel, or the change in the
20 lot lines of Malek's property:

- 21 • On February 20, 2013 Plaintiff's letter of interest to Defendant BANA states in pertinent
22 part: "15. **CONDITION OF PROPERTY:** . . . Buyer shall **purchase the property**
23 '**As-Is.**'"²⁷
- 24 • The March 13, 2013 email from Plaintiff's realtor to Defendants states "My buyers are
25 very serious and have **no restrictions regarding seeing the interior** as they walked it

26 ²² Exhibit 1-A, 160:22-161:4.

27 ²³ Exhibit 1-A, 164:3-5; Exhibit 1-D.

27 ²⁴ Exhibit 1-A, 165:18.

28 ²⁵ Exhibit 1-F, 135:7-10.

28 ²⁶ Exhibit 1-F, 158:16-24.

28 ²⁷ Defendants' MSJ Exhibit B at 2. (Emphasis added).

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

- 3 • The March 13, 2013 Purchase Agreement defines **“Property”** as **“the real property and**
4 **any personal property included in the sale.”**²⁹ The Purchase Agreement further states
5 that “Buyer acknowledges that at COE, the **Property will be sold AS-IS.**”³⁰
- 6 • The Real Estate Purchase Addendum states that **“BUYER IS BUYING THE**
7 **PROPERTY ‘AS IS.’”**³¹

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

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

26 ²⁸ Defendants’ MSJ Exhibit F. (Emphasis added).

27 ²⁹ Defendants’ MSJ Exhibit G at BANA 000009. (Emphasis added).

28 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.

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

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

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

22 Defendants also allege that “Plaintiff failed to perform the inspections it agreed to do.” This
23 allegation also fails because, as set forth above, the Rosenberg Trust had no a reason to believe there
24 had been any changes to the golf course. In fact, even Defendants acknowledge that the Rosenberg
25 Trust’s duties of inspection pertained only to the subject property.³⁵ As such, even if the Rosenberg
26 Trust had gone to the City of Henderson to review the zoning of the subject property it would have seen
27

28 ³⁴ Exhibit 1-F, 212:12-16.

³⁵ Defendants’ MSJ at 6:5-6.

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

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

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

27
28 ³⁶ Exhibit 1-F 156:10-12.

³⁷ Defendants' MSJ at Exhibits G and H.

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

3 A licensee may not be held liable for:

4 1. A misrepresentation made by his or her client **unless the licensee:**

5 (a) **Knew the client made the misrepresentation; and**

6 (b) **Failed to inform the person to whom the client made the**
7 **misrepresentation that the statement was false.**

8 NRS 645.259 (Emphasis added).

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

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

21 Bank of America even responded "no" to the questions about whether the property was in a planned
22 community development, and subject to a homeowners association.⁴⁴ It took the Trust's real estate agent
23 to point out this obvious mistake.
24

25
26 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.

1 Because Defendants knew the answers to the above questions were false, they had a duty under NRS
2 645.259 to inform the Rosenberg Trust the statements were false. As such, the Rosenberg Trust has
3 viable claims against Defendants based on Defendants' failure to disclose information it knew Bank of
4 America falsely reported to the Rosenberg Trust, and therefore, summary judgment must be denied.

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

7 Defendants' claims that Defendant Doiron made disclosures to the Rosenberg Trust regarding
8 zoning and property boundaries cannot be sustained because the Rosenberg Trust was not provided with
9 accurate, current information regarding the lot lines of the Golf Course. As set forth above, the
10 Rosenberg Trust only received information pertaining to the subject property. However, regarding the
11 golf course and the subsequent change in zoning and lot lines of the golf course, the Rosenberg Trust
12 never received information from Defendants. In fact, Defendants did not update the community map
13 on its website to reflect the merger of the Golf Parcel with Malek's property.⁴⁵ Likewise, the topography
14 table located in the MacDonald Realty office was not changed after the merger – and still was not
15 changed as of March 6, 2015.⁴⁶ Additionally, the "final map of the neighborhood" Defendant Doiron
16 provided the Rosenberg Trust was dated March 4, 2004 – **nine years before** the Rosenberg Trust's
17 purchase.⁴⁷ Defendant Doiron also provided the Rosenberg Trust with a zoning map.⁴⁸ However, the
18 zoning map was a map of Henderson and did not depict any lot lines of Lairmont Street.⁴⁹ Further,
19 even if the Rosenberg Trust had some inkling that there had been a change to the lot lines for the golf
20 course, the Rosenberg Trust would not have been able to discover that information until May or June
21 of 2013 – months after the purchase of the subject property.⁵⁰ Because there are genuine issues of
22 material fact regarding Defendants' failure to disclose the material change to the Rosenberg Trust's
23 property caused by the sale of a portion of the golf course to Malek, summary judgment in favor of
24 Defendants must be denied.

25
26 ⁴⁵ Exhibit 1-A, 166:2-11.

27 ⁴⁶ Exhibit 1-A, 166:12-25.

28 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.

1
2 **D. Genuine Issues of Material Fact Exists as to Whether an Implied Restrictive**
3 **Covenant Exists Over the Golf Parcel.**

4 As detailed in the Rosenberg Trust's Opposition to Malek's Motion for Summary Judgment, the
5 Rosenberg Trust does not seek an easement to light, air and view. Instead, the Rosenberg Trust seeks to
6 preserve the use of land adjacent to its property. Specifically, the 1/3 acre of golf course land sold to
7 Malek must remain golf course land in terms of its use. This concept of restricting/preserving land use
8 has been recognized by Nevada since 1913. *See Shearer v. City of Reno*, 36 Nev. 443, 136 P. 705 (1913)
9 (recognizing the concept of dedication or restrictive covenant). Nevada then recognized this concept
10 again in 1965. *See Boyd v. McDonald*, 81 Nev. 642, 408 P.2d 717 (1965) (recognizing the concept of
11 implied easement). *See also, Meredith v. Washoe Cnty. Sch. Dist.*, 84 Nev. 15, 17, 435 P.2d 750, 752
12 (1968) (stating a restrictive covenant is an easement or a servitude in the nature of an easement). The
13 Restatement Third defines "restrictive covenant" as "a negative covenant that limits permissible uses of
14 land." Restatement (Third) of Property, Servitudes, § 1.3(3) (2000).

15 Interestingly, Defendants cite to *Boyd* as standing for the proposition that implied restrictive
16 covenants are rejected by Nevada, but this case actually sets forth the elements for an implied restrictive
17 covenant. Specifically, in *Boyd*, the Johnsons owned two parcels of land, Lot 22 and Lot 121. The
18 Johnsons sold Lot 22 to the McDonalds. At the time of the sale, the Johnsons were using portions of Lot
19 121 for a sign, extended driveway and patio. Thereafter, the Johnsons sold Lot 121 to the Boyds. The
20 Boyds eventually demanded that the McDonalds cease use of the sign, extended driveway and patio.
21 The McDonalds argued they had an implied easement. The *Boyd* Court noted there are three essential
22 elements to an implied easement: "(1) unity of title and subsequent separation by a grant of the dominant
23 tenement; (2) apparent and continuous user; and (3) the easement must be necessary to the proper or
24 reasonable enjoyment of the dominant tenement." *Id.* at 647. The Court further noted that necessity
25 really means "intent," and explained that "the reason that absolute necessity is not essential is because
26 fundamentally such a grant by implication depends on the intention of the parties." *Id.* at 648 *quoting*
27 *Marshall v. Martin*, 139 A. 348 (Conn. 1927). The Court stated that the inquiry is "what a reasonable
28 grantee would be justified in expecting as a part of his bargain when he purchases land under the

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

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

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

19 //

20 //

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28 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.”).

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DATED this 4th day of May, 2015.

HOWARD KIM & ASSOCIATES

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Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 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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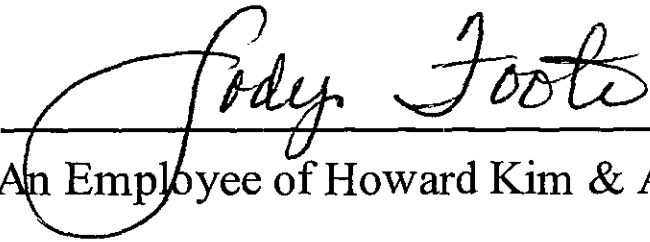
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An Employee of Howard Kim & Associates

Ex. 1

EXHIBIT 1

Ex. 1

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

4 I, Melissa Barishman, Esq., hereby declare as follows:

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

8 2. Attached hereto as Exhibit 1-A is true and correct copies of excerpts from Michael
9 Dorion's March deposition.

10 3. Attached hereto as Exhibit 1-B is a true and correct copies of excerpts from Paul
11 Bykowski's deposition.

12 4. Attached hereto as Exhibit 1-C is a true and correct copy of DRFH Ventures Secretary
13 of State printout.

14 5. Attached hereto as Exhibit 1-D is true and correct of City of Henderson Zoning
15 Ordinance No. 2986.

16 6. Attached hereto as Exhibit 1-E is a true and correct copies of excerpts from Michael
17 Tassi's deposition.

18 7. Attached hereto as Exhibit 1-F is a true and correct copies of excerpts from Barbara
19 Rosenberg's deposition.

20 8. Attached hereto as Exhibit 1-G is a true and correct copy of Zoning Classification and
21 Land Use Disclosure.

22 9. Attached hereto as Exhibit 1-H is a true and correct copy of the Purchase Agreement.

23 10. Attached hereto as Exhibit 1-I is a true and correct copy of the amended Seller's Real
24 Property Disclosure Form.

25 ///

26 ///

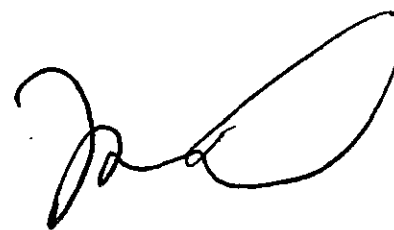
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1 11. Attached hereto as Exhibit 1-J is a true and correct copy of the Seller's Real Property
2 Disclosure Form.

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

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6 Dated this 4th day of May, 2015.

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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*



Min-U-Script® with Word Index

1 moving forward today, giving truthful and accurate
2 statements to my questions?

3 A No.

4 Q This is the second time we've had you
5 here, so some of my questions are going to seem
6 disjointed. There's going to be no real rhyme or
7 reason to them in terms of following a same subject
8 area.

9 I'm just going to pick up kind of in
10 pieces where we left off in the first deposition, so
11 please bear with me.

12 Did you have any involvement with the
13 design review committee for MacDonald Highlands as
14 it pertained to the approval of any plan submitted
15 by Mr. Malek for 594 Lairmont Place, which is Lot 2?

16 A No.

17 Q But you have served on the design review
18 committee at some point in time throughout your
19 employment with MacDonald Realty; correct?

20 A Yes.

21 Q During the times that you did serve on the
22 design review committee, if there was ever a
23 question as to whether something should be approved
24 or disapproved, did Richard MacDonald have the final
25 say with respect to that issue, whatever that might

1 be?

2 MR. GUNNERSON: Objection: Form.
3 Go ahead.

4 A I'm not quite sure. It's been several
5 years. I think we needed a vote.

6 BY MS. HANKS:

7 Q And you say "several years," so it's been
8 several years since you've served on the design
9 review committee?

10 A It's been several years since I've met in
11 the design review committee.

12 Q And what's the difference between serving
13 on it and meeting?

14 A Well, we used to have meetings where we'd
15 sit down with the owners, the builders, the
16 architects, an outside architect, a gal that
17 actually headed up the design review. And now Paul,
18 who is our head of construction, oversees that.

19 Most owners and their builders and whatnot
20 don't come in anymore.

21 Q So in terms of the function of the design
22 review committee, it's sort of changed over the
23 years, in terms of you don't have those formal
24 meetings -- not formal, but those meetings where
25 everyone attends -- anymore?

1 A Correct.

2 Q Are you still involved in the voting with
3 the design review committee, even though those
4 meetings have stopped? Does that still happen?

5 A I was let go yesterday.

6 Q I apologize. Up until yesterday, did you
7 still participate in any voting that had to happen,
8 even though there weren't meetings taking place?

9 A I haven't done anything with the design
10 review committee in years.

11 Q And just so I understand, though, to the
12 best of your recollection, however, when you did
13 have involvement with the design review committee,
14 your recollection is that you had to put stuff to a
15 vote if there was some discrepancy as to what should
16 be done?

17 A Yes, but Rich would have the final say.

18 Q When you say "Rich," you mean Richard
19 MacDonald?

20 A Yes.

21 Q Now, I read your deposition from the prior
22 time that we deposed you, and you indicated that you
23 wrote the contract for the golf course parcel that
24 Mr. Malek purchased; is that correct?

25 A Yes.

1 Q Who did you represent in that transaction?

2 A I represented, I believe -- I can't
3 remember, but I believe I represented Rich
4 MacDonald.

5 Q And would that be through his connection
6 to DRFH Ventures, who owned the golf course?

7 A I don't remember the ownership title.

8 Q But it was in context because of his
9 ownership of the golf course --

10 A Yes.

11 Q -- whichever of his multiple companies
12 owns it?

13 A Yes.

14 Q When -- let me back up.

15 How did it come about that Mr. Malek
16 wanted to purchase a portion of the golf course?

17 A Mr. Malek came to me and wanted to buy
18 that piece of land.

19 Q Was this prior to him purchasing Lot 2,
20 which is 594 Lairmont Place?

21 A I don't remember.

22 Q Did Mr. Malek explain to you what he
23 wanted to do with the additional portion he was
24 seeking to buy?

25 A He wanted to merge it with Lot No. 2.

1 Q Did he explain anything else about his
2 intentions with that particular area of property?
3 MR. GUNNERSON: Objection: Form --
4 A I don't remember.
5 MR. GUNNERSON: -- speculation.
6 BY MS. HANKS:
7 Q When Mr. Malek approached you about
8 purchasing a portion of the golf course to merge
9 with the 594 Lairmont Place lot, what did you do
10 next?
11 A I went to Rich MacDonald, to see what he
12 wanted as far as a price and if he wanted to sell
13 that.
14 Q And did Mr. MacDonald give you a price at
15 that time?
16 A Yes.
17 Q And did he indicate that he -- I'm
18 assuming -- it's an assumption, that he wanted to
19 sell it, because he gave you a price?
20 A Yes.
21 Q What was that price?
22 A Offhand, I don't remember, but I believe
23 it was 300,000.
24 Q In speaking with Mr. MacDonald, was there
25 a discussion about exactly what portion of the golf

1 course he would agree to sell to Mr. Malek?
2 A I don't remember exactly, but it was the
3 scrubbed area. It was the dirt area, not the green
4 of the golf course, and our head of construction,
5 Paul, would have had to draw it off as far as how
6 much land that would include.
7 Q That was going to be my next question.
8 Was that the next step -- once you
9 confirmed with Mr. MacDonald he was willing to sell
10 a portion of the golf course to Mr. Malek, did the
11 next step take place in terms of actually drawing,
12 or at least mapping out in an informal way, what
13 area was actually going to be sold to Mr. Malek?
14 A Yes.
15 Q And Mr. Bykowski did that informal kind of
16 mapping out of the area that would be sold?
17 MR. GUNNERSON: Objection: Foundation.
18 A I don't remember, but I believe so.
19 Q Now, when you approached Mr. MacDonald or
20 Mr. Bykowski was figuring out what actual sections
21 of the parcel would be sold to Mr. Malek, was there
22 any discussion about having to rezone that area?
23 A Yes, but I don't remember the details.
24 Q Would it be fair to state that at the time
25 you represented -- we'll just say Richard MacDonald,

1 whatever, entity owned the golf course during this
2 transaction.
3 You were aware that prior to the sale
4 being completed, that area had to be rezoned?
5 A Yes.
6 Q Do you know if Mr. Bykowski met with
7 Mr. Malek when he was trying to determine which
8 portion of the golf course he would sell; in other
9 words, where he was kind of mapping out the lot
10 lines. Was there any meetings between those two
11 individuals to confirm this is what Mr. Malek
12 wanted?
13 A I don't believe so.
14 Q Did the individual who owned Lot 2, which
15 is 594 Lairmont Place, prior to Mr. Malek ever
16 approach you or anyone with MacDonald Realty about
17 purchasing a portion of the golf course?
18 A I don't believe so, but I don't remember.
19 Q After the golf course parcel was rezoned,
20 were you notified?
21 A I would have been notified by Paul, I
22 believe --
23 Q And that's --
24 A -- that it was completed.
25 Q Sorry. And that's so you could know that

1 you could go to the next part of the -- I guess
2 completing the sale contract?
3 MR. GUNNERSON: Objection: Foundation;
4 form.
5 Go ahead, if you know.
6 A That would mean that we would be able to
7 go forward with closing the escrow.
8 BY MS. HANKS:
9 Q Thank you. That's probably a better way
10 to say it. That's what I was getting at.
11 So do you remember the approximate time
12 the rezoning was approved by the City of Henderson?
13 A No.
14 Q But you were notified at some point
15 because that was the trigger to you to know that now
16 escrow could close on the deal between Mr. MacDonald
17 and Mr. Malek; correct?
18 A Correct.
19 Q Did MacDonald Realty change the community
20 map that's located on their website to reflect the
21 new lot lines for Mr. Malek's lot?
22 A I don't believe so.
23 MR. GUNNERSON: Objection: Form, as to
24 when.
25 MS. HANKS: And I'll correct that, then.

1 **BY MS. HANKS:**

2 Q At any time after the rezoning for the
3 golf course parcel that was merged with Mr. Malek's
4 lot, 594 Lairmont Place, did MacDonald Realty change
5 the community map on the MacDonald Highlands
6 website?

7 A I don't believe so.

8 Q Is this the change that could have
9 occurred? In other words, could you have changed
10 the community map on the website if you wanted to?

11 A Yes.

12 Q How about the topo table? I think it's
13 topography table.

14 A Topo.

15 Q The topo table that is located in the
16 MacDonald Realty office; correct? And that's -- I'm
17 sorry, is that a "yes"?

18 A Yes.

19 Q And that's like a 3D, I guess, model of
20 the community?

21 A Yes.

22 Q Was that table ever changed from the time
23 that Mr. Malek's golf course portion that was merged
24 with his lot, 594 Lairmont Place?

25 A Not yet. It's being sent to California as

1 we speak.

2 Q When was that sent to California?

3 A I don't know. I was fired yesterday.
4 It's in the process of being sent to California.
5 There's some major changes on there, and it's
6 expensive, so it's done every once in a while.

7 Q Do you recall when the last time the topo
8 table was changed?

9 A No.

10 Q But to your best recollection as you sit
11 here today -- I understand you don't work for
12 MacDonald Realty anymore, but it is in the process
13 of being sent to California to be changed to
14 incorporate some changes -- or you said "major
15 changes"?

16 A What I said is I don't know. It's
17 supposed to get sent to California. Those are not
18 exact details, though. That's just a general
19 overview --

20 Q Sure.

21 A -- of the community. Because they're not
22 exact matches to any piece of land. It's generic.

23 Q Is the topo table still in the office as
24 of yesterday?

25 A Yes.

1 Q Will the topo table stay there until the
2 new topo table comes with the changes, if you know?
3 I know you are not there anymore.

4 A To the best of my ability, I can tell you
5 that a man from California will come up with a van,
6 pick the topo table up, take it back to California,
7 and then Paul will send maps of whatever changes
8 Mr. MacDonald wants.

9 Q Do you know if the maps that are going to
10 be sent to the guy from California that will change
11 the topo table includes the change to Mr. Malek's
12 lot at 594 Lairmont Place?

13 A I have no idea.

14 Q At the time this transaction was taking
15 place where Mr. Malek was going to purchase a
16 portion of the golf course to merge with his lot at
17 594 Lairmont Place, were there any discussions about
18 any impact that might have on Lot 3, which is 590
19 Lairmont Place?

20 A No.

21 Q Did you have any involvement with the sale
22 of the golf course? And I say the "golf course" --
23 DragonRidge golf course, to -- I think it's Pacific
24 Links.

25 A No, I did not know about it for a long

1 time. It was not told to me.

2 Q So you did not represent any of the
3 parties with respect to that transaction?

4 A No.

5 Q And when you say it was a long time, do
6 you recall when you approximately learned that the
7 DragonRidge golf course was sold to Pacific Links?

8 A I don't remember.

9 Q Do you know if that sale happened before
10 Mr. MacDonald sold the portion of the golf course to
11 Mr. Malek?

12 A In the middle of all this, my husband died
13 March 9th. I don't remember.

14 Q Do you know if anyone submitted, for
15 written approval from the board, the HOA board for
16 MacDonald Highlands, to change the lot lines for
17 594 Lairmont Place?

18 A I don't know anything about the HOA.

19 Q Fair to say you didn't submit anything to
20 the HOA board; correct?

21 A Correct.

22 Q And MacDonald Realty didn't submit
23 anything to the HOA; correct?

24 A Correct.

25 Q Was there any discussions with anyone

Page 174

1 **MR. GUNNERSON:** My problem is I don't have
2 Mr. Bykowski's deposition with me. I want to make
3 sure what we did mark, in fact, was what she's
4 referring to here and there's no discrepancy.
5 That's my concern.
6 **MS. HANKS:** Yeah. And what we can do,
7 too, is we can just have her refer to the actual
8 map. They have numbers on them. They say 2 of
9 4 sheets, 3 of 4 sheets, and this is Page 76 of
10 Book 115, so if you want to refer to it that way...
11 **MR. GUNNERSON:** I guess my question would
12 be, then -- or my request would be if we're going to
13 refer to them that way, that's fine, but I would
14 like these maps to become an exhibit then.
15 **MS. HANKS:** We can do that.
16 **MR. GUNNERSON:** So that we can reference
17 them and make sure that they're exactly the same.
18 There's no -- page number of page numbers
19 isn't necessarily a great identifier for documents,
20 but as long as we can identify these as exhibits and
21 have them included as exhibits, I'm fine.
22 **MS. HANKS:** So what we can is -- and,
23 frankly, I'm not really going to talk about the
24 exhibits too much. I just wanted to see why they
25 were included. But I want to identify them as best

Page 175

1 as I can with some of the identifiers here.
2 So the first page within this binder --
3 it's titled "Final Map, MacDonald Highlands Planning
4 Area 10, AKA the Foothills at MacDonald Ranch,
5 Lot 10, Planning Area 10. And it is Sheet No. 2 of
6 four sheets.
7 **MR. GUNNERSON:** Is there a date on them?
8 **MS. HANKS:** There's a date: 10/6/03.
9 **MR. GUNNERSON:** Okay.
10 **MS. HANKS:** And then the next page -- it's
11 titled, "Final Map, MacDonald Highlands Planning
12 Area 10, AKA the Foothills at MacDonald Ranch,
13 Lot 10, Planning Area 10," and it is Sheet 3 of 4,
14 and it has the same date as 10/6/03.
15 And then the last sheet, which I'm not
16 really concerned with, but we'll still mark it since
17 it goes with the maps.
18 This is "Final Map, MacDonald Highlands
19 Planning Area 10, AKA the Foothills at MacDonald
20 Ranch, Lot 10, Planning Area 10," and it's dated
21 March 4, 2004, and it says Book 115, Page 76.
22 **MR. GUNNERSON:** And those will be --
23 **MS. HANKS:** Exhibit 1.
24 **MR. GUNNERSON:** Exhibit 1, okay.
25 ///

Page 176

1 (Deposition Exhibit 1 was marked for
2 identification.)
3 **BY MS. HANKS:**
4 Q Do you recall putting these maps in the
5 binder prior to giving it to the Rosenbergs?
6 A No.
7 Q Is it the normal course and practice for
8 those maps to be in the binder that's titled,
9 "Governing Documents for MacDonald Highlands"?
10 A Yes.
11 Q And what do those maps typically entail?
12 A **It's a final map of the neighborhood.**
13 Q Who prepares the governing documents
14 binder?
15 A **It all depends on who's working that day.**
16 **Could be me; could have been my partner; could have**
17 **been an assistant; could have been a receptionist.**
18 Q Are they prepared on a case-by-case basis,
19 or are there multiple ones you can take off the
20 shelf?
21 A **There are multiple ones that you can take**
22 **off the shelf for the governing docs. And then we**
23 **try to update them whenever we can.**
24 Q Do you know if the original binder that I
25 have here was one that was prepared that day or

Page 177

1 taken from a shelf somewhere in the office?
2 A **Well, I'm going to assume that the book,**
3 **because they're runoff -- we'll purchase 10 or 20 at**
4 **a time to be runoff, so one of us put the maps in**
5 **there.**
6 Q Okay. So when --
7 A **And the updated HOA financials.**
8 Q So when the binder is run off, when you
9 were ordering 10 to 20 at a time, it would not
10 contain the maps?
11 A **Correct.**
12 Q When you -- anybody at MacDonald Realty
13 would hand the book to a new homeowner, they would
14 add the maps in and any updated budget with HOA; is
15 that correct?
16 A **Correct.**
17 Q How does MacDonald Realty or the employees
18 that work for MacDonald Realty know that when
19 they're putting a map in the book, it's the most
20 updated map for the community?
21 A **Well, the maps are in a file cabinet, the**
22 **final maps, and then you can also pull it off of the**
23 **Internet.**
24 Q When you say "the Internet," where would
25 you go to pull off the final map?

1 A I would go to Clark County Assessor.
2 Q Then what do you put in?
3 A Put in the address and then pull up the
4 final map.
5 Q When you say "the address," what address
6 do you put in to pull up the final map?
7 A Whatever address of property you need that
8 book for.
9 Q Now, did you tell the Rosenbergs they
10 could go to that website to do that?
11 A No.
12 Q After Mr. Malek's golf course portion was
13 rezoned, did MacDonald Realty receive any updated
14 final maps to insert in the binders?
15 MR. GUNNERSON: Objection: Facts not in
16 evidence.
17 Final maps were created or finalized after
18 a zoning approval, so I'll object to form, I guess
19 is what I'm trying to say. Thank you.
20 BY MS. HANKS:
21 Q Do you want me to repeat the question?
22 A I want you to restate it, yeah.
23 Q After -- at any time after the golf course
24 portion that was sold to Mr. Malek was approved for
25 rezoning, did MacDonald Realty receive any updated

1 maps?
2 A I don't remember.
3 Q Do you recall telling the Rosenbergs that
4 the final map either was changed or may be in the
5 process of being changed based on the rezoning that
6 was approved for Mr. Malek's golf course parcel
7 purchase?
8 A No. I didn't have very many conversations
9 with the Rosenbergs.
10 Q In your prior deposition, you
11 testified -- and correct me if I'm wrong -- that
12 when you handed the Rosenbergs this binder, it was
13 during their due diligence period -- correct? -- of
14 their purchase contract?
15 A I don't remember what I said, but that
16 would have been given to them during their due
17 diligence. I don't remember if their real estate
18 agent picked it up or they picked it up.
19 Q Regardless of who picked it up, what is
20 the due diligence period?
21 A It is a period of time for the buyer to
22 review everything in that book, the design
23 guidelines book, talk to their agent, or have their
24 agent help them find out everything they can on that
25 property.

1 Q And how long is the due diligence period?
2 How long was it for the Rosenbergs?
3 A I don't remember. It would be in the
4 contract.
5 Q If during that time the Rosenbergs looked
6 at the governing documents binder that you or
7 someone at MacDonald Highlands handed to them or
8 their agent and reviewed the design guidelines and
9 saw something they didn't like, whatever that might
10 be, could they back out of the purchase contract at
11 that time?
12 A At the due diligence period, yes.
13 Q And let's make that even more specific.
14 If the Rosenbergs had learned that the lot
15 lines for Lot 2, 594 Lairmont Place, had changed
16 during that due diligence period, they could have
17 backed out of the contract?
18 MR. GUNNERSON: Objection: Foundation;
19 form.
20 BY MS. HANKS:
21 Q And it bothered them. I'll add that.
22 If they found that out and they didn't
23 like that, could they have backed out of the
24 contract during the due diligence?
25 A I believe so, but I would have to read the

1 contract. I don't have the contract in front of me.
2 Q Okay. So there are --
3 A I don't know what the limitations of the
4 contract state.
5 Q Are there limitations in contracts during
6 that due diligence period?
7 A I don't know what the contract says unless
8 I read it. I don't have it in front of me to read
9 it.
10 MR. GUNNERSON: Let her finish her
11 question.
12 BY MS. HANKS:
13 Q I understand that. I guess I'm trying to
14 generally understand, though, in purchase agreements
15 for the residential property for MacDonald
16 Highlands, are there only certain reasons why you
17 can back out during the due diligence?
18 MR. GUNNERSON: Objection: Foundation;
19 form.
20 A I don't know what was in their total
21 contract, if there were terms in their contract
22 because I'm not reviewing the contract.
23 BY MS. HANKS:
24 Q So there might be terms within their
25 contract that prevented them from backing out during

Page 182

1 the due diligence?
2 **A Correct.**
3 **Q And you would have to review the contract**
4 **to make sure?**
5 **A Correct. And the contract was not**
6 **MacDonald Highlands Realty contract.**
7 **Q Okay.**
8 **A It was a contract from a real estate agent**
9 **that represented them.**
10 **Q And so if there weren't -- let's assume**
11 **hypothetically there were no restrictions for a**
12 **reason why they could back out during the due**
13 **diligence. Then that's a period they could back**
14 **out?**
15 **MR. GUNNERSON: Objection: Foundation;**
16 **calls for speculation; form.**
17 **A Well, you're asking me to speculate and**
18 **assume, so I would assume, yes, they could back out.**
19 **BY MS. HANKS:**
20 **Q Sure. I understand. It's a hypothetical;**
21 **right.**
22 **Now, who did you represent in the**
23 **transaction between the Rosenbergs' purchase? When**
24 **I say the "Rosenbergs," I mean the Rosenberg Trust,**
25 **purchase of Lot 3, 590 Lairmont Place.**

Page 183

1 **A Bank of America.**
2 **Q I know you indicated you had very little**
3 **conversation with the Rosenbergs. Who did you**
4 **specifically ever speak to? Because I know there's**
5 **a couple of Rosenbergs. So if you spoke to anyone,**
6 **who did you speak to?**
7 **A I spoke to Barbara once or twice on the**
8 **phone before I listed the property. When I handed**
9 **off the books and disclosures, I don't -- there was**
10 **a whole group of people. I don't know who they**
11 **were.**
12 **Q Do you recall the substance of your**
13 **conversation with Barbara during the one or two**
14 **times before you listed the property?**
15 **A She called, wanting to buy the property,**
16 **and I told her I didn't have it listed yet.**
17 **And she kept saying, "I have a real estate**
18 **agent."**
19 **And I said, "You need to talk to your real**
20 **estate agent and have them contact us."**
21 **Q How about: Is that the only substance of**
22 **those one or two conversations?**
23 **A Yep.**
24 **Q How about: On the day that you handed**
25 **over the books, was there any substantive**

Page 184

1 conversation between any of those people?
2 **A Basically, from what I remember, is their**
3 **agent was supposed to pick up the documents and add**
4 **her disclosures for her office also to that and sit**
5 **with the Rosenbergs and go over everything.**
6 **Q So would it be fair to state that there**
7 **were no conversations, either by you or on behalf of**
8 **MacDonald Realty, with any of the Rosenbergs about**
9 **Mr. Malek purchasing a portion of the golf course?**
10 **A I can't speak for my partner, who is now**
11 **dead, but I was on-site with a customer when the**
12 **Rosenbergs, a big group of them, came in and**
13 **disturbed my office several times, looking for me.**
14 **Q I'm just making sure I understand, though,**
15 **that as far as you can remember, you individually**
16 **had no conversations with the Rosenbergs about**
17 **Mr. Malek purchasing a portion of the golf course;**
18 **correct?**
19 **A Correct.**
20 **Q Now, Jim Venable is your partner; correct?**
21 **Or was your partner?**
22 **A Was my partner, yes.**
23 **Q He may have had conversations, but as you**
24 **sit here today, you are not aware of any that he may**
25 **have had?**

Page 185

1 **A Correct.**
2 **Q Did you talk to Jim prior to his death as**
3 **to whether he did have any conversations with the**
4 **Rosenbergs?**
5 **A No.**
6 **Q How about Bank of America? Did you have**
7 **any conversations with Bank of America or its**
8 **agent -- as I understand REO management was its**
9 **agent for purposes of listing this property -- about**
10 **the sale of the golf course portion to Mr. Malek?**
11 **A I don't believe so.**
12 **Q Did you ever consider whether you, as a**
13 **real estate agent/broker, had a duty to disclose the**
14 **sale of the golf course portion to Mr. Malek to the**
15 **Rosenbergs?**
16 **MR. GUNNERSON: Objection: Foundation;**
17 **form.**
18 **Go ahead.**
19 **A It never occurred to me.**
20 **BY MS. HANKS:**
21 **Q How about the change in zoning? Did it**
22 **ever occur to you whether that needed to be**
23 **disclosed to the Rosenbergs, the rezoning of the**
24 **golf course?**
25 **A Never occurred to me.**

Page 194

1 **A** I don't know what it would require. They
2 had their own real estate agent.
3 **BY MS. HANKS:**
4 **Q** Is it their real estate agent that's
5 supposed to disclose the zoning changes?
6 **A** Well, their real estate agent is working
7 for them, so I would assume they would go over
8 everything with them. I don't sit down with them on
9 this.
10 **Q** But this says the seller has knowledge --
11 "of which the seller has knowledge."
12 Do you have an understanding of whether
13 the seller and/or the seller agent has a duty to
14 disclose zoning with -- I'm sorry, zoning within
15 proximity to the subject property?
16 **A** As I stated, I gave them a zoning map and
17 a zoning disclosure which states if you need -- if
18 you want further information on this, to contact the
19 City of Henderson.
20 **Q** No, no, no. I know what you did. I'm
21 asking what your understanding this provision
22 requires you, as the agent for the seller.
23 Is it your understanding that you just
24 have to disclose the zoning map and say, "If you
25 want further information, you can go to the City of

Page 195

1 Henderson"?
2 **MR. GUNNERSON:** You can answer, but I'm
3 going to object that it calls for a legal
4 conclusion.
5 **A** I think I did my job for the seller well
6 with the zoning and the other disclosures, and I
7 think it's up to the buyer if they want further
8 information to either find that out themselves, or
9 they've hired a real estate agent to do that for
10 them.
11 **BY MS. HANKS:**
12 **Q** And what you -- and just to clarify what
13 you did in this case that you think you did well was
14 the disclosure of the zoning map; correct?
15 **A** Correct.
16 **Q** We're getting that copied right now, so
17 we'll talk about that in a minute.
18 **MR. GUNNERSON:** Objection: Misstates
19 prior testimony.
20 **MS. HANKS:** Counsel, can we go off the
21 record for a second?
22 (Discussion held off the record.)
23 **BY MS. HANKS:**
24 **Q** Let's talk about 4, since we just left off
25 on the zoning, and get back to the written answers.

Page 196

1 **MS. HANKS:** So can you hand her 4.
2 (Deposition Exhibit 4 was marked for
3 identification.)
4 **BY MS. HANKS:**
5 **Q** This map that's a colored zoning map, it's
6 marked as Exhibit 4. It was located in the binder
7 marked "Governing Documents," and it's behind Tab 3.
8 According to the index for the binder, it says
9 "Section 3, Existing Zoning Map and City of
10 Henderson Gaming Overlay Map." And I only copied
11 the zoning map because I'm not concerned about the
12 gaming map.
13 Do you know on that map where MacDonald
14 Highlands is located?
15 **A** Right here, this general area right here,
16 Horizon Ridge Parkway, Stephanie.
17 **Q** Can your circle that on that exhibit so we
18 know where we're talking? And do a big enough
19 circle to include the area, if you could.
20 **A** Your pen is not writing very well.
21 **MR. SHEVORSKI:** Here, use mine.
22 **BY MS. HANKS:**
23 **Q** You indicated earlier that MacDonald
24 Realty would get updated final maps to include in
25 this "Governing Documents" binder.

Page 197

1 Did MacDonald Highlands also receive
2 updated zoning maps to include in the binders?
3 **A** Can you restate the question?
4 **Q** Sure. If I recall correctly, your
5 testimony was that MacDonald Realty would get --
6 from time to time would get updated final maps to
7 include in these "Governing Documents" binders?
8 **A** I don't understand what you mean by we
9 would "get." Nobody delivered those to us.
10 **Q** If the final map was updated in any way,
11 how would MacDonald Realtors obtain it in order to
12 put it in the binders?
13 **MR. GUNNERSON:** Objection: Asked and
14 answered.
15 Go ahead.
16 **A** Before the Internet, I would have Paul get
17 me a smaller version, because they came in sheets.
18 When the Internet and the City of Henderson had a
19 website for the Assessor's Office, we would pull it
20 from the Assessor's Office and print it out.
21 **Q** Okay. So you would print it out.
22 So would the same be true for the zoning
23 maps? If the zoning was altered, would you also go
24 and print off updated zoning maps to insert into the
25 binders?

Ex. 1-B

EXHIBIT 1-B

Ex. 1-B

Paul Bykowsky - 2/3/2015
The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

CASE NO.
A-13-689113-C

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.

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

1 Q. "Of the project owned by declarant or
2 such transferee. Any such division boundary line
3 change or re-platting shall not be in violation of
4 the applicable subdivision and zoning regulations."

5 Now, the declarant which is
6 Foothills did not own any portion of Dragon Ridge
7 Golf Club in 2012, correct?

8 A. That calls for a legal conclusion.

9 Q. Do you know if Foothills Partners owned
10 any part of the golf course property in 2012?

11 A. Foothills Partners did not.

12 Q. And when the term "board of directors"
13 is used in this subsection, that's referring to the
14 board of directors of the homeowner's association,
15 correct?

16 A. Correct.

17 Q. Now, it's my understanding that the lot
18 lines for 594 Lairmont Place were changed, correct?

19 A. Correct.

20 Q. And they were changed to include a
21 portion of the golf course; is that correct?

22 A. Correct.

23 Q. Do you know if any prior written
24 approval of the board of directors was received
25 prior to those boundary lines being changed?

1 **A. Board of directors, no.**

2 Q. If someone were to back up -- sorry.

3 Who is supposed to submit the
4 request for written approval? It doesn't seem to
5 indicate that in this section.

6 Do you know?

7 **A. No.**

8 Q. Do you know why written approval was
9 not received from the board of directors for the
10 change of boundary line for 594 Lairmont Place if it
11 was required by the CC&R's?

12 **A. It was done through the declarant, not**
13 **through the board of directors.**

14 Q. Why was it done through the declarant
15 if 12.9 requires it to be done through the board of
16 directors?

17 **A. I don't read that it's required by the**
18 **board of directors.**

19 Q. It says "No unit shall be subdivided or
20 it boundary line changed except with prior written
21 approval of the board of directors."

22 **A. That's not the entire section.**

23 Q. And then it says, "Declarant, however,
24 for itself and any transferee of developmental
25 rights pursuant to section 15.1 hereby expressly

1 **Rich.**

2 Q. And how did you do that? Did you go
3 out there and look at it, or did you just draw it on
4 the map? How did you actually determine the new lot
5 lines?

6 A. I believe I put together an exhibit
7 based upon suggestions of Michael and Shane for the
8 size of the area. And I discussed it with golf
9 course operation's people to find out how much of
10 the area there was playable, what was in-bound, out
11 of bounds, and what was non golf-able area. And
12 then I put together an exhibit that was reviewed by
13 Michael, and we discussed it with Rich.

14 Q. Okay. So let me make sure I understand
15 this. So Michael and Shane had an idea of what area
16 they thought should be included in the additional
17 lot line, correct?

18 A. I don't recall. I don't know what they
19 did.

20 Q. I thought you said that they had given
21 you some ideas and you took that and made an exhibit
22 from. So I'm just trying to --

23 A. I got a request whether it was possible
24 to remap that area based upon a discussion I wasn't
25 privy to between Michael and Shane.

1 I said yes, and then I suggested
2 an area that was possible. And then they might have
3 had a further conversation as to the size or whether
4 it was acceptable, but I was approached whether it
5 was possible and put an exhibit together of what was
6 possible.

7 Q. And were you approached by Michael or
8 Shane about being possible?

9 A. I was e-mailed by Michael.

10 Q. Now, Mr. Malek testified that prior to
11 his purchase of 594 Lairmont Place, he was told that
12 the current owner of 594 Lairmont was in talks about
13 getting the golf parcel.

14 Do you have any recollection of
15 that happening?

16 A. No.

17 Q. So the first time you were aware that
18 anyone wanted to increase 594 Lairmont to include a
19 portion of the golf course was from when Mr. Malek
20 expressed that through his, I guess, through Michael
21 Doiron?

22 A. Was the e-mail I received from Michael.

23 Q. And do you remember about when that
24 e-mail was received?

25 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:	
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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

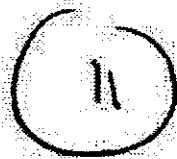
Action Type:	Articles of Organization
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Ex. 1-D

EXHIBIT 1-D

Ex. 1-D

APN: 178-28-520-001



Inst #: 201301070001226

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

JA_1163

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/SEMI-PUBLIC 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.

ZCA-06-660018-A15 – MacDonald Highlands - Golf Hole 9

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.

PLTF4604

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.

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.

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)

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.

- 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.

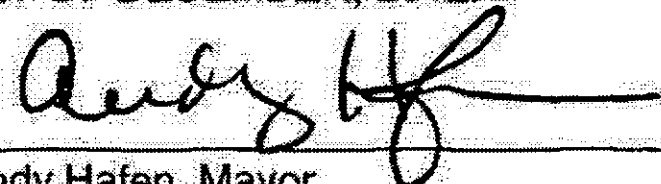
SECTION 4. All ordinances, or parts of ordinances, sections, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

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

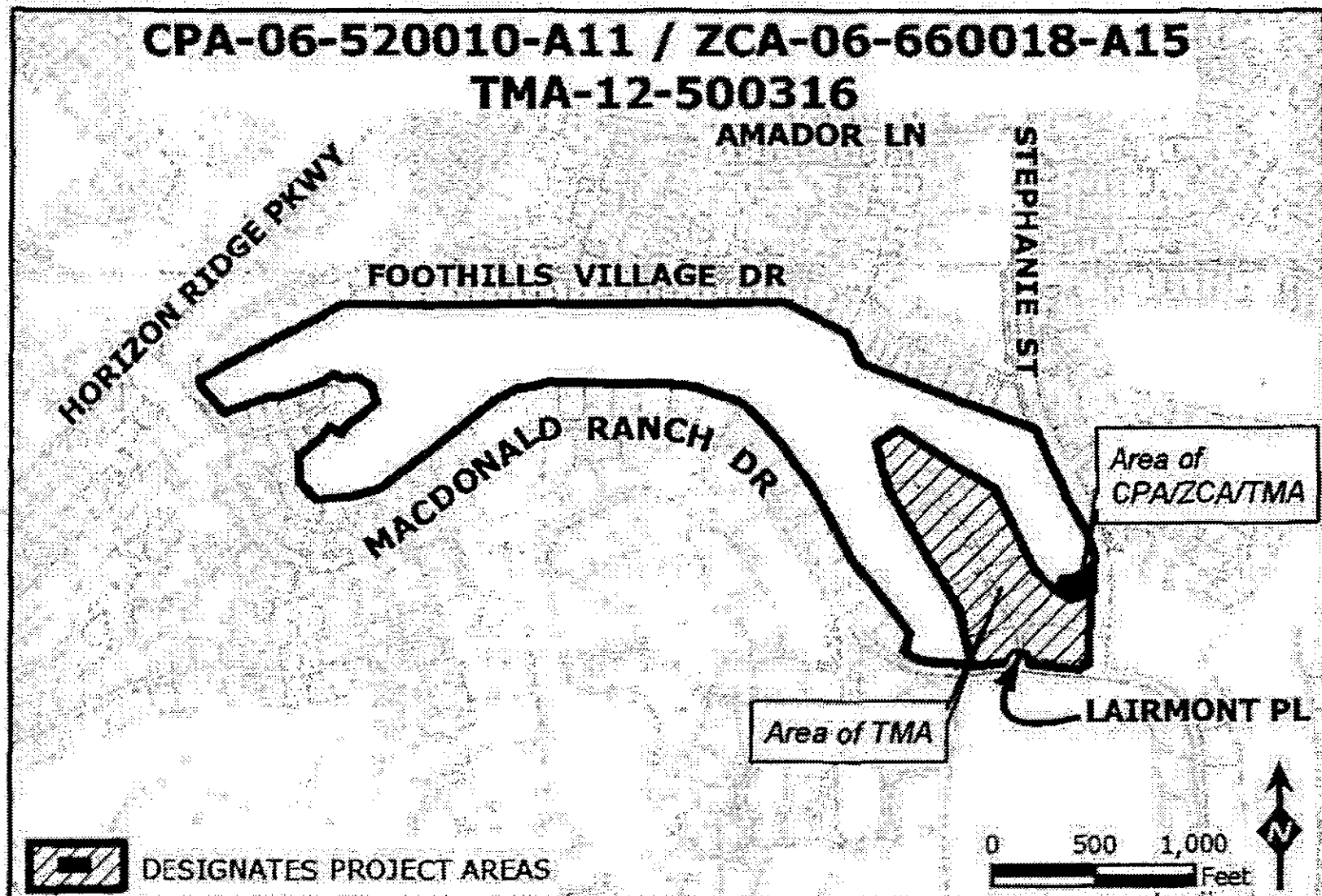
ATTEST:


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.

PLTF4610

EXHIBIT A
ZCA-06-660018-A15 – MacDonald Highlands (Golf Hole 9)



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.

PLTF4611

Ex. 1-E

EXHIBIT 1-E

Ex. 1-E

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	THE FREDRIC AND BARBARA)	
	ROSENBERG LIVING TRUST,)	
5)	
)	
6	Plaintiff,)	
)	
7	vs.)	Case No. A689113
)	DEPT. NO. I
8	BANK OF AMERICA, N.A.; BAC)	
	HOME LOANS SERVICING, LP, a)	
9	foreign limited partnership;)	
	DRAGONRIDGE PROPERTIES, LLC;)	
10	DRAGONRIDGE GOLF CLUB, INC. is)	
	a Nevada corporation;)	
11	MACDONALD PROPERTIES, LTD., a)	
	Nevada corporation; MACDONALD)	
12	HIGHLANDS REALTY, LLC, a)	
	Nevada limited liability)	
13	company; MICHAEL DOIRON, an)	
	individual; SHAHIN SHANE)	
14	MALEK, an individual; REAL)	
	PROPERTIES MANAGEMENT GROUP,)	
15	INC., a Nevada corporation;)	
	DOES I through X, inclusive;)	
16	ROE BUSINESS ENTITY I through)	
	XX, inclusive,)	
17)	
)	
18	Defendants.)	
)	

19 _____

20

21 DEPOSITION OF MICHAEL TASSI

22 LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015

23

24 Reported by: Johanna Vorce, CCR No. 913

25 JOB NO.: 235400

1 A. Yes.

2 Q. And is that document, to your understanding,
3 memorialized in Exhibit C and D that are in front of you?

4 A. Yes, it is.

5 Q. So particularly in this case then, when would the
6 physical maps pertaining to the zoning change have been
7 updated?

8 A. We updated the physical maps on this particular
9 item on January 24th.

10 Q. What year was that?

11 A. 2013.

12 Q. After those physical maps were updated, as you
13 stated previously, the process would have been to send them
14 to the IT Department, correct?

15 A. That's correct.

16 Q. Do you know when the website was updated to
17 incorporate those zoning changes?

18 A. I do not know.

19 Q. Do you have an approximate timeline as to when
20 they were updated?

21 A. Approximately the typical process. Approximately,
22 one to two weeks.

23 Q. Are you aware if it's ever taken longer than a
24 month to update the website after physical maps have been
25 changed?

1 A. I am not aware.

2 Q. Do you know if there's anybody at the City of
3 Henderson who knows the exact date as to which those maps
4 would have been updated online?

5 A. I don't know who that would be.

6 Q. As the planning manager of the City of Henderson,
7 what is the longest amount of time you're aware it has taken
8 to update zoning changes online once the physical map has
9 been updated?

10 A. That's not something I prepared for. I don't
11 know.

12 Q. But in your personal knowledge as someone who's
13 worked on zoning changes, do you have an estimate of the
14 amount of time which is the longest amount of time you
15 understand it's taken to update those?

16 A. I -- I don't. I looked at our typical process. I
17 thought that's what we were asked to do.

18 MR. KEMBLE: He just asked in your personal.

19 THE WITNESS: Okay. Yeah. I'm sorry. I don't.
20 I don't know.

21 BY MR. GUNNERSON:

22 Q. So you had mentioned before that it takes one to
23 two weeks to your understanding, correct?

24 A. For a map to be -- once we submit it to IT
25 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.)

No. A-13-689113-C

Dept. No. I

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

Defendants.)

DEPOSITION OF BARBARA ROSENBERG

Taken on Monday, December 8, 2014

By a Certified Court Reporter

At 1:04 p.m.

At Akerman, LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

CSR ASSOCIATES OF NEVADA

LAS VEGAS, NEVADA (702) 382-5015

73

1 BY MR. GUNNERSON:

2 Q. I didn't mean that. It stated, "My

3 buyers are very serious," correct?

4 A. Yes.

5 Q. And by "my buyers", she is referring

6 to you, your family, the trust, correct?

7 A. Yes, uh-huh.

8 Q. And you were very serious, correct?

9 A. Yes.

10 Q. It also says you have no restrictions

11 regarding seeing the interior, correct?

12 A. Yes, that is what she wrote.

13 Q. And that is true, right?

14 A. Yes.

15 Q. And then it says if you go down a

16 little bit more, second to last line, "And they

17 will take property as is." Is that correct?

18 A. That is what she wrote.

19 Q. But is she relaying what you

20 understood you and your family and the trust

21 position to be, that you would take the property

22 as is?

23 A. It depends on how you define as is. I

24 don't know how she was defining as is.

25 Q. But that is what she says here?

74

1 A. That is what she wrote, yes.

2 Q. Do you recall telling her that you

3 would take the property as is?

4 A. I don't recall saying that.

5 Q. Do you recall having any discussions

6 with any of your family about taking the

7 property as is?

8 A. We understood from Bank of America

9 that we would take it as is in terms of the

10 structural problems that were inside the house,

11 the cosmetic problems that were inside the

12 house, and that was our understanding of what as

13 is meant.

14 Q. As a real estate agent when somebody

15 takes a property as is, what does that mean?

16 A. That means they take the property as

17 they see it. If there are leaky faucets, they

18 take them. If there is a problem with a wall

19 that has cracks in it, the wood is warped, they

20 take it that way. It deals with structural

21 problems inside the house.

22 Q. What if there were environmental

23 concerns with the dirt on the property, would

24 that "as is" also include that?

25 A. Sometimes.

75

1 Q. Did you intend for it to cover that in

2 this case?

3 A. I didn't write this.

4 Q. But you said you intended that you

5 would take it as is as it pertains to structural

6 parts, correct?

7 A. Yes.

8 Q. I am asking did it include some

9 nonstructural parts such as any potential

10 environmental concerns with the property?

11 A. We never discussed that.

12 Q. Did as is concern regarding any

13 potential problems in the neighborhood?

14 A. My understanding of as is and the way

15 I always functioned as a broker realtor is as is

16 has to do with the house structure itself and

17 when you take a property as is, you assume that

18 the seller is going to make no remediation to

19 the structural problems in the house.

20 Q. And in fact when you buy a property as

21 is, that usually includes language in your

22 agreement that states it as such, correct?

23 A. Yes.

24 Q. And usually in your agreement, you

25 outline then in detail or a little more detail

76

1 then what as is means; is that correct?

2 A. Yes.

3 Q. But would you agree with me that the

4 way Ms. McGill states it here, she doesn't make

5 it clear what you meant by as is, correct?

6 A. I don't know what her idea of what as

7 is was.

8 Q. I understand that. I am not asking

9 what her idea was or what her thoughts were.

10 I am saying reading the letter, she

11 doesn't give any further explanation as to what

12 as is means in here, does she?

13 A. No, she doesn't explain.

14 Q. During this time that you were

15 negotiating the property, do you recall having

16 any verbal communications with anyone at Bank of

17 America or their real estate agents?

18 A. Are you referring to Michael?

19 Q. Michael would have been one of the

20 real estate agents, so yes, Michael would have

21 been included in that group?

22 A. The negotiations were running through

23 Siobhan. She was my agent. She was the one

24 dealing with the appropriate people. That is

25 what an agent is.

<p style="text-align: right;">121</p> <p>1 real estate transaction, correct?</p> <p>2 A. Yes.</p> <p>3 MS. CLINE: I'm sorry. What was that</p> <p>4 last question?</p> <p>5 (Record read as follows:</p> <p>6 "Q. Again, you would have read</p> <p>7 this document as you read all</p> <p>8 documents pursuant to a real</p> <p>9 estate transaction, correct?</p> <p>10 A. Yes.")</p> <p>11 BY MR. GUNNERSON:</p> <p>12 Q. The last paragraph, the third sentence</p> <p>13 starts with you.</p> <p>14 A. Uh-huh.</p> <p>15 Q. It says, "You may obtain more current</p> <p>16 information regarding the zoning and master plan</p> <p>17 information from the City of Henderson, Planning</p> <p>18 Department, 240 Water Street, Henderson, Nevada,</p> <p>19 89015," and it gives a telephone number. The</p> <p>20 Henderson city information is bolded and</p> <p>21 underlined. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Did you or to your knowledge did</p> <p>24 anyone else associated with you go to the City</p> <p>25 of Henderson Planning Department to look at</p>	<p style="text-align: right;">123</p> <p>1 did you or anyone associated with you go to the</p> <p>2 City of Henderson Planning Department to get</p> <p>3 current information?</p> <p>4 A. No. Had they gone, it was not</p> <p>5 recorded and they would not have found it out</p> <p>6 anyway.</p> <p>7 (Deposition Exhibit W marked.)</p> <p>8 THE WITNESS: If I could just add</p> <p>9 something. It says this information is current</p> <p>10 and it says if you want more current. There is</p> <p>11 no such thing as more current. Current by</p> <p>12 definition means something that as of this</p> <p>13 moment, this is the situation.</p> <p>14 BY MR. GUNNERSON:</p> <p>15 Q. What is the moment on that?</p> <p>16 A. It is April 13th.</p> <p>17 Q. That is not what the document says.</p> <p>18 The first line of the last paragraph, what does</p> <p>19 it say it is current on?</p> <p>20 A. It says this information is current</p> <p>21 and then it says it was plotted on</p> <p>22 February 2010, but it doesn't say -- it says</p> <p>23 this is information is current. It is two parts</p> <p>24 of the sentence.</p> <p>25 Q. It says, and I will read it word for</p>
<p style="text-align: right;">122</p> <p>1 zoning or master planned information?</p> <p>2 A. There would have been no reason to.</p> <p>3 It says here this information is current. It</p> <p>4 says on the top of it when they gave it to me</p> <p>5 that it is the most recent zoning and land use</p> <p>6 information. So as of April 13th, they were</p> <p>7 telling me you don't have to go there. If after</p> <p>8 you close there is a -- you want to know if</p> <p>9 something happened, fine. But as of this date,</p> <p>10 here is your current zoning information, and</p> <p>11 nobody told us about what was going on with the</p> <p>12 lot next door.</p> <p>13 Q. Ms. Rosenberg, my question was really</p> <p>14 simple. I understand you have an explanation.</p> <p>15 If your attorney wants you to explain further</p> <p>16 the response to the question, she can do that.</p> <p>17 That is fine. My question that I am asking is</p> <p>18 this states you may obtain current information</p> <p>19 regarding the zoning master planned information</p> <p>20 from the City of Henderson. Did you or are you</p> <p>21 aware of anyone associated with you go to the</p> <p>22 City of Henderson Planning Department to get</p> <p>23 further information?</p> <p>24 A. There was no need.</p> <p>25 Q. That is not the question. Yes or no,</p>	<p style="text-align: right;">124</p> <p>1 word, "This information is current and plotted</p> <p>2 as of February 2010." Isn't that correct, isn't</p> <p>3 that what it states?</p> <p>4 A. Well, that is not how I read it.</p> <p>5 Q. Is that what it states?</p> <p>6 A. That is what it says, but the way I</p> <p>7 read it is as a two-part sentence. Also, it</p> <p>8 says on top -- if you feel that that is</p> <p>9 confusing, it says on top that this is the most</p> <p>10 recent zoning and land use information, so you</p> <p>11 clarified it on top and you said don't worry</p> <p>12 about it, this is the most recent zoning and</p> <p>13 land use information that you can get.</p> <p>14 Q. First of all, I didn't do anything</p> <p>15 because I am just the attorney in this case.</p> <p>16 Secondly, I just asked you for that,</p> <p>17 and again, if your attorney wants you to clarify</p> <p>18 this, she can. Unfortunately right now, I am</p> <p>19 trying to get through this as quickly as I can</p> <p>20 and if you want to add more, have your attorney</p> <p>21 ask you more questions at the end. That is</p> <p>22 permissible. My question was what that read and</p> <p>23 you agreed that that is how that reads and that</p> <p>24 is what I was looking for, so I thank you.</p> <p>25 I would like to go to the next exhibit</p>

1 which is marked as Exhibit W --

2 MS. CLINE: I want to object to your
3 last statement because it misstates the prior
4 testimony, but we could go ahead and go forward
5 now.

6 MR. GUNNERSON: I disagree.

7 BY MR. GUNNERSON:

8 Q. We will go ahead and go to the next
9 one which is Duties Owed by a Nevada Real Estate
10 Licensee. Do you see that?

11 A. Yes.

12 Q. Again, at the bottom, I see
13 signatures.

14 A. Yes.

15 Q. It appears to have your signature and
16 your husband's; is that correct?

17 A. That's correct.

18 Q. This is a true and correct copy of the
19 Duties Owed by a Nevada Real Estate Licensee?

20 A. Yes.

21 Q. And this is to state what your -- am I
22 correct in that this is stating what duties your
23 real estate agent holds to you; is that correct?

24 A. This is approved by the Nevada Real
25 Estate Division, so it is a boilerplate that

1 they give to you when you employ them.

2 Q. So outlining what their duties are,
3 correct?

4 A. Yes.

5 Q. If you look down towards the bottom
6 half of the page, Item Number 6, do you see
7 that?

8 A. I do.

9 Q. It says advise -- this is again your
10 real estate agent's duty is to "advise the
11 client to obtain advice from an expert relating
12 to matters which are beyond the expertise of the
13 licensee". Do you see that?

14 A. I do.

15 Q. Did your real estate agent ever
16 discuss neighboring lot lines with you?

17 A. No.

18 Q. Did she ever advise you to seek an
19 appraisal regarding lot lines of the properties
20 or a survey of lot lines regarding the
21 properties?

22 A. No.

23 Q. If she didn't give you this advice to
24 obtain experts regarding these issues, why is
25 she included as a party to this lawsuit?

1 A. Because she had done nothing wrong.

2 Had she told us to go get these people, she
3 could have looked up the lot lines and they
4 would not have found anything because it is not
5 recorded. They would have seen the same lot
6 lines as my son David saw and that we saw in the
7 preliminary title, so she did absolutely nothing
8 wrong. There is nothing that set off an alarm
9 that said you should go get a survey done --
10 Bank of America should have told us if there was
11 a problem where we needed to get a survey, but
12 there was absolutely no indication that we
13 needed to get a survey and that anything had
14 changed. As I said before, even had we done a
15 survey, it was not discoverable.

16 Q. Did your real estate agent know how
17 important the view was to you?

18 A. Yes.

19 Q. Did she know how important privacy was
20 to you?

21 A. Yes.

22 Q. How important it was that you had a
23 complete and expanding view of everything around
24 you?

25 A. Yes.

1 Q. And yet knowing this and how important
2 that was to you, you are telling me she did not
3 advise you to obtain an expert opinion as to the
4 lot lines surrounding your property; is that
5 correct?

6 A. That is correct. That is not the
7 norm. I have been doing this for 25 years. I
8 never tell people to get a survey of the
9 property because you have a preliminary title
10 and when you get the title report, it tells you
11 the outlines of the property. There is
12 absolutely no reason.

13 When the title company did this, they
14 didn't discover it because it was not
15 discoverable because it had not been recorded,
16 so she did absolutely nothing wrong.

17 (Deposition Exhibit X marked.)

18 BY MR. GUNNERSON:

19 Q. I am handing you what we marked as
20 Exhibit X. This is entitled Walk-Through
21 Inspection and Release. Do you see that?

22 A. I do.

23 Q. There are signatures at the bottom of
24 the first page. Do you see that?

25 A. Yes.

129

1 Q. And for the record, this is marked as
 2 Exhibit X. And then there are signatures as
 3 well as initials at the bottom of the second
 4 page, correct?
 5 A. Uh-huh.
 6 Q. Are these yours and your husband's
 7 initials and signatures?
 8 A. They are.
 9 Q. As far as you could tell, this is a
 10 true and correct copy of the Walk-Through
 11 Inspection and Release?
 12 A. Yes.
 13 Q. It appears in the middle of the first
 14 page and the top of the second page, there is a
 15 line through the inspection with the word
 16 handwritten waived. Do you see that?
 17 A. Yes.
 18 Q. Do you recognize whose handwriting
 19 that is that says waived?
 20 A. It is an assumption. I think it is
 21 Michael, but I don't know. I don't know. I am
 22 guessing.
 23 Q. It is not yours, correct?
 24 A. That is not my handwriting, no.
 25 Q. And is this true that you waived the

130

1 Walk-Through Inspection and Release?
 2 A. It looks like it.
 3 Q. And you did say, however, you did
 4 conduct an inspection; is that correct?
 5 A. Yes.
 6 Q. When you conducted the inspection, you
 7 said you didn't really notice Malek's property,
 8 it was a bare lot, correct?
 9 A. Yes.
 10 Q. Do you recall seeing any stakes in the
 11 bare lot?
 12 A. No.
 13 Q. Because you don't remember looking at
 14 the bare lot at all, correct?
 15 A. I would assume in the course of normal
 16 looking I might have glanced over at the lot,
 17 but it was not on my mind that I needed to look
 18 at the lot because I didn't have any idea there
 19 was any problem.
 20 Q. Again, you don't recall looking at a
 21 lot or seeing anything on the lot; is that
 22 correct?
 23 A. That is correct.
 24 Q. If you waived the walk-through
 25 inspection, why did you then go forward with an

131

1 inspection?
 2 A. We went through an inspection because
 3 we needed to know what the problems were. Just
 4 like with the other house, the other Lairmont
 5 house, we needed to know how pervasive the
 6 problems were and we also did try to get them to
 7 pay for some of the problems, which they -- you
 8 saw there was a letter where we tried to ask
 9 them to fix some of the problems, and so
 10 basically I needed to know how bad it was.
 11 Q. When you asked them to fix the
 12 problems, what was their response?
 13 A. Well --
 14 Q. Do you recall?
 15 A. I don't recall.
 16 Q. In going through this process of
 17 getting ready to close, do you recall -- we
 18 talked about communications you had with Michael
 19 or her office or MacDonald Highlands Realty
 20 during the negotiation phase. We will call it
 21 the due diligence phase or the pre-close of
 22 escrow phase. Do you recall having any
 23 conversations with Michael or Jim or anyone at
 24 their office?
 25 A. Yes.

132

1 Q. Who did you have a conversation with?
 2 A. We had a very lengthy conversation
 3 with Michael.
 4 Q. Who is we?
 5 A. My husband, David, his wife. We were
 6 all in her office together.
 7 Q. And you are in Michael's office?
 8 A. Yes.
 9 Q. And do you recall when this was?
 10 A. It was the day of the inspection.
 11 Q. The day of the inspection. So it
 12 was -- did she attend the inspection with you?
 13 A. Yes. She came over to the inspection.
 14 Q. Do you recall what day the inspection
 15 occurred on?
 16 A. I think it was April the 13th. Is
 17 that when it was? Yeah, April the 13th. That
 18 is when she gave us this.
 19 MS. CLINE: I am showing her Exhibit
 20 B. It is the disclosure.
 21 THE WITNESS: That is the date she
 22 gave us that paper.
 23 BY MR. GUNNERSON:
 24 Q. Exhibit B, which is the zoning
 25 disclosure, you are saying she gave that to you

133

1 on the day you inspected the property?

2 A. Yes, when we went to the office

3 afterward.

4 Q. Did you go to her office after the

5 inspection or before?

6 A. After.

7 Q. Who met you at the property to do the

8 inspection?

9 A. She was at the property and the

10 inspector was there.

11 Q. Was your real estate agent there?

12 A. Yes.

13 Q. And your husband was there, correct?

14 A. Yes.

15 Q. And David and his wife were there,

16 correct?

17 A. Yes.

18 Q. And so my count, there were seven

19 people, is that correct, two real estate agents

20 and an inspector?

21 A. Uh-huh, seven.

22 Q. Who was the inspector?

23 A. I don't remember his name.

24 Q. And who let you into the property?

25 A. Siobhan arrived first and let the

134

1 inspector in.

2 Q. And how far along were you through the

3 inspection when you say Michael showed up?

4 A. I don't remember exactly.

5 Q. You don't remember exactly?

6 A. I don't remember exactly when she

7 came.

8 Q. You do recall, however, seeing her in

9 the property?

10 A. Yes.

11 Q. Or was it just that you recall talking

12 with her after the inspection?

13 A. No. She was in the property.

14 Q. And afterwards -- during that

15 inspection, did you have any conversations with

16 Michael?

17 A. Yes.

18 Q. What conversations did you have with

19 Michael during the inspection?

20 A. She was out with us by the pool when

21 they were inspecting the pool and she looked out

22 and she was telling us how beautiful this is,

23 what a wonderful view, you are so lucky to have

24 this property, my God, you are on the 9th hole

25 and right across from the driving range, it is

135

1 such a beautiful property. She was very, very

2 auditory about the property and how smart we

3 were to get this property.

4 Q. It is a beautiful property.

5 A. It is, yes.

6 Q. It has spectacular views.

7 A. Yes, but she neglected to mention what

8 Mr. Malek was intending to do and that they had

9 sold him a piece of the golf course, and she had

10 every opportunity to do so.

11 Q. You are saying she did not mention it?

12 A. She did not mention it.

13 Q. And did you talk with her anymore,

14 have any other conversations with her during the

15 inspection that you recall?

16 A. Well, what we did is she said she was

17 going to go back to her office, to come over

18 after the inspection and we would all talk at

19 her office.

20 Q. And so did she leave right then and

21 you finished the inspection or did she stay with

22 you through the inspection?

23 A. No, we didn't stay the whole time. We

24 finished the inspection and then we all went

25 across the street.

136

1 Q. Just as a reminder, let me finish the

2 questions because it is harder on the court

3 reporter than it is on me.

4 And so do you recall any other

5 conversations? I don't recall what you said.

6 Did you have any other conversations with her at

7 the property during the inspection?

8 A. I am sure we did chitchat.

9 Q. Nothing that you recall?

10 A. No. I remember being outside by the

11 pool and having that conversation.

12 Q. So she is there at the inspection, you

13 chitchat with her, but the only conversation you

14 recall is the one where she talks about the

15 beautiful view?

16 A. And how wonderful the house is.

17 Q. And then you went back to her office?

18 A. Right.

19 Q. And what was the purpose of the

20 discussion at the office?

21 A. She asked us to come back to the

22 office. She took us in. There is a big room

23 that has sort of a diagram of all of the lots,

24 and we all stood around the lots, and she said

25 here is your lot and she showed us all of the

1 delineation and possible lots, none of which
2 showed Mr. Malek's piece. Everything was
3 delineated exactly. It is still that way. If
4 you go to the office today, it doesn't show
5 Mr. Malek's land piece jutting out.

6 She was telling us how wonderful the
7 community was and we were so lucky to be in it,
8 and we all went into her office and it was so
9 crowded where my son David had to stand by the
10 door. She told us all about the people living
11 in the community and they are all rich, there
12 was one lady who had this very, very big, long
13 house and she got very angry at her neighbor who
14 wouldn't allow her to raise her RV garage thing,
15 so she went to her CC & R's, and she said we
16 really care about our CC & R's here. She
17 researched with a lawyer and she found out she
18 could put in very low trees, and she put in
19 those low trees and they grew like crazy and she
20 obliterated the man's view, and when the guy
21 came and said what did you do, she said I did it
22 legally, that is what the CC & R's said.

23 So she was basically telling us this
24 was a community that had restrictions, that it
25 had covenants, and you could depend on what they

1 told you. She told us all tremendous gossip
2 about a lot of people. She told us that the
3 people whose house it was -- she had listings on
4 the two houses across the street from us. She
5 said both of them are way overpriced, she
6 couldn't believe they had her put them up for
7 those prices, it is ridiculous, which is not the
8 way an agent speaks about your own listings.
9 Being an agent myself, I know you don't speak
10 like that. She told me she was going to be my
11 best friend, she was going to introduce all of
12 us to all of the people in the community, it was
13 such a wonderful community, my husband was so
14 lucky, we lived across the street, he had his
15 9th hole, he could walk, he had his driving
16 range, oh, my God, he had the 9th hole and he
17 had this gorgeous view, and she went on and on.
18 We were there a very, very long time and we
19 walked out feeling very, very good.

20 Q. Other than discussions about how
21 wonderful the property is and what is going on
22 in the community, and I understand that during
23 that, you said what you recall her saying and
24 then what it means. The part where you talked
25 about what that means, that is your

1 interpretation, correct?

2 A. That was what she was trying to tell
3 us.

4 Q. You don't know what she was trying to
5 do, do you? You are not Michael, right?

6 A. Right. If not, then she was --

7 Q. You are not Michael, correct?

8 A. Right.

9 Q. So you don't know what she was trying
10 to do, correct?

11 A. I don't know what she was trying to
12 do.

13 Q. When you state what she was trying to
14 do, you don't know if that is true or not?

15 A. I do not know.

16 Q. After those discussions talking about
17 the community and how beautiful your home is and
18 so on and so forth, what else did you talk
19 about?

20 A. She gave us the CC & R's, she gave us
21 the design booklets.

22 Q. The zoning disclosure, correct?

23 A. The zoning disclosure, no.

24 Q. Do you recall --

25 A. That was in the CC & R book.

1 Q. Do you recall receiving any other
2 documents?

3 A. The CC & R book by the way has plot
4 maps. She gave us this and --

5 Q. I am going to cut you off because this
6 is going really long and we are going to run out
7 of time --

8 MS. CLINE: She is trying to explain
9 to you what she did.

10 MR. GUNNERSON: Would you re-ask my
11 question, please?

12 (Record read as follows:

13 "Q. Do you recall receiving any
14 other documents?")

15 MS. CLINE: She was explaining what
16 documents she was given.

17 BY MR. GUNNERSON:

18 Q. Do you recall receiving any other
19 documents?

20 A. Yes.

21 Q. What other documents did you receive?

22 A. I received the book of the CC & R, I
23 received the design plans. Inside the CC & R
24 book, there were plot maps that showed the land,
25 the Lairmont land exactly as we have seen it,

153

1 MR. GUNNERSON: Let's take a quick
 2 break and go off the record.
 3 (Discussion held off the record.)
 4 BY MR. GUNNERSON:
 5 Q. My question is who put in on Number 18
 6 that the golf parcel had certain easements?
 7 MS. CLINE: Objection. Form.
 8 THE WITNESS: This is written by my
 9 lawyer.
 10 BY MR. GUNNERSON:
 11 Q. So your lawyer put that in the
 12 complaint; is that correct?
 13 A. Yes.
 14 Q. Thank you.
 15 So if I wanted to find out what those
 16 certain easements are, I would have to ask your
 17 lawyers, right?
 18 A. You could ask my lawyer, you could ask
 19 Paul Bykowski because he asked for them to be
 20 vacated, you could ask DragonRidge Properties.
 21 I don't know who you could ask, but there are
 22 several people you could ask.
 23 Q. I am not interested in what other
 24 people think the easements are. I am interested
 25 in what you and your lawyers think they are.

154

1 That was the purpose of the question.
 2 If you could go to Paragraph
 3 Number 55, Paragraph 55 states, "Michael Doiron,
 4 seller's representative, knew, or should have
 5 known, that the adjacent Malek Property lot
 6 lines were other than as presented to Plaintiff
 7 and had been amended in such a way to materially
 8 effect the value of the subject property or its
 9 use in an adverse manner." Do you see that?
 10 A. I do.
 11 Q. Malek Property says lot lines were
 12 other than what were presented to Plaintiff.
 13 Who presented those lot lines to you?
 14 A. Michael.
 15 Q. And are you referring back to then the
 16 conversation you had both during the inspection
 17 and at her office or are you referring to
 18 somewhere else?
 19 A. Also in her literature, in her listing
 20 agreement, she shows plot lines, I believe; and
 21 in her conversations, she never talked about
 22 anything having changed with the Malek property.
 23 She absolutely knew about it because she was the
 24 broker on it. She sold it to Malek so she knew
 25 that this had happened, and she failed to

155

1 disclose to us. She had multiple opportunities
 2 to tell us as Bank of America's representative
 3 that there had been a material change to the
 4 property line, and she didn't do it. That is
 5 what we are alleging here.
 6 Q. I see that. I understand when you
 7 said before that Michael had conversations when
 8 she talked about the view, how wonderful the
 9 property was, where she told you all of these
 10 wonderful things about what you could see and
 11 all of that, where she handed you the CC & R's,
 12 which they had in the office a layout of the
 13 properties.
 14 Did anyone present to you lot lines,
 15 specific lot lines, not an assumption of lot
 16 lines but actual lot lines?
 17 MS. CLINE: Objection. Form.
 18 Go ahead and answer if you understand
 19 the question.
 20 THE WITNESS: I told you there was a
 21 plot line map in the CC & R's and there was the
 22 display of all of the lots and exactly what
 23 their lines were, the plot lines were.
 24 BY MR. GUNNERSON:
 25 Q. Thank you. Just to be clear just to

156

1 check, when you are talking about lot lines were
 2 other than what was presented and I am asking
 3 how were the lot lines presented to you, you are
 4 talking about the plot lines or the lot lines
 5 that were in the CC & R's and on the display
 6 table in or near Michael's office?
 7 A. And the title company.
 8 Q. The title company presented you lot
 9 lines?
 10 A. They gave us a preliminary title that
 11 showed lot lines and it did not show the Malek
 12 property.
 13 Q. You are stating that your view of the
 14 title report provided lot lines?
 15 A. Yes.
 16 Q. Did it provide Malek's lot lines, the
 17 title report?
 18 A. The original ones.
 19 Q. So you are saying your title report
 20 showed Malek's lot lines?
 21 A. It shows the adjacent property lot
 22 lines, I think. I am not sure. I am not sure.
 23 Q. I don't recall seeing that. I don't
 24 have them with me, so I can't pull them up and
 25 ask you.

157

1 A. I am not sure.

2 Q. So you are not sure they do, but you

3 think they might?

4 A. I thought they might.

5 Q. We could always go back and look at

6 those and see if they are actually in the title

7 report. I used to be an attorney for a title

8 company for many years, and I don't recall

9 seeing lot lines for adjacent properties in the

10 title reports, but it may be in this one. I am

11 not saying it is not. I appreciate that.

12 MS. CLINE: Just a point of

13 clarification, when she says the CC & R's, I

14 believe, and you could ask her about it, there

15 is a binder that was handed that included the

16 CC & R's and also maps. I don't think the maps

17 were actually a part of the CC & R's.

18 BY MR. GUNNERSON:

19 Q. Did the CC & R's include maps?

20 A. Yes, in the binder.

21 Q. Did the binder include something more

22 than CC & R's?

23 A. It had the maps.

24 Q. So were the maps a part of the CC &

25 R's or were the maps separate from the CC & R's

158

1 in the binder?

2 A. I don't remember if they were

3 separate.

4 MR. GUNNERSON: That is the binder,

5 Counsel, you said you have --

6 MS. CLINE: I have them in my car and

7 I could grab them later if you went.

8 MR. GUNNERSON: That would be helpful.

9 They were not produced or they were just

10 produced?

11 MS. CLINE: They were just produced,

12 but it is easier to look at the binder format.

13 It is a little bit confusing when they are all

14 just scanned.

15 BY MR. GUNNERSON:

16 Q. How did you find out that the bare lot

17 was being sold to Malek?

18 A. A friend of David's told him.

19 Q. Do you remember when that was?

20 A. That was after we bought the property.

21 Q. Do you remember how far past after you

22 bought the property?

23 A. It would be a guess. Maybe a month or

24 two. I don't know.

25 Q. Do you recall anything about the

159

1 manner in which David found out about it? Was

2 there a conversation, was it an email, do you

3 remember how David found out?

4 A. One of his friends approached Malek

5 about possibly selling his property for him. In

6 discussing that he would possibly sell the

7 property, he mentioned I have three pieces, and

8 the agent said to him what do you mean three

9 pieces, you have two pieces. He said no, I have

10 this third piece that is not recorded.

11 Q. Who was that that was the friend that

12 was talking to --

13 A. Bob Diamond.

14 Q. Bob Diamond?

15 A. Yeah.

16 Q. And Bob Diamond was having this

17 conversation with Malek because Malek was

18 interested in using him as an agent or Bob

19 Diamond approached Malek about buying the

20 property?

21 A. They were having -- no. They were

22 having a friendly conversation, and Malek was

23 talking about possibly selling his land.

24 Q. So this is just Bob and Malek are

25 friends, is that what you are saying?

160

1 A. They are not friends. They are

2 acquaintances.

3 Q. And they just happened to have a

4 discussion about this property?

5 A. They had a discussion about possibly

6 selling his land.

7 Q. Bob Diamond is also friends with your

8 son?

9 A. Yes.

10 Q. And Bob Diamond is the one who

11 informed your son?

12 A. Yes.

13 Q. On Number 83 -- actually, I could have

14 picked a lot of paragraphs because a lot of

15 paragraphs make this statement -- strike that.

16 I think what I am going to do is I

17 noticed that generally speaking, the claims

18 against my clients are basically the same

19 between the original complaint and the amended

20 complaint.

21 Would you agree, Counselor?

22 MS. CLINE: Yes.

23 MR. GUNNERSON: I am going to mark as

24 Exhibit Z, and we are going to go through them

25 together and look at them both, and I don't

185

1 value to Plaintiff if Malek builds a structure
 2 on the golf course parcel or modifies the fence
 3 line to incorporate the golf course parcel." Do
 4 you see that?
 5 A. Yes.
 6 Q. Is that still your position that the
 7 property has zero value if he builds on the lot?
 8 A. It has zero value to us. We wouldn't
 9 stay there.
 10 Q. Where would you go?
 11 A. We would either reposition the house
 12 if we had to or buy an analogous house hopefully
 13 on Lairmont if something shows up or if we could
 14 find something that would even in some ways be
 15 equivalent to it. No, we would not stay there.
 16 We would not have bought the house if we had
 17 known this.
 18 We are too old. We are at a stage in
 19 life where we just can't go through this kind of
 20 stuff. Basically, you want peaceful enjoyment
 21 of the house, you want to just move in. If
 22 there is a couple of leaky faucets, I don't care
 23 about it. I don't want to deal with litigation
 24 like we are right now.
 25 Q. When you say the property has zero

186

1 value --
 2 A. To us.
 3 Q. You are not saying the property has no
 4 value, right?
 5 A. No. It says zero value to Plaintiff.
 6 Q. In reality, you just told me you
 7 believe the replacement value or the insurance
 8 company believes the replacement value is over
 9 \$4 million, right?
 10 A. For the house, yeah, 3 1/2. It says
 11 zero value to us.
 12 Q. I got that.
 13 In Interrogatory Number 3, which is on
 14 the same page, Line 21, do you see that?
 15 A. Yes.
 16 Q. It says, "Plaintiff purchased the
 17 subject property based on its unique
 18 characteristics." Do you see that?
 19 A. What line?
 20 Q. Line 21 on the same page.
 21 A. Okay, yeah.
 22 Q. "Plaintiff purchased the subject
 23 property based on its unique characteristics
 24 including, but not limited to, its location in a
 25 Henderson golf course community," right?

187

1 A. Yes.
 2 Q. Even if Malek purchases the property,
 3 do you still have that with the subject
 4 property?
 5 A. It is located in a golf course --
 6 Q. That remains, right?
 7 A. Yes.
 8 Q. Its proximity to the 9th hole of the
 9 golf course, Malek's purchase of the bare lot
 10 and building whatever he does with those lots,
 11 that does not change your proximity to the 9th
 12 hole of the golf course, does it?
 13 A. It absolutely does because they have
 14 to reconfigure the golf course. It is not the
 15 9th hole that we bought. I don't know what he
 16 is building there. If he is building something
 17 obstructive, there is going to be fencing and a
 18 house and the 9th hole will not look like the
 19 way it does right now. It is going to look
 20 completely different.
 21 Q. It doesn't say the look of the 9th
 22 hole. It says your proximity to the 9th hole.
 23 Your proximity of the home to the 9th hole is
 24 the same distance as it was previously, correct?
 25 A. I don't know if they will have to

188

1 modify the 9th hole if he builds. I don't know.
 2 Q. You are saying maybe --
 3 A. Hypothetically, I don't know because
 4 he has not given us any papers to show what his
 5 plans are.
 6 Q. He has. Nonetheless --
 7 A. No. My attorneys told me they
 8 requested it, they keep requesting and they
 9 don't get any plans to show them what his
 10 intention is.
 11 Q. They may have received them by now. I
 12 don't know if they have.
 13 A. They did not.
 14 MS. CLINE: I have not received all of
 15 the plans and I also have not received anything
 16 that says this is the final version that is
 17 going to be approved. It is not one that they
 18 said in any way this is definitely the way we
 19 want to build.
 20 BY MR. GUNNERSON:
 21 Q. But as far as you have not seen
 22 anything to indicate that the 9th hole is being
 23 moved, correct?
 24 A. As of yet.
 25 Q. Right. All you know is what happened

197

1 obstruct your view of the grass part of the 9th
2 hole. Are those all correct statements?
3 A. Yes.
4 Q. And yet, you are making a claim that
5 your view of the 9th hole is being obstructed
6 even though you don't know any of those things;
7 is that correct?
8 A. I am saying that these are all
9 possibilities and if these possibilities --
10 Q. I am sorry to interrupt. I need you
11 to answer yes or no.
12 Could you repeat the question?
13 (Record read as follows:
14 "Q. And yet, you are making a
15 claim that your view of the 9th
16 hole is being obstructed even
17 though you don't know any of those
18 things; is that correct?")
19 THE WITNESS: Yes.
20 MS. CLINE: I am going to object as
21 argumentative. And, Counsel, could you tone it
22 down a little bit?
23 MR. GUNNERSON: My tone is not going
24 anywhere. I don't know what you are saying.
25

198

1 BY MR. GUNNERSON:
2 Q. Number 3, Page 3, Number 24, it also
3 says the view, it says the golf course and the
4 mountains; is that correct?
5 A. Yes.
6 Q. What mountains are you referring to
7 there?
8 A. The mountains that you see from the
9 house.
10 Q. When I looked out of your house, I saw
11 mountains in the distance straight back behind
12 the house and then around us towards the front
13 of the house are a lot of foothills. When you
14 say mountains, are you also including the
15 foothills or are you referencing the mountains
16 in the distance?
17 A. I am referencing the views from the
18 back of the house.
19 Q. And then it says you also bought the
20 property because of the living room. Does that
21 remain the same if in fact Malek purchases and
22 builds on the bare lot?
23 A. Well, the living room has this
24 beautiful view. So if he builds into the view,
25 then it is damage to the living room.

199

1 Q. I am not sure exactly. What you are
2 saying is what you could see out the living room
3 is what you mean here when you say the living
4 room is unique. You are talking about the view
5 from the living room is unique?
6 A. This says we bought it based on -- it
7 still has a very nice living room; but if he
8 builds something, it could have an obstructed
9 view which doesn't have that.
10 Q. Even if he didn't buy the bare lot, he
11 is still going to build on that property which
12 you would still be able to see out your living
13 room window, correct?
14 A. Yes, but you would see it
15 peripherally.
16 Q. It also says you bought it because of
17 the kitchen?
18 A. Yes.
19 Q. And the dining room?
20 A. Uh-huh.
21 Q. Do the kitchen and dining room change
22 if Malek purchases the property and builds on
23 it?
24 A. Not the kitchen, but possibly the
25 dining room.

200

1 Q. Because of the view?
2 A. Yeah.
3 Q. And it says also the master bedroom,
4 right, that is something that was unique?
5 A. Major league, yeah.
6 Q. Are you saying that -- has that
7 changed as a result of him purchasing the
8 property, the master bedroom?
9 A. That would be the most impacted if he
10 builds on that piece of land.
11 Q. You are not talking about the master
12 bedroom itself won't change, that remains the
13 same as far as the carpet and the color of the
14 walls and the furniture and the layout. What
15 you are saying is the view from the master
16 bedroom changes?
17 A. Yes.
18 Q. And you also talk about then the
19 privacy created by the lack of residential
20 building lots to the rear of the property,
21 correct?
22 A. Yes.
23 Q. What lack of -- To the rear of the
24 property is the 9th hole.
25 A. Yes.

<p style="text-align: right;">209</p> <p>1 understanding is that it is concerns about view 2 and privacy alone and there is nothing else that 3 is damaging you, the trust, or the property, the 4 subject property?</p> <p>5 MS. CLINE: Objection. Form, 6 misstates prior testimony.</p> <p>7 MR. GUNNERSON: Let me rephrase it 8 then because your counsel is objecting. I want 9 to make sure I get a question that she doesn't 10 feel she needs to object to.</p> <p>11 BY MR. GUNNERSON:</p> <p>12 Q. Other than the concerns for view and 13 privacy, whether it is your lack of disclosure 14 of the purchase to affect your view and 15 privacy -- strike that.</p> <p>16 Other than view and privacy, how else 17 has your property been damaged as a result of 18 these claims against the Defendants?</p> <p>19 A. Well, according to this, if you went 20 out to try to resell it, you would have to sell 21 it at a very, very reduced price.</p> <p>22 Q. And why is that?</p> <p>23 A. It tells you it went down in value by 24 almost a million dollars.</p> <p>25 Q. As a result of what?</p>	<p style="text-align: right;">211</p> <p>1 Q. Go ahead.</p> <p>2 A. Right now? I would think that is the 3 primary concern, privacy and view. It is also 4 emotional distress. We have been spending so 5 much time and effort on this thing, and fees for 6 the attorneys and all of the fees and all of 7 that. Those are the main damages.</p> <p>8 Q. Sitting here today, and I think I will 9 tell you your expert even talks about damages 10 related to the purchase of the property like 11 fees, title fees, recording fees, those kinds of 12 things. Other than what you just said and what 13 is contained in his report, are you aware of 14 anything else that has damaged your property?</p> <p>15 A. Well, that it has become public 16 knowledge.</p> <p>17 Q. But that hasn't damaged your property, 18 right?</p> <p>19 A. On resale it would. We would disclose 20 to the next person. So as I said, it completely 21 damages the value of the property.</p> <p>22 Q. Because it takes away view and 23 privacy?</p> <p>24 A. Right.</p> <p>25 Q. I just want to make sure. It seems to</p>
<p style="text-align: right;">210</p> <p>1 A. As a result of if he builds.</p> <p>2 Q. And --</p> <p>3 A. If he doesn't build, that is a whole 4 other thing.</p> <p>5 Q. If he builds, it takes away what from 6 you?</p> <p>7 A. Read the report.</p> <p>8 Q. I have. I want to know your thoughts. 9 It takes away what from you?</p> <p>10 A. It takes away the reason we bought 11 this thing. We bought this thing because we 12 wanted to be -- it is our dream. It was my 13 husband's dream to be on the 9th hole, to be 14 across the street from the driving range, to be 15 in this beautiful gated community, to have 16 peaceful enjoyment of the property, not to have 17 another house with somebody staring from their 18 window into your master bedroom. That was never 19 the idea behind this.</p> <p>20 Q. If your expert's report at BB is based 21 entirely upon damages resulting from view and 22 privacy, is that your understanding as to the 23 basis for your damages?</p> <p>24 A. I would have to think about it some 25 more.</p>	<p style="text-align: right;">212</p> <p>1 me that everything is based on view and privacy. 2 That is the basis of your damages, and I just 3 wanted to make sure that that was it. So I 4 thank you for your responses to that.</p> <p>5 A. And the obstruction of the 9th hole. 6 I am not an expert on golf courses so I can't 7 tell you exactly what it would do to the 9th 8 hole, but in preserving the integrity of the 9 golf course the way it is now --</p> <p>10 Q. But you don't own the golf course, 11 correct?</p> <p>12 A. No. But you had a reasonable 13 expectation that when you bought the house that 14 the golf course was going to remain the way it 15 looked at that time and that is what we were 16 represented.</p> <p>17 Q. We have gone the rounds on this one 18 already. I won't go again other than just to 19 ask as far as your view goes, where Malek's 20 property is and where the bare lot is, when you 21 look out towards those, what view do you see? I 22 am not talking about the 9th hole itself, 23 meaning the green part of the 9th hole. I am 24 not talking about the view of the valley or the 25 Strip or the mountains in the distance.</p>

269

1 A. Yes.

2 Q. Have you ever had clients who

3 encountered litigation as a result of selling

4 the bare land that they built a new house on?

5 MS. CLINE: Objection to form.

6 THE WITNESS: Not really.

7 BY MR. DEVOI:

8 Q. Not really, so it has happened?

9 A. No. Not to my memory, no.

10 MR. DEVOI: I don't think I have

11 anything more at this time. Anybody else?

12 MR. GUNNERSON: I just have a few

13 follow up questions.

14

15 FURTHER EXAMINATION

16 BY MR. GUNNERSON:

17 Q. Spencer Gunnerson again. Just as I

18 was finishing my questions earlier, your counsel

19 handed me these binders you say you received

20 when you met with Michael Doiron. I am going to

21 hand you first what appears to be the Design

22 Guidelines. I don't know how we are going to

23 mark this as an exhibit since I am not aware of

24 what exhibit numbers these are.

25 MS. CLINE: I could figure out what

270

1 the Bates numbers are for these.

2 MR. GUNNERSON: Do you have that front

3 cover -- Did you produce the front covers of

4 these?

5 MS. CLINE: I don't know if I do. If

6 you want, I can mark it separately and disclose

7 it again.

8 MR. GUNNERSON: Let's mark it as next

9 in line, the Design Guidelines. If we could,

10 Counsel, if you could get me those numbers and

11 put a blank in the transcript, is that okay?

12 MS. CLINE: Yes.

13 MR. GUNNERSON: And we could insert it

14 in. What is the next exhibit number?

15 COURT REPORTER: II.

16 (Deposition Exhibit II marked.)

17 BY MR. GUNNERSON:

18 Q. I handed you what we marked as Exhibit

19 II. We will mark it as Exhibit II. It is

20 Design Guidelines that you claim were provided

21 to you. Can you state to me when those appear

22 to be revised as of?

23 A. The last one?

24 Q. Yes.

25 A. September 1, 2006.

271

1 (Deposition Exhibit JJ marked.)

2 BY MR. GUNNERSON:

3 Q. In addition to that, I am going to

4 hand you we are going to mark as JJ. It is the

5 Governing Documents, and that binder I believe

6 if you open it up to the first page, there is, I

7 believe, three maps on the front of that binder.

8 Do you see that?

9 A. Yes.

10 Q. Those three maps we will mark JJ as

11 the cover page, if we could, of the binder, and

12 then Exhibit KK will be the first page of that

13 plot map.

14 Could you open up that map you have

15 right there and tell me the date on the bottom

16 right-hand corner?

17 A. 10/06/03.

18 Q. So October 6, 2003.

19 Could you turn to the second map and

20 we will mark the second map as LL. Also, could

21 you tell me the date it says on the bottom

22 right-hand corner?

23 A. 11/06/03.

24 Q. That is November 6, 2003, correct?

25 A. Yes.

272

1 Q. Turn to the next one, which we will

2 mark as MM. Can you tell me on that map what

3 the date is on the bottom right-hand corner?

4 A. 3/04/04.

5 Q. Go ahead and close that. Is that all

6 of the maps there at the front?

7 I didn't see any other maps in this

8 binder. Do you see the one at the very end

9 there? The one at the very end, if you open it

10 up, it is not a plat map. It doesn't show the

11 properties specifically, does it? It is a map

12 of the valley; is that correct?

13 A. It says gaming overlay area.

14 Q. It doesn't show the lot lines for the

15 properties, correct?

16 A. No.

17 Q. We will mark that as NN.

18 And then the next map at the end of

19 the binder, which I believe is the last map, we

20 will mark this as OO. That is a map it appears

21 of the valley?

22 A. It is a zoning map of Henderson.

23 Q. And that does not show any lot lines

24 as well, correct?

25 A. It shows zoning.

273

1 Q. But no lot lines on Lairmont Street,
2 correct?

3 A. No.

4 Q. Is that correct?

5 A. Yes, that is correct.

6 Q. Are there any other maps that you
7 could see in that binder?

8 A. I don't think so.

9 Q. I didn't see any either. I have no
10 further questions.

11 MS. CLINE: Natalie, did you have any
12 follow-up?

13 MS. WINSLOW: No.

14 MS. CLINE: If we could take a
15 couple-minute break and I will have a couple of
16 follow-up questions.

17 (Recessed from 7:07 p.m. to 7:17
18 p.m.)
19 (Deposition Exhibits KK - OO
20 marked.)

21

22 EXAMINATION

23 BY MS. CLINE:

24 Q. Just a couple of things I want to
25 clarify with you. When did your son, David, get

274

1 married?

2 A. He got married in 2010, got engaged in
3 2009.

4 Q. I am going to show you again what was
5 previously marked as Exhibit P. The page that
6 is Bates stamped BANA 000005, can you tell me
7 what Paragraph 10 is?

8 A. Disclosures. Shall I read it?

9 Q. Yes.

10 A. "Within five calendar days of
11 acceptance of this agreement, seller will
12 provide the following disclosure and/or
13 documents, each of which is incorporated herein
14 by this reference. Check applicable boxes."

15 Q. Is there any box that is checked?

16 A. Buyer Real Property Disclosure Form.

17 Q. Buyer?

18 A. I'm sorry. Seller. It is late.
19 Seller Real Property Disclosure Form.

20 Q. Is it your understanding that the
21 Seller Real Property Disclosure Form if it was
22 provided would be incorporated into this
23 agreement?

24 A. Yes.

25 Q. Was a Seller Real Property Disclosure

275

1 Form ever provided to you?

2 A. Yes.

3 Q. I am going to hand you a document that
4 we will mark as Exhibit PP.

5 (Deposition Exhibit PP marked.)

6 BY MS. CLINE:

7 Q. Have you seen this document before?

8 A. Yes.

9 Q. And what is it?

10 A. It is a Seller's Real Property
11 Disclosure Form.

12 Q. If you look at the bottom of each of
13 the pages, do you see initials?

14 A. Yes.

15 Q. On the right-hand side of each of the
16 pages over buyer's initials, are those your
17 initials?

18 A. That is mine and my husband.

19 Q. And just make sure on each of the
20 pages that that is correct.

21 A. Yes.

22 Q. Can you tell me what this form is?

23 A. A Seller's Real Property Disclosure
24 Form tells you basically everything you need to
25 know about the property and they disclose their

276

1 knowledge of it.

2 Q. Can you tell me what it says on
3 Number 11 on the pages that are Bates stamped
4 MHR 000051?

5 A. It says are you aware of any of the
6 following, and it says, "Any other conditions or
7 aspects of the property which materially affect
8 its value or use in an adverse manner."

9 Q. And what box was checked?

10 A. No.

11 Q. Is it your understanding that that was
12 correct?

13 A. No, it is not correct.

14 Q. Is it your understanding that Bank of
15 America who was the seller had knowledge of
16 another adverse condition or aspect of the
17 property which materially affects its value or
18 use in an adverse manner?

19 A. Yes.

20 Q. Is there any other things provided
21 within the seller's disclosures that you believe
22 was answered incorrectly by the seller? You can
23 take a second to look at it.

24 A. Whether the property was located next
25 to or near any known future development.

<p style="text-align: right;">277</p> <p>1 Q. And what was the answer?</p> <p>2 A. And the answer was no.</p> <p>3 Q. Is there anything else that you see?</p> <p>4 A. Any encroachments, easements, zoning</p> <p>5 violations, or nonconforming uses, possibly.</p> <p>6 MS. WINSLOW: What paragraph?</p> <p>7 THE WITNESS: 2, land or foundation.</p> <p>8 BY MS. CLINE:</p> <p>9 Q. Paragraph 9 talks about common</p> <p>10 interest communities. Can you tell me what that</p> <p>11 says and which box was checked?</p> <p>12 A. "Any common areas, facilities like</p> <p>13 pools, tennis courts, walkways or other areas</p> <p>14 co-owned with others, or homeowner association</p> <p>15 which has any authority over the property," and</p> <p>16 the box checked is no.</p> <p>17 Q. Is that accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Is it accurate that --</p> <p>20 A. Is it accurate that they didn't know?</p> <p>21 Q. Is there a common interest community?</p> <p>22 A. Yes, there is a common interest</p> <p>23 community.</p> <p>24 Q. If you go a little bit further to MHR</p> <p>25 000372, do you recognize that page?</p>	<p style="text-align: right;">279</p> <p>1 Q. So that still reads they are unaware</p> <p>2 of any other conditions or aspects of the</p> <p>3 property which materially affect its value or</p> <p>4 use in an adverse manner?</p> <p>5 A. Yes.</p> <p>6 Q. You have talked some about what you</p> <p>7 believe is important and what you appreciate</p> <p>8 about the property. Are you aware of what, if</p> <p>9 anything, was important about this property to</p> <p>10 your husband?</p> <p>11 A. Yes. My husband grew up very poor and</p> <p>12 the money we have we worked for and he worked</p> <p>13 very, very hard all his life, and one of the</p> <p>14 things that he really wanted was to have a golf</p> <p>15 community, be on his street of dreams, and be</p> <p>16 able to enjoy his old age or our old age</p> <p>17 actually because we are heading to 70, in a</p> <p>18 nice, quiet, beautiful place.</p> <p>19 He loved -- when we saw the house, not</p> <p>20 only did he love the fact that it was on the</p> <p>21 driving range -- it was across from the driving</p> <p>22 range and it was on the 9th hole, he loved when</p> <p>23 he looked out the flow of the land and it was so</p> <p>24 beautiful. He is very aesthetic. I am from</p> <p>25 Brooklyn and I have no aesthetic sense at all.</p>
<p style="text-align: right;">278</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. Property conditions, same page.</p> <p>4 Q. Is there a change to that page?</p> <p>5 A. Yes.</p> <p>6 Q. From the first one that was marked as</p> <p>7 MHR 00051?</p> <p>8 A. Yes.</p> <p>9 Q. What is the change?</p> <p>10 A. There were three changes, Number 9,</p> <p>11 (a), (b), and (c).</p> <p>12 Q. When is that dated?</p> <p>13 A. 5/10/13.</p> <p>14 Q. Do you know who signed that or</p> <p>15 initialed it?</p> <p>16 A. No.</p> <p>17 Q. It wasn't you?</p> <p>18 A. No, it wasn't me.</p> <p>19 Q. Is it your understanding that the</p> <p>20 seller amended part of the disclosure form?</p> <p>21 A. Yes.</p> <p>22 Q. On the amended disclosure form or that</p> <p>23 amended page marked MHR 372, did they change</p> <p>24 Paragraph 11?</p> <p>25 A. No.</p>	<p style="text-align: right;">280</p> <p>1 He is extremely aesthetic. When he found out</p> <p>2 about this, he was so appalled that his dream</p> <p>3 was shattered. Now we are in litigation and we</p> <p>4 have to deal with all of this. Basically, this</p> <p>5 was the perfect house. It was the fulfillment</p> <p>6 of all of his dreams, and this is a big mess.</p> <p>7 It is really a mess.</p> <p>8 The other thing is he is so committed</p> <p>9 to golf that our little grandson who is 15</p> <p>10 months old, he took him across the street to see</p> <p>11 if he could get him fitted for golf clubs, and</p> <p>12 of course at 15 or 16 months you don't get</p> <p>13 fitted for golf clubs. He is in the house with</p> <p>14 the little golf club and showing him. His dream</p> <p>15 was he would finish out his medical practice and</p> <p>16 we would come out here and stay with the</p> <p>17 grandchildren and doing all of the things that</p> <p>18 it took him all of those years to accomplish.</p> <p>19 It has been a very long haul. We are very, very</p> <p>20 fortunate. A lot of very good things happened</p> <p>21 to us, but this is sort of a culmination of all</p> <p>22 of his hard work.</p> <p>23 Q. You said earlier, you were asked the</p> <p>24 question before when Mr. Gunnerson was asking</p> <p>25 you questions about did you ever go to the</p>

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 LAURENCE 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: <u>RS-6 & RS-2</u>	Master Plan: The Foothills at MacDonald Ranch
East of the Subdivision:	Zoning: <u>DE</u> <u>Development Holding</u>	Master Plan: The Foothills at MacDonald Ranch
South of the Subdivision:	Zoning: <u>RS-2</u>	Master Plan: The Foothills at MacDonald Ranch
West of the Subdivision:	Zoning: <u>RS-6 & RS-2</u>	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 is 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: 4-13-13

Purchaser: [Signature]

Purchaser: [Signature]

Deft	EXHIBIT <u>V</u>
WITNESS	<u>B. Rosenberg</u>
DATE:	<u>12/8/14</u>
CINDY HUEBNER, CCR	

MHR000038

APP00116

Ex. 1-H

EXHIBIT 1-H

Ex. 1-H

870115123



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 within 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 2B 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: BR

Property Address: 590 Lairmont Place

SELLER(S) INITIALS: ML

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Page 1 of 11

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

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

7 ☐ does -OR- ☐ does not

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

10

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

14

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

21

22 3. **SALE OF OTHER PROPERTY:**

23 This Agreement

24 ☒ is not -OR-

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

26

27 Said Property

28 ☐ is currently listed

29 ☐ is not -OR- ☐ is

30 presently in escrow with

31 Escrow Number:

32

33 When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to
34 Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will
35 terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a
36 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
37 written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and
38 closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver
39 of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's
40 ability to obtain financing is not contingent upon the sale and/or close of any other property.

41

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

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

51

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

53

54

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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 2 of 11

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1 5. ESCROW:

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

9
10 B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of
11 this Agreement, shall be deposited per the Earnest Money Receipt Notice and Instructions contained herein.

12
13 C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on (date) 4/30/2013 or sooner
14 If the designated date falls on a weekend or holiday, COE shall be the next business day.

15
16 D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation which became effective January
17 1, 1987, that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known
18 only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is
19 required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by
20 federal law.

21
22 E. FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and
23 deliver to ESCROW HOLDER a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the
24 Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign
25 corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a
26 foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller
27 understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by ESCROW
28 HOLDER in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the ESCROW
29 HOLDER the necessary documents, to be provided by the ESCROW HOLDER, to determine if withholding is required. (See
30 26 USC Section 1445).

31
32 6. TITLE INSURANCE: Upon COE, Buyer will be provided with the following type of title insurance policy:
33 ☐ CLTA; ☒ ALTA-Residential; -OR- ☐ ALTA-Extended (including a survey, if required).

34
35 7. PRORATIONS, FEES AND EXPENSES (Check appropriate box):

36 A. TITLE AND ESCROW FEES:

TYPE	PAID BY SELLER	PAID BY BUYER	50/50	N/A
Escrow Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lender's Title Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Owner's Title Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Real Property Transfer Tax	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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44 B. PRORATIONS:

TYPE	PAID BY SELLER	PRORATE	N/A
CIC (Common Interest Community) Assessments	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CIC Periodic Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SIDs / LIDs / Bonds / Assessments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sewer Use Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash Service Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Real Property Taxes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

54
55
56
57 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 FR

Property Address: 590 Lairmont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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Page 3 of 11
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1 **C. INSPECTIONS AND RELATED EXPENSES** (See also Section 12): Acceptance of this offer is subject to
2 the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building
3 inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas,
4 power and water) are turned on and supplied to the Property within two (2) business days after execution of this Agreement, to
5 remain on until COB. (It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.)

6	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED	N/A
7	Appraisal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	CIC Capital Contribution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	CIC Transfer Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	CLUE Report ordered by Seller	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Energy Audit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Fungal Contaminant Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Home Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Mechanical Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Oil Tank Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	Pool/Spa Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	Roof Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	Septic Inspection (requires pumping)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19	Septic Lid Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20	Septic Pumping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Soils Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	Structural Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	Survey (type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24	Termites/Pest Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25	Well Inspection (Quantity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26	Well Inspection (Quality)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27	Wood-Burning Device/Chimney Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28	(includes cleaning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30	Re-Inspections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

37
38 **D. CERTIFICATIONS:** Notwithstanding the elections below, in the event an inspection reveals problems with any
39 of the foregoing, Buyer reserves the right to require a certification.

40	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED
41	Fungal Contaminant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
42	Roof	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
43	Septic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
44	Well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
45	Wood-Burning Device/Chimney Certification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
46	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

48
49 The foregoing expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary
50 prior to COB (along with the applicable invoice). A certification is not a warranty.

51
52 **E. SELLER'S ADDITIONAL COSTS AND LIMIT OF LIABILITY:** Seller agrees to pay a maximum
53 amount of \$ ZERO to correct defects and/or requirements disclosed by inspection reports, appraisals,
54 and/or certifications. It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves
55 the right to request additional repairs, which may exceed the above-stated amount, based upon the Seller's Real Property

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, FR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: NR

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Page 4 of 11

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

7
8 **F. LENDER AND CLOSING FEES:** In addition to Seller's expenses above, Seller will contribute
9 \$ zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding
10 costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have
11 different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

12
13 **G. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home
14 Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with
15 ☐ Seller -OR- ☒ Buyer will pay for the Home Protection
16 Plan at a price not to exceed \$ 790.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make
17 any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for
18 ordering the Home Protection Plan.

19
20 **8. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall
21 tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes,
22 (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public
23 utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the
24 Property may be reassessed after COE which may result in a real property tax increase or decrease.

25
26 **9. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"),
27 Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale
28 package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's
29 receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the
30 date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of
31 Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement
32 pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his
33 authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation,
34 Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW
35 HOLDER to facilitate this refund. If written cancellation is not received within the specified time period, the resale package
36 will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

37
38 **10. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the
39 following Disclosures and/or documents (each of which is incorporated herein by this reference). Check applicable boxes.

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

49
50
51 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

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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Page 5 of 11

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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 116.4108); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridor (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 helipads. 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: Barbara Rosenberg

Property Address: 590 Lalmont Place Henderson, NV 89012

SELLER(S) INITIALS: MJ

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Page 6 of 11

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

10
11 13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of
12 the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances,
13 heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure
14 Statement, and that the Property and improvements are in the same general condition as when this Agreement was signed by
15 Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on. If any
16 systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right
17 to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or
18 power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have
19 been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-
20 through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer
21 releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection,
22 except as otherwise provided by law.

23
24 14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door
25 opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees
26 to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than
27 COE-OR- ☐ . In the event Seller does not vacate the Property by this time, Seller shall be
28 considered a trespasser and shall be liable to Buyer for the sum of \$ 150.00 per calendar day in addition to
29 Buyer's legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be
30 considered abandoned by Seller.

31
32 15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any
33 material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and
34 Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift
35 to Buyer.

36
37 16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable by
38 Buyer.

39
40 17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the
41 terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any
42 expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction
43 (unless otherwise provided herein).

44
45 18. DEFAULT:

46
47 A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the
48 parties agree to engage in mediation, a dispute resolution process, through OLVAR. Notwithstanding the foregoing,
49 in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply.

50
51 B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal
52 and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual
53 damages incurred by Buyer due to Seller's default.

54
55 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
56 particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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Page 7 of 11

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

3
4 [] [] As Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this
5 respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a
6 reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any
7 additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW
8 HOLDER to Buyer.

9 -OR-

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

Instructions to Escrow

14
15 19. ESCROW: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy,
16 Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except
17 losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are
18 made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is
19 entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such
20 documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their
21 several claims and rights among themselves. Upon the entry of an order authorizing such interpleader, ESCROW HOLDER
22 shall be fully released and discharged from any obligations imposed upon it by this Agreement, and ESCROW HOLDER shall
23 not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor
24 as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with
25 any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein.
26 ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents
27 received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event
28 an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise
29 compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur
30 in said action, shall be the responsibility of the parties hereto.

31
32 20. UNCLAIMED FUNDS: In the event that funds from this transaction remain in an account, held by ESCROW
33 HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada
34 Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge
35 shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation.
36 ESCROW HOLDER is further authorized and directed to deduct this charge from the dormant escrow account for as long as the
37 funds are held by ESCROW HOLDER.

Brokers

39
40 21. BROKER FEES: Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay
41 Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum
42 and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready,
43 willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and
44 agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue
45 all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or
46 Seller's Broker, Buyer ☐ will -OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined
47 between the Buyer and Buyer's Broker.

48
49 22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers
50 or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations
51 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: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 8 of 11
Undated

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

9 Other Matters

10
11 23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to and received a final, binding
12 contract by affixing their signatures to this Agreement and all counteroffers. "Agent" means a licensee working under a Broker
13 or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and
14 addenda. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the
15 Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real
16 estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means
17 a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means
18 Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means
19 a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees"
20 means the administrative service fee charged by a CIC to transfer ownership records. "CLUE" means Comprehensive Loss
21 Underwriting Exchange. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default"
22 means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means
23 personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or
24 mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money
25 deposit. "Escrow Holder" means the neutral party that will handle the escrow. "FHA" is the U.S. Federal Housing
26 Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable
27 form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue
28 Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada
29 Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller.
30 "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means
31 Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title
32 Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt"
33 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
34 Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance.
35 "USC" is the United States Code. "VA" is the Veterans Administration.

36 24. SIGNATURES, DELIVERY, AND NOTICES:

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

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

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

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

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

51 Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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Page 9 of 11
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1 26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement
2 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This
3 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and
4 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties
5 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this
6 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of
7 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing
8 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by
9 such prevailing party.

10
11 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review
12 the terms of this Agreement.

13
14 NO REAL ESTATE BROKER/AGENT MAY SIGN FOR A PARTY TO THIS AGREEMENT UNLESS THE
15 BROKER OR AGENT HAS A PROPERLY EXECUTED POWER OF ATTORNEY TO DO SO.

16
17 THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS®
18 (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY
19 PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO
20 ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN
21 APPROPRIATE PROFESSIONAL.

22
23 This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®,
24 REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL
25 ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

26
27 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 12, 2013 Signed: Stephen McGill 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: [Signature]

Property Address: 580 Latham Place SELLER(S) INITIALS: [Signature]

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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.

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

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

Seller must respond by: ☐ AM ☐ PM on (month) 3, (day) 13, (year) 2013. 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: Slobhan McGill
Company Name: Realty ONE Group Agent's Public ID: 214400
Phone: 702-898-7575 Office Address: 2891 St. Rose Parkway # 100
Email: slobhanmcgill@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.E. herein, Seller declares that he/she

☐ is not -OR-

☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Seller's Signature: Mark Lundell Seller's Printed Name: Mark Lundell Date: 3/13 Time: 3:33 ☐ AM ☐ PM

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

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 Fredrick Rosenberg BUYER(S) INITIALS: BR

Property Address: 590 Lelmont Place Henderson, NV 89012 SELLER(S) INITIALS: ML

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Page 11 of 11
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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? ☐ YES ☒ NO
 - (b) Any structural defect? ☐ YES ☒ NO
 - (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ YES ☒ NO
 - (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ YES ☒ NO
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. Land / Foundation:
- (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☒ NO
 - (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☒ NO
 - (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☒ NO
 - (d) The property being located in a designated flood plain? ☐ YES ☒ NO
 - (e) Whether the property is located next to or near any known future development? ☐ YES ☒ NO
 - (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☒ NO
 - (g) Is the property adjacent to "open range" land? ☐ YES ☒ NO
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. Roof: Any problems with the roof? ☐ YES ☒ NO
4. Pool/spa: Any problems with structure, wall, liner, or equipment? ☐ YES ☒ NO
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☒ NO
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? ☐ YES ☒ NO
 - (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? ☐ YES ☒ NO
7. Fungi / Mold: Any previous or current fungus or mold? ☐ YES ☒ NO
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? ☐ YES ☒ NO
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? ☐ YES ☒ NO
- (a) Common Interest Community Declaration and Bylaws available? ☐ YES ☒ NO
 - (b) Any periodic or recurring association fees? ☐ YES ☒ NO
 - (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☒ NO
 - (d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☒ NO
 - (e) Any assessments associated with the property (excluding property taxes)? ☐ YES ☒ NO
 - (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☒ NO
10. Any problems with water quality or water supply? ☐ YES ☒ NO
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ YES ☒ NO
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ YES ☒ NO
(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? ☐ YES ☒ NO

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

Seller's Initials: _____ Buyer(s) Initials: _____

5-10-13
5-10-13
5-10-13

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 Lairmont 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		YES	NO	N/A
Electrical System	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Shower(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Plumbing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sink(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sewer System & line	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Sauna / hot tub(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Septic tank & leach field ...	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Built-in microwave	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Well & pump	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Range / oven / hood-fan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Yard sprinkler system(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dishwasher	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fountain(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Garbage disposal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heating system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Trash compactor	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooling system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Central vacuum	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solar heating system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Alarm system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireplace & chimney	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	owned .. <input type="checkbox"/> leased .. <input type="checkbox"/>			
Wood burning system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Smoke detector	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Garage door opener	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intercom	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Water treatment system(s) ..	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Data Communication line(s) ..	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
owned .. <input type="checkbox"/> leased .. <input type="checkbox"/>				Satellite dish(es)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Water heater	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	owned .. <input type="checkbox"/> leased .. <input type="checkbox"/>			
Toilet(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bathtub(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>				

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

Nevada Real Estate Division
 Replaces all previous versions

MacDonald Highlands Realty 552 S Stephanie St Henderson, NV 89012
 Michael Dobson

Page 1 of 4

 Seller(s) Initials

 Buyer(s) Initials

Seller Real Property Disclosure Form
 Revised 10/01/11 547

Phone: (702)614-9100

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590 Lairmont Place

Produced with zipForm® by zipLogix, 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

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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? ☐ YES ☒ NO
- (b) Any structural defect? ☐ YES ☒ NO
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ YES ☒ NO
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☒ NO
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☒ NO
- (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☒ NO
- (d) The property being located in a designated flood plain? ☐ YES ☒ NO
- (e) Whether the property is located next to or near any known future development? ☐ YES ☒ NO
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☒ NO
- (g) Is the property adjacent to "open range" land? ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ☐ YES ☒ NO

4. Pool/spa: Any problems with structure, wall, liner, or equipment? ☐ YES ☒ NO

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☒ NO

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? ☐ YES ☒ NO
- (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? ☐ YES ☒ NO

7. Fungi / Mold: Any previous or current fungus or mold? ☐ YES ☒ NO

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? ☐ YES ☒ NO

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? ☐ YES ☒ NO

(a) Common Interest Community Declaration and Bylaws available? ☐ YES ☒ NO

(b) Any periodic or recurring association fees? ☐ YES ☒ NO

(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☒ NO

(d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☒ NO

(e) Any assessments associated with the property (excluding property taxes)? ☐ YES ☒ NO

(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☒ NO

10. Any problems with water quality or water supply? ☐ YES ☒ NO

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ YES ☒ NO

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ YES ☒ NO

(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? ☐ YES ☒ NO

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

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Seller(s) Initials

Page 2 of 4

Buyer(s) Initials

Seller Real Property Disclosure Form
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590 Lairmont Place

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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)

Seller(s) Initials

Buyer(s) Initials

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): [Signature] Bank of America NA Date: 3-12-13

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: _____

[Signature]
Seller(s) Initials

Buyer(s) Initials