

Exhibit 1

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

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

10 THE FREDERIC AND BARBARA) CASE NO.: A-13-689113-C
ROSENBERG LIVING TRUST,) DEPT NO.: I
11)
12 Plaintiff,)
vs.)
13)
14 BANK OF AMERICA, N.A.; BAC HOME) **DEFENDANT SHAHIN SHANE**
LOANS SERVICING, LP, a foreign limited) **MALEK’S FOURTH SUPPLEMENTAL**
partnership; DRAGONRIDGE PROPERTIES,) **NRCP 16.1 DISCLOSURE**
15 LLC; DRAGONRIDGE GOLF CLUB, INC.,)
16 a Nevada Corporation; MACDONALD)
PROPERTIES, LTD., a Nevada Corporation;)
17 MACDONALD HIGHLANDS REALTY,)
LLC, a Nevada limited liability company;)
18 MICHAEL DOIRON, an individual; SHAHIN)
SHANE MALEK, an individual; REAL)
19 PROPERTIES MANAGEMENT GROUP,)
INC., a Nevada corporation; DOES I through)
20 X, inclusive; and ROE BUSINESS ENTITY I)
21 through XX, inclusive,)
22 Defendants.)
23)

24 Defendant Shahin Shane Malek (hereinafter “Defendant”), by and through his undersigned
25 counsel, hereby submits his fourth supplemental disclosure as required by Rule 16.1 of the Nevada
26 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.

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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.

29 6. Rule 30(b)(6) witness for
30 MacDonald Highlands Realty, LLC
31 c/o J. Randall Jones, Esq.
32 Spencer H. Gunnerson, Esq.
33 Kemp, Jones & Coulthard, LLP
34 3800 Howard Hughes Pkwy., 17th Floor
35 Las Vegas, NV 89169

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

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

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

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

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

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

12 II.

13 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

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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*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16th day of March, 2015, pursuant to NRC 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 NRC 16.1 FOURTH SUPPLEMENTAL DISCLOSURE** to the following
6 parties:

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

9 Diana S. Cline, Esq.
10 Email: Diana@hkimlaw.com

11 Jacqueline A. Gilbert, Esq.
12 Email: Jackie@hkimlaw.com

Attorneys for Plaintiff

13 Darren Brenner
14 Email: Darren.brenner@akerman.com

15 Deb Julien
16 Email: Debbie.julien@akerman.com

17 Natalie Winslow
18 Email: Natalie.winslow@akerman.com
19 *Attorneys for Bank of America, N.A.*

20 Erica Bennett
21 Email: E.bennett@kempjones.com

22 J. Randall Jones
23 Email: Jrj@kempjones.com

24 Janet Griffin
25 Email: janetjamesmichael@gmail.com

26 Email: jlg@kempjones.com
27 Spencer Gunnerson

28 Email: S.gunnerson@kempjones.com

Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

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

Exhibit 2

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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8 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Case No. A-13-689113-C

9 Plaintiff,

Dept. No. I

10 vs.

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

**PLAINTIFF'S NINTH SUPPLEMENTAL
NRCP 16.1 DISCLOSURES**

19 Defendants.

20 All related Claims.

21 Plaintiff The Fredric and Barbara Rosenberg Living Trust ("Rosenberg Living Trust"),
22 hereby submits its Ninth Supplemental NRCP 16.1 Disclosure (**additions in bold**).

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

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I. LIST OF WITNESSES PROVIDED BY ROSENBERG LIVING TRUST:

Based on the information currently available to Rosenberg Living Trust, the following individuals are identified as potential witnesses:

1. 30(b)(6) Person Most Knowledgeable for
The Fredric and Barbara Rosenberg Living Trust
c/o Howard Kim and Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014

This person is expected to testify regarding facts and circumstances related to the claims and issues raised in this case.

2. Barbara Rosenberg
c/o Howard Kim and Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014

This person is expected to testify regarding facts and circumstances related to the claims and issues raised in this case.

3. Fredric Rosenberg
c/o Howard Kim and Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014

This person is expected to testify regarding facts and circumstances related to the claims and issues raised in this case.

4. David Rosenberg
c/o Howard Kim and Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014

This person is expected to testify regarding facts and circumstances related to the claims and issues raised in this case.

5. 30(b)(6) Person Most Knowledgeable for
Bank of America, N.A.
c/o Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

This person is expected to testify regarding facts related to the sale of real property.

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6. 30(b)(6) Person Most Knowledgeable for
MacDonald Highlands Realty LLC
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

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This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to, the sale of real property to plaintiff.

7. Michael Doiron
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

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This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the sale of real property to plaintiff.

8. 30(b)(6) Person Most Knowledgeable for
Real Properties Management Group, Inc.
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

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This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to, design guidelines, noticing regarding all changes to the common elements and sale of land affecting homeowners association.

9. 30(b)(6) Person Most Knowledgeable for
MacDonald Highlands Master Association
c/o Leach Johnson Song & Gruchow
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

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This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to, design guidelines, noticing regarding all changes to the common elements and sale of land affecting homeowners association.

10. 30(b)(6) Person Most Knowledgeable for
The Foothills at MacDonald Highlands Master Association
c/o Leach Johnson Song & Gruchow
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

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This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to, design guidelines, noticing regarding all changes to the common elements and sale of land affecting homeowners association.

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11. Siobhan McGill
Realty One Group
2831 St. Rose Parkway, Suite 100
Henderson, Nevada 89052

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to, the sale of real property to plaintiff.

12. Shahin Shane Malek
c/o Snell & Wilmer, LLP
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the zoning variances, easement changes, and the purchase of land from Dragonridge.

13. Richard C. MacDonald
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the zoning variances, easement changes, easements, and sale of real property.

14. Paul Bykowski
MacDonald Properties, LTD
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the applications for zoning variances, easement vacation, and sale of real property.

15. Barbara Baird
B2 Development Svcs.
209 S. Stephanie Street #B-128
Henderson, Nevada 89012

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the applications for zoning variances, easement vacation, related noticing, and sale of real property.

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16. 30(b)(6) Person Most Knowledgeable for
DRFH Ventures, LLC f/k/a/Dragonridge Properties, LLC
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the sale of real property, application for zoning variances, and easement vacation, and sale of golf course.

17. 30(b)(6) Person Most Knowledgeable for
Dragonridge Golf Club, Inc.
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to sale of real property, application for zoning variances, easement vacation, equity membership rights, and noticing to members.

18. 30(b)(6) Person Most Knowledgeable for
The City of Henderson
240 Water Street
Henderson, Nevada 89009

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited zoning variances, easement vacation, noticing and holding meeting(s) regarding zoning variances and vacating easements.

19. Jim Venable
c/o Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the sale of the Rosenberg Property and the sale of the golf course parcel to Shahin Malek.

20. Joyce Muir
c/o MacDonald Properties
552 South Stephanie Street
Henderson, Nevada 89012

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the sale of the Rosenberg Property, and the sale of the golf course parcel to Shahin Malek.

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21. Lark Lowry
Windemere Prestige Properties
2200 Paseo Verde Parkway, Suite 160
Henderson, NV 89052

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the rezoning of the golf course parcel and the sale, transfer, or conveyance of the golf course parcel to Shahin Malek.

22. Kelli Barrington
R.E.O. Management Services, Inc.
12443 San Jose Blvd., Suite 304
Jacksonville, FL 32223

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the disposition of the Rosenberg Property on behalf of Seller.

23. Lahna Rosenberg
c/o Howard Kim and Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014

This person is expected to testify to the facts related to the claims and issues raised in this case.

24. Bob Diamond
2298 Horizon Ridge Pkwy, Ste. 114
Henderson NV 89052-2697

This person is expected to testify to the facts related to the claims and issues raised in this case.

25. Crystal Maddox
Chicago Title of Nevada, Inc.
7201 W. Lake Mead Blvd., Suite 101
Las Vegas, Nevada 89128

This person is expected to testify regarding the facts related to the claims and issues raised in this case.

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26. John Fontana, President, CEO
Real Estate Owned Management Services, Inc.
324 Elm St., Suite 105-B
Monroe, CT 06468

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the disposition of the Rosenberg Property on behalf of Seller.

27. Elena L. Escobar
R.E.O. Management Services, Inc.
324 Elm St., Suite 105B
Monroe, CT 06468

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the disposition of the Rosenberg Property on behalf of Seller.

28. Lisa Verino, CLA
R.E.O. Management Services, Inc.
12443 San Jose Blvd., Suite 304
Jacksonville, FL 32223

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the disposition of the Rosenberg Property on behalf of Seller.

29. Terry Hamblet, Project Manager
Wallace Morris Surveying
5740 S. Arville St., Suite 206
Las Vegas, NV 89118

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the rezoning, sale, and transfer of the golf course parcel to Shahin Malek.

30. Robin Bryant, Escrow Officer
Nevada Title Company
701 N. Green Valley Parkway, Suite 120
Henderson, NV 89074

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the rezoning, sale, and transfer of the golf course parcel to Shahin Malek.

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31. Connie [Last Name Unknown]
DragonRidge Country Club
552 S. Stephanie St.
Henderson, NV 89012

This person is expected to testify regarding the facts related to the claims and issues raised in this case.

32. Tina Hollingworth, Assistant Vice President
Bank of America, N.A.
c/o Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not to Seller's disclosures and the sale of the Rosenberg Property on behalf of Seller.

33. Mark Rumfeld, Asset Manager
Bank of America, N.A.
c/o Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the sale of the Rosenberg Property and documents he signed on behalf of Seller Bank of America.

34. Tyler Jones
Address Unknown

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the rezoning of the golf course parcel, the sale, transfer, or conveyance of the golf course parcel to Shahin Malek, and any "approved plans" affecting that parcel.

35. Robert W. Meissner
Realty One Group
2831 St. Rose Parkway, Ste. 100
Henderson, Nevada 89052

This person is expected to testify regarding the facts related to the claims and issues raised in this case.

1 36. 30(b)(6) Person Most Knowledgeable for
2 Chubb Personal Insurance
3 2155 W. Pinnacle Peak Road, Suite 100
4 Phoenix, Arizona 85027

This person is expected to testify regarding the valuation of the subject property.

5 37. 30(b)(6) Person Most Knowledgeable for
6 FHP Ventures f/k/a The Foothills Partners
7 c/o Kemp, Jones & Coulthard, LLP
8 3800 Howard Hughes Parkway, 17th Floor
9 Las Vegas, Nevada 89169

This person is expected to testify regarding the facts related to the claims and issues raised in this case, including but not limited to the applications for zoning variances, easement vacation, related noticing, and sale of real property.

10 38. **Peter Bernhard, Esq.**
11 **Kaempfer Crowell**
12 **8345 West Sunset Road, Ste 250**
13 **Las Vegas, NV 89113**
14 **702-792-7000**

This person is expected to testify regarding the facts relating to the filing of the lis pendens for the limited purpose of defending the malice element of Defendant Malek's claim for slander of title. Plaintiff does not believe any attorney-client privileged communications need to be disclosed from this witness in order for this witness to testify. Plaintiff, however, acknowledges the Court may have to determine whether the at-issue waiver doctrine applies to the extent any party seeks the disclosure of attorney-client privileged communications regarding the limited issue of the lis pendens and Plaintiff's defense of the malice element of Defendant Malek's slander of title claim.

19 39. Any other witness disclosed by another party to this litigation.

20 Rosenberg Living Trust specifically reserves the right to supplement this disclosure to add
21 relevant witnesses, if subsequent information and investigation so warrant.

22 **II. LIST OF DOCUMENTS PROVIDED BY ROSENBERG LIVING TRUST**

23 Based on information reasonably available, Rosenberg Living Trust identifies the
24 following documents and other exhibits that are relevant to the issues set out in the Complaint and
25 Defendants' Answers and Counter-Claims in this action:

26 1. Amendment to Master Declaration of Covenants, Conditions and Restrictions
27 for the Foothills at MacDonald Ranch [PLTF1]
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HOWARD KIM & ASSOCIATES

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

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2. Photographs and Maps [PLTF100]
3. Foreclosure Mediation Certificate, Instrument # 201107250001678 [PLTF104]
4. City Council Agenda Item Information [PLTF105]
5. City of Henderson Application Form [PLTF138]
6. City of Henderson City Council Minutes: Regular Meeting [PLTF160]
7. Clark County Real Property General Information Sheet: Shahin Shane Malek [PLTF167]
8. Deed of Trust, Instrument #200703220002409 [PLTF168]
9. Foreclosure Deed, Instrument #201210240002007 [PLTF189]
10. Grant, Bargain, Sale Deed, Instrument #201208100002353 [PLTF192]
11. Grant, Bargain, Sale Deed, Instrument #201305150002010 [PLTF196]
12. Assessor's Map and General Information [PLTF198]
13. MacDonald highlands Notices List [PLTF202]
14. Community Design Guidelines [PLTF216]
15. Grant, Bargain, Sale Deed, Instrument #201306260005003 [PLTF218]
16. Residential Ownership Information Sheet [PLTF223]
17. Aerial Maps [PLTF225]
18. Master Declaration of Covenants, Conditions and Restrictions for the Foothills at Macdonald Ranch [PLTF238]
19. Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust, Instrument #201007130000931 [PLTF412]
20. Notice of Claim of Lien, Instrument #201210010005628 [PLTF415]
21. Notice of Foreclosure Sale, Instrument #201206170001647 [PLTF416]
22. Notice of Private Transfer Fee Obligation, Instrument #20120730000312 [PLTF420]
23. Notice of Rescission, Instrument #201203190000039 [PLTF422]
24. Notice of Trustee's Sale, Instrument #201107250001679 [PLTF424]
25. Notice of Claim of Lien, Instrument #201111290001008 [PLTF426]

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26. Recorded Documents List [PLTF427]
27. Seller's Real Property Disclosure Form [PLTF433]
28. Substitution of Trustee, Instrument #201010070003936 [PLTF437]
29. Tentative Map for MacDonald Highlands [PLTF438]
30. MacDonald Highlands Justification Letter [PLTF440]
31. Trustee's Deed Upon Sale, Instrument #201101250003262 [PLTF442]
32. Vacation Application Form [PLTF445]
33. Documents produced by City of Henderson [PLTF452 – PLTF2181]
34. Documents produced by Greater Las Vegas Association of REALTORS (GLVAR) [PLTF2182 – PLTF2388]
35. Documents produced by Foothills at MacDonald Ranch Master Homeowners Association via Real Property Management Group [PLTF2389 – PLTF3222]
36. MacDonald Highland Property Brochure [PLTF3223 – PLTF3261]
37. MacDonald Highland Property Marketing DVD
38. Email correspondence [PLTF3262 – PLTF3374]
39. Documents received from Chicago Title [PLTF3375—PLTF3496]
40. Home Inspection Report [PLTF3497—PLTF3565]
41. Exterior Home Appraisal Report [PLTF3566—PLTF3582]
42. Recorded documents for parcel numbers 178-27-214-005, 178-27-317-010, 178-28-521-001 [PLTF3583 – PLTF3684]
43. Documents received from Wallace-Morris Surveying, Inc. pursuant to subpoena [PLTF3685 – PLTF3765]
44. Documents received from Nevada Title pursuant to subpoena [PLTF3766 – PLTF6369]
45. Documents received from B2 Development Services pursuant to subpoena [PLTF6370 – PLTF6423]
46. Documents received from DRFH Ventures, LLC, Dragonridge Golf Club, Inc., Richard MacDonald and Affidavit of Custodian of Records for B2 Dev. Svcs. to subpoenas [PLTF6424 – PLTF6912]

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- 47. Documents received from R.E.O. Management to subpoena [PLTF6913 – PLTF10493]
- 48. Documents received from U.S Bank, N.A. to subpoena [PLTF10494 – PLTF10506]
- 49. Restricted Appraisal_594 & 598 Lairmont [PLTF10507 – 10514], attached hereto.
- 50. Documents Contained in Governing Documents Binder provided by Seller [PLTF10515 – 10743], attached hereto.
- 51. MacDonald Highlands Design Guidelines [PLTF 10744-11149] (available for copying due to size)
- 52. Residential Disclosure Guide [PLTF 11150-11180]

Rosenberg Living Trust specifically reserves the right to supplement this disclosure to add relevant documents, if subsequent information and investigation so warrant.

III. COMPUTATION OF DAMAGES

In addition to the injunctive relief Rosenberg Living Trust estimates its damages as follows:

- 1. Cost to replace home if injunctive relief is not obtained, including lot of similar size: approximately \$4,320,500
- 2. Attorneys fees and costs for Kaempfer Crowell Renshaw Gronauer & Fiorentino: \$46,447.22
- 3. Attorney’s fees and costs to date for Howard Kim & Associates: in excess of \$300,000.
- 4. External Detrimental Condition Damages: in excess of \$750,000-\$1,000,000

IV. INSURANCE

Rosenberg Living Trust is unaware of any policy of insurance is likely to be called upon to satisfy the claims raised in this action other than the policy disclosed by MacDonald Highlands Realty, LLC.

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Rosenberg Living Trust specifically reserves the right to supplement this disclosure to add relevant documents, if subsequent information and investigation so warrant.

DATED this 10th day of March, 2015.

HOWARD KIM & ASSOCIATES


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

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 10th day of March, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **PLAINTIFF'S NINTH SUPPLEMENTAL NRCP 16.1 DISCLOSURE** to the following parties:

| Akerman | | |
|--|--------------------------|--|
| | Contact | Email |
| | Darren Brenner | Darren.Brenner@akerman.com |
| | Deb Julien | debbie.julien@akerman.com |
| | Natalie Winslow | natalie.winslow@akerman.com |
| | Akerman Las Vegas Office | akermanlas@akerman.com |
| <i>Attorneys for Bank of America, N.A.</i> | | |

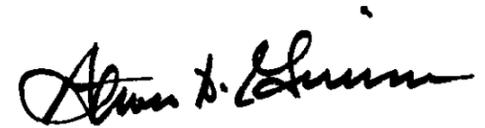
| Kemp, Jones & Coulthard | | |
|--|-------------------|--|
| | Contact | Email |
| | Erica Bennett | e.bennett@kempjones.com |
| | J. Randall Jones | jrj@kempjones.com |
| | Janet Griffin | janetjamesmichael@gmail.com |
| | Janet Griffin | jlq@kempjones.com |
| | Spencer Gunnerson | s.gunnerson@kempjones.com |
| <i>Attorneys for MacDonald Highlands Realty LLC and Michael Doiron</i> | | |

| The Firm, P.C. | | |
|---|-------------------------|--|
| | Contact | Email |
| | Preston P. Rezaee, Esq. | preston@thefirm-lv.com |
| | Ryan E. Alexander, Esq. | ryan@ryanalexander.us |
| <i>Attorneys for Shahin Shane Malek</i> | | |

/s/ Karen L. Hanks
An Employee of Howard Kim & Associates

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

TAB 29



CLERK OF THE COURT

RPLY

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

**PLAINTIFF'S REPLY TO MALEK'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

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

21
22 Defendants.

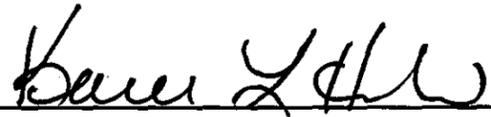
23 Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its
24 counsel of record, HOWARD KIM & ASSOCIATES, hereby replies to the Opposition to Motion for
25 Summary Judgment filed by Defendant Malek.
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1 This Reply is made and based upon the pleadings and papers already on file herein, the following
2 Memorandum of Points and Authorities, the Declaration of Karen L. Hanks, and any argument allowed
3 by the Court at the hearing of this matter.

4 DATED this 11th day of May, 2015.

6 Respectfully submitted by:

7 HOWARD KIM & ASSOCIATES

8 
9 _____

10 Karen L. Hanks, Esq.

11 Nevada Bar No. 009578

12 1055 Whitney Ranch Drive, Suite 110

13 Henderson, Nevada 89014

14 Telephone: (702) 485-3300

15 Facsimile: (702) 485-3301

16 *Attorneys for Plaintiff,*

17 *The Fredric and Barbara Rosenberg Living Trust*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 Malek's Opposition is premised on a major flaw: that the lis pendens recorded by the Rosenberg
20 Trust was false. The Rosenberg Trust disputes that the lis pendens was false. A lis pendens or notice of
21 pending action, "provides constructive notice to the world that a dispute involving real property is
22 ongoing." Weddell v. H2O, Inc., 271 P.3d 743, 751 (Nev. 2012) citing NRS 14.010(3). The Rosenberg
23 Trust has alleged that a restrictive covenant, which affects title, exists over the golf parcel sold to Malek.
24 As such, the Rosenberg Trust recorded the lis pendens to give the world notice that it disputed the title
25 to the golf parcel. Even though this Court expunged the lis pendens, this does not automatically establish
26 that the lis pendens was false. Nevertheless, for purposes of its Motion, the Rosenberg Trust focused on
27 the other two elements of Malek's slander of title claim because there can be no doubt that the Rosenberg
28 Trust acted in good faith and Malek has not established any damages.

With respect to the malice element, Malek still has not shown any evidence of "reckless
disregard" on the part of the Rosenberg Trust. Not only does the advice of counsel negate malice, but
"where a [party] has reasonable grounds for belief in his claim, he has not acted with malice." Rowland

1 v. Lepire, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983), *citing* Merchants Nat. Bank of Mobile v.
2 Steiner, 404 So.2d 14 (Ala. 1981); Whildin v. Kovacs, 403 N.E.2d 694 (Ill.App.Ct. 1980). The
3 Rosenberg Trusts' answers to written discovery, Barbara Rosenberg's testimony and the declaration of
4 Peter Bernhard, Esq., all show that there was no malice on the part of the Rosenberg Trust in recording
5 the lis pendens. Malek wrongfully claims that Barbara Rosenberg's experience as a real estate agent
6 means she should have had sufficient knowledge regarding the effect of a lis pendens, a **legal**
7 mechanism often recorded by lawyers, not a mechanism recorded by real estate agents. Nothing in
8 Barbara's testimony suggests she acted with malice. Instead, she reasonably believed the lis pendens
9 would prevent Malek from building, but this is exactly what the Rosenberg Trust was seeking by way
10 of this lawsuit i.e. to enforce the restrictive covenant which mandates that the golf parcel remain part of
11 the golf course. As such, it is perfectly reasonable that Barbara, a non-lawyer, would believe that a lis
12 pendens would protect this interest. Regardless of whether this was right, this does not amount to malice.
13 Malek has offered no evidence whatsoever that the Rosenberg Trust acted with "reckless disregard."

14 But in the end, the recording of the lis pendens was done at the advice of counsel, and Peter
15 Bernhard has been practicing since 1975 or 40 years. But Malek wants this Court to believe that Barbara,
16 as a real estate agent, in California no less, knew better than her seasoned, Nevada attorney on whether
17 a lis pendens should be recorded. The Rosenberg Trust is entitled to rely on the advice of counsel, and
18 as Mr. Bernhard's declaration evidences, he too recorded the lis pendens on a good faith belief that it
19 was proper under Nevada law.

20 Contrary to Malek's contention, Mr. Bernhard's declaration is admissible, and Malek was not
21 deprived of any discovery. Mr. Bernhard, and his firm, represented the Rosenberg Trust in this matter
22 as early as September 2013 when the Complaint was filed. Undersigned counsel did not substitute in as
23 counsel until January 21, 2014. As such, it is not as if Mr. Bernhard was an attorney unknown to Malek,
24 and operating behind the scenes. Because he was the attorney who recorded the lis pendens, Malek
25 could have deposed him irrespective of when the Rosenberg Trust disclosed him as a witness. Malek
26 chose not to, to his own detriment. Additionally, the declaration of Mr. Bernhard was offered to show
27 the expected testimony of Mr. Bernhard, and that in light of this testimony no genuine issues of material
28 fact exists regarding the element of malice. Malek cannot fail to adequately

1 “work up” his claim, which he bears the burden to prove, and then cry foul when testimony is offered
2 showing no genuine issue of material fact exists. Malek further had notice as early as February 11, 2015,
3 when the Rosenberg Trust served its Answers to Interrogatories that the lis pendens was filed on the
4 advice of counsel. Still, Malek did not choose to depose the Rosenberg Trust’s attorneys.

5 Additionally, the fact that Barbara did not date the declaration page, is harmless error and does
6 not render the Interrogatory responses void. Hearn v. Howard, 99 Cal.Rptr.3d 642, 652 (Cal.Ct.App.
7 2009) *citing* People v. Flores, 44 Cal.Rptr.2d 585 (Cal.Ct.App. 1995) (noting that “courts have held
8 procedural or technical errors [under § 2015.5 to be harmless].”). *See also*, Hirschman v. Saxon, 54
9 Cal.Rptr. 767 (Cal.Ct.App. 1966) (finding no need to determine effect of undated declaration, a technical
10 defect under section 2015.5).¹

11 In short, with regard to the malice element, this case is at the dispositive motion phase. Malek
12 must “do more than simply show that there is some metaphysical doubt” as to the operative facts in order
13 to avoid summary judgment. Woods v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005)
14 *citing* Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986).
15 Malek has provided no evidence that creates a genuine issue of material fact as to malice. His entire
16 Opposition to the malice element is premised on the innocuous statement by Barbara that she believed
17 the lis pendens would avoid any building by Malek on the golf parcel. Of course, Malek ignores the full
18 picture, but even so, this one statement does not prove malice.

19 Finally, Malek still has offered no evidence of special damages as a direct result of the lis
20 pendens. The Nevada Supreme Court has held that attorney’s fees are special damages, and special
21 damages must be specially pleaded under NRCP 9(g) and “proved by competent evidence just as any
22 other element of damages.” Sandy Valley Associates v. Sky Ranch Estates Owners Ass’n, 117 Nev.
23 948, 956-57, 35 P.3d 964, 969 (2001); Horgan v. Felton, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007).
24 The Sandy Valley Court also held that the “mention of attorneys fees in a complaint’s general prayer
25 for relief is insufficient to meet this requirement.” *Id.* at 957. Contrary to Malek’s contention, these
26 holdings were not made in dicta.

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¹ Section 2015.5 mirrors NRS 53.045.

1 Under Sandy Valley, Malek's claim that he alleged damages in excess of \$10,000, and therefore
2 has met his burden is contrary to Nevada law. Even Malek's Fourth Supplement (which was never
3 served on Plaintiff)² is contrary to Nevada law, because it does not include any competent evidence i.e.
4 billing records, to support the claimed amount. In fact, it is hard to imagine that Malek spent \$45,000
5 for one motion to expunge. Malek cannot come to trial, and merely claim he incurred \$45,000 without
6 any documentary support. This is no different than a personal injury plaintiff claiming thousands of
7 dollars in medical expenses without any proof. Particularly concerning is Malek's statement that his
8 fees "continue to grow." This statement suggests that Malek is including his attorneys fees for more
9 than just the removal of the lis pendens, but under Nevada law this is all he would be entitled to if he
10 prevailed on his claim. He is not entitled to all his fees in defending against the Rosenberg Trust's
11 request for injunctive relief. This is why competent evidence is required for special damages.

12 Additionally, Malek's suggestion that the Rosenberg Trust's decision not to file a motion to
13 dismiss somehow means his failure to establish his damages is not significant makes no sense. Damages
14 is an element of a slander of title claim. If a party fails to establish even one element of his claim, the
15 claim fails as a matter of law. The Rosenberg Trust does not bear the burden of proof on Malek's claim;
16 instead, he bears the burden to establish damages, and his failure to do so justifies summary judgment
17 in favor of the Rosenberg Trust. It is astounding that even in light of a motion for summary judgment,
18 Malek still has not produced any evidence of his alleged special damages. This is not to say that the
19 Rosenberg Trust would not have objected, but as it stands now, there is absolutely no evidence to
20 support Malek's claimed attorney's fees. As such, summary judgment in favor of the Rosenberg Trust
21 is appropriate.

22 //

23 //

24 //

25 //

26
27 ² Malek never served his Fourth Supplemental Disclosures on Plaintiff. On March 16, 2015 Malek's counsel emailed
28 undersigned counsel explaining difficulties he was having with Wiznet. Having not received the Disclosure by March 19,
2015, undersigned counsel emailed Malek's counsel and explained she still never received service of the Fourth Supplement
and never consented to service by email. Still, Malek's counsel never served the Fourth Supplement. See Declaration of
Karen L. Hanks attached hereto as Exhibit 1.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2015, pursuant to NRC 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing **REPLY TO MALEK'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** to the following parties:

| Akerman | | | |
|----------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Deb Julien | debbie.julien@akerman.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

| Akerman LLP | | | |
|---------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | 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. Shevorski, Esq. | steven.shevorski@akerman.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

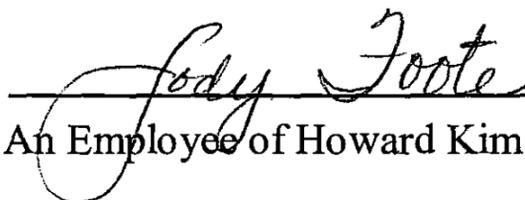
| Kemp Jones & Coulthard | | | |
|-----------------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Ian P. McGinn | ipm@kempjones.com | <input checked="" type="checkbox"/> | <input checked=""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

| Kemp, Jones & Coulthard | | | |
|------------------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | 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 | jlq@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Matthew Carter | m.carter@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sandy Sell | s.sell@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Spencer Gunnerson | s.gunnerson@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

| Kemp, Jones & Coulthard, LLP | | | |
|---|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Pamela Montgomery | p.montgomery@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

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

| The Firm, P.C. | | | |
|-------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | 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

1 **DECLARATION OF KAREN L. HANKS, ESQ. IN SUPPORT OF PLAINTIFF'S REPLY TO**
2 **MALEK'S OPPOSITION TO 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. Malek never served his Fourth Supplemental Disclosures on Plaintiff. Even the copy
8 attached to his Opposition bears no service stamp.

9 3. On March 16, 2015 Malek's counsel emailed me explaining difficulties he was having
10 with Wiznet, and he attached a copy of the Fourth Supplement.

11 4. Having not received proper service of the Fourth Supplement by March 19, 2015, I
12 emailed Malek's counsel and explained I still had not received service of the Fourth Supplement. I also
13 explained that I never consented to service by email, and reserved my right to object at a later date if I
14 determined that was necessary. A true and correct copy of the March 19, 2015 email is attached hereto.

15 5. I recall that Malek's counsel responded to my March 19, 2015 email, but could not
16 locate this email, and I do not recall the substance of the email.

17 7. To date, I have not received service of the Fourth Supplement.

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

20
21 Dated this 11th day of May, 2015.

22
23
24 
25 KAREN L. HANKS, ESQ.

Ex. 1

EXHIBIT 1

Ex. 1

From: karen@hkimlaw.com
Sent: Thursday, March 19, 2015 9:59 AM
To: Jay DeVoy; Spencer Gunnerson; steven.shevorski@akerman.com; Darren.Brenner@akerman.com
Cc: Preston Rezaee; Sarah Chavez
Subject: RE: Rosenberg v. BoA et al. - Defendant Shahin Shane Malek's Fourth Supplemental Disclosures

Jay,

I never received service of this document. We have not consented to service by email. As such, I reserve the right to file a motion in limine on this disclosure if I deem it necessary.

If you have a Wizent verification that it was served, please forward.

Karen L. Hanks, Esq.
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: 702-485-3300
Facsimile: 702-485-3301

From: Jay DeVoy [mailto:jay@thefirm-lv.com]
Sent: Monday, March 16, 2015 6:18 PM
To: karen@hkimlaw.com; Spencer Gunnerson; steven.shevorski@akerman.com; Darren.Brenner@akerman.com
Cc: Preston Rezaee; Sarah Chavez
Subject: Rosenberg v. BoA et al. - Defendant Shahin Shane Malek's Fourth Supplemental Disclosures

All,

I have attached Mr. Malek's fourth supplemental disclosures to this e-mail. It is my understanding that they are in the e-file queue and will be served by the court's electronic service system in due course. In order to ensure everyone receives these on the discovery deadline, I am supplying them now. Please let me know if you have any questions, and I thank you in advance for your cooperation.

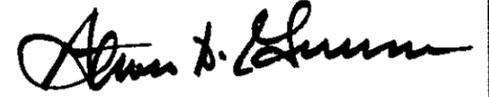
Jay

--
Jay DeVoy, of Counsel
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Tel: (702) 222-FIRM (3476)
Fax: (702) 252-FIRM (3476)
www.TheFirm-LV.com

TAB 30

1 J. RANDALL JONES, ESQ. (#1927)
r.jones@kempjones.com
2 SPENCER H. GUNNERSON, ESQ. (#8810)
s.gunnerson@kempjones.com
3 MATTHEW S. CARTER, ESQ. (#9524)
m.carter@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
5 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
6 Facsimile: (702) 385-6001
Attorneys for Defendants
7 *MacDonald Highlands Realty, LLC,*
Michael Doiron and FHP Ventures,
8 *A Nevada Limited Partnership*

Electronically Filed
05/11/2015 03:52:56 PM



CLERK OF THE COURT

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

13 Plaintiff,

14 vs.

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

23 Defendants.

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

**ERRATA TO MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: May 19, 2015
Time of Hearing: 9:00 a.m.

24 Defendants MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures,
25 A Nevada Limited Partnership (sued as "The Foothills Partners"), by and through its counsel
26 of record, hereby submits its Errata to Motion for Summary Judgment. Defendants' Motion
27 for Summary Judgment filed on April 16, 2015 erroneously attached an Addendum No. 1 to
28 Purchase Agreement as Exhibit H. Defendant hereby files this Errata to Motion for

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

1 Summary Judgment attaching the true and correct copy of the Real Estate Purchase
2 Addendum that was intended and understood to be the true Exhibit H as alleged in the
3 motion and conceded in the Opposition as Exhibit H.

4 DATED this 11th day of May, 2015.

5 Respectfully submitted by:

6
7 /s/ Matthew S. Carter

8 J. Randall Jones, Esq. (#1927)
9 Spencer H. Gunnerson, Esq. (#8810)
10 Matthew S. Carter, Esq. (#9524)
11 KEMP, JONES & COULTHARD, LLP
12 3800 Howard Hughes Parkway, 17th Floor
13 Las Vegas, Nevada 89169
14 *Attorneys for Defendants*
15 *MacDonald Highlands Realty, LLC,*
16 *Michael Doiron and FHP Ventures,*
17 *A Nevada Limited Partnership*

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2015, pursuant to NRCP 5(b), I e-
served via the Eighth Judicial District Court electronic service system the foregoing
ERRATA TO MOTION FOR SUMMARY JUDGMENT to all parties on the e-service
list.

/s/ Pamela Montgomery
An employee of Kemp, Jones & Coulthard

EXHIBIT H

REC # _____

BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A.

REAL ESTATE PURCHASE ADDENDUM

This Real Estate Purchase Addendum ("Addendum") is to be made part of, and incorporated into, the Real Estate Purchase Contract dated March 10th, 2013 ("Contract") between BAC ("Seller" and the term "Seller" shall also include BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A.) and Barbara & Fredric Rosenberg ("Buyer") for the property and improvements located at the following address: 596 Lairmont Place Henderson, NV 89012 ("Property"). Buyer and Seller may each be referred to herein as a "Party" and collectively as the "Parties." The Contract and this Addendum together constitute the "Agreement".

The Seller and the Buyer agree as follows:

1. LIMITATION OF SELLER'S LIABILITY AND BUYER'S WAIVER OF IMPORTANT RIGHTS:

BUYER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER HAS ACQUIRED THE PROPERTY THROUGH FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, OR SIMILAR PROCESS. SELLER HAS NEVER OCCUPIED THE PROPERTY, AND SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE ABOUT THE CONDITION OF THE PROPERTY. BUYER AGREES THAT BUYER IS BUYING THE PROPERTY "AS IS" (AS MORE FULLY SET FORTH IN SECTION 13 OF THIS ADDENDUM).

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES AND FOR ALL CLAIMS (AS THE TERM IS DEFINED IN SECTION 26 OF THIS ADDENDUM, AND ALL REFERENCES IN THIS ADDENDUM TO "CLAIMS," "CLAIM," "Claims," or "Claim" SHALL HAVE SUCH MEANING) ARISING OUT OF OR RELATING IN ANY WAY TO THE AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO, SELLER'S BREACH OR TERMINATION OF THE AGREEMENT, THE CONDITION OF THE PROPERTY, SELLER'S TITLE TO THE PROPERTY, THE OCCUPANCY STATUS OF THE PROPERTY, THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF THE PROPERTY, ANY COST OR EXPENSE INCURRED BY BUYER IN SELLING A CURRENT OR PRIOR RESIDENCE OR TERMINATING A LEASE ON A CURRENT OR PRIOR RESIDENCE, OBTAINING OTHER LIVING ACCOMMODATIONS, MOVING, STORAGE OR RELOCATION EXPENSES, OR ANY OTHER COSTS OR EXPENSES INCURRED BY BUYER IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO NO MORE THAN:

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

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

BUYER SHALL NOT BE ENTITLED TO A RETURN OF BUYER'S EARNEST MONEY DEPOSIT IF BUYER MATERIALLY BREACHES THE AGREEMENT.

BUYER AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE, THEORY, OR CAUSE OF

BUYER (initials) BR

SELLER (initials) BR

Revised 3/06

Def't EXHIBIT Q
WITNESS B. Rosenberg
DATE: 12/8/14
CINDY HUEBNER, CCR

ACTION ARISING OUT OF OR RELATED IN ANY WAY TO ANY CLAIM, INCLUDING, BUT NOT LIMITED TO, THE AFOREMENTIONED CLAIMS.

ANY REFERENCE TO A RETURN OF THE BUYER'S EARNEST MONEY DEPOSIT CONTAINED IN THE AGREEMENT SHALL MEAN A RETURN OF THE EARNEST MONEY DEPOSIT, LESS ANY ESCROW CALCULATION FEES APPLICABLE TO THE BUYER UNDER THE AGREEMENT AND LESS FEES AND COSTS PAYABLE FOR SERVICES AND PRODUCTS PROVIDED DURING ESCROW AT THE BUYER'S REQUEST. TO THE FULLEST EXTENT PERMITTED BY LAW THE BUYER WAIVES ANY CLAIMS THAT THE PROPERTY IS UNIQUE AND THE BUYER ACKNOWLEDGES THAT A RETURN OF ITS EARNEST MONEY DEPOSIT CAN ADEQUATELY AND FAIRLY COMPENSATE THE BUYER FOR ALL CLAIMS. UPON RETURN OF THE EARNEST MONEY DEPOSIT TO THE BUYER, THE AGREEMENT SHALL BE TERMINATED, AND THE BUYER AND THE SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THE AGREEMENT. IF THE SALE TO BUYER CLOSSES AND SELLER COMPENSATES BUYER AS PROVIDED ABOVE FOR BUYER'S ACTUAL DAMAGES, IF ANY, THEN THE BUYER AND THE SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THE AGREEMENT.

SELLER'S LIMITATION OF LIABILITY AND BUYER'S WAIVERS PROVIDED IN THE AGREEMENT ARE A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THE AGREEMENT AS NEGOTIATED AND AGREED TO BY THE BUYER AND THE SELLER.

THE BUYER FURTHER WAIVES THE FOLLOWING, TO THE FULLEST EXTENT PERMITTED BY LAW:

- (A) ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST THE SELLER FOR SPECIFIC PERFORMANCE;
- (B) RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THE AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;
- (C) RIGHT TO INVOKE ANY EQUITABLE REMEDY THAT WOULD PREVENT THE SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY BUYER;
- (D) ANY CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING UNLESS SUCH CLAIMS ARE MATERIAL AND BUYER NOTIFIES SELLER IN WRITING OF SUCH CLAIMS WITHIN THIRTY (30) DAYS OF THE CLOSING DATE;
- (E) ANY REMEDY OF ANY KIND THAT THE BUYER MIGHT OTHERWISE BE ENTITLED TO AT LAW OR EQUITY (INCLUDING, BUT NOT LIMITED TO, RESCISSION OF THE AGREEMENT), EXCEPT AS EXPRESSLY PROVIDED IN THIS ADDENDUM;
- (F) ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THE AGREEMENT;
- (H) ANY RIGHT TO AVOID THE SALE OF THE PROPERTY OR REDUCE THE PRICE OR HOLD THE SELLER LIABLE FOR ANY CLAIMS ARISING OUT OF OR RELATED IN ANY WAY TO THE CONDITION, CONSTRUCTION, REPAIR, OR TREATMENT OF THE PROPERTY, OR ANY DEFECTS, APPARENT OR LATENT, THAT MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY;

BUYER (initials) BR JA

SELLER (initials) JK

(9) ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO BROCHURE/CD/PTA, RESIDENTS, BOUNDARIES, ENCROACHES IN AREA OR ANY OTHER MATTER THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS, AND:

DO ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO THE SQUARED FOOTAGE, SIZE OR LOCATION OF THE PROPERTY, OR ANY INFORMATION PROVIDED ON THE MULTIPLE LISTING SERVICE, OR BROCHURES OR WEB SITES OF SELLER OR SELLER'S AGENT OR BROKER.

Reference to the "Seller" in the Section 1 of this Addendum shall include the Seller and the person(s) that he defined in Section 36 of the Addendum, and all references to the Addendum to the "Seller" shall be "INDEMNIFIED PARTIES" shall have the meaning set forth in Section 30).

Buyer initials: *AK*

2. **Effective Date:** The date of Seller's execution of this Addendum shall be the "Effective Date" of this Agreement, notwithstanding any prior acknowledgment or agreement with respect to the financial terms set forth herein. This Agreement shall be valid and void if the Agreement is paid by the Buyer is not actually received by the Seller before the Seller signs a corresponding offer, or gives verbal or written notice of revocation to the Buyer. The Buyer's request or attorney of the listing agent. The Agreement shall be approved by the Seller's management, and a copy to be signed by all parties to refer to be binding.

3. **Purchase Price:** \$2,160,000.00
Down Payment: \$325,000.00
Loan Amount(s): N/A

4. **Buyer's Escrow Deposit:** If applicable, Escrow will be opened by both parties immediately following the Effective Date and all pertinent closing agent services shall be for Seller. The Buyer's escrow money/deposit of \$325,000.00 is to be delivered to Seller's listing agent to be held pursuant to local law and custom, within 24 hours of the Effective Date.

5. **Financing:** This Agreement (hereinafter) ("MVA") is not contingent on the Buyer obtaining financing for the purchase of the Property. If the Agreement is contingent on financing, the type of financing shall be the following (check one):

MVA Contingent
 ALL FIN
 MVA VA
 MVA Other (specify):

(a) If this Agreement is contingent on financing, the Buyer shall supply for a copy to be received of _____ with a term of _____ years, at prevailing rates, terms and conditions. The Buyer shall cover and closing to a mortgage broker, an application for a mortgage loan containing the terms set forth in this _____, shall occur _____ business days of the Effective Date, and shall use diligent effort to obtain a mortgage loan commitment within fifteen (15) calendar days from the said date. If despite the Buyer's diligent efforts, the Buyer cannot obtain a mortgage loan commitment by the specified date, then either the Buyer or the Seller may terminate this Agreement by giving written notice to the other Party. The Buyer's notice shall include a copy of the loan application, proof of the application date, and a copy of the denial letter from the mortgage lender. In the event the Buyer's termination of the Agreement under this paragraph, the earnest money deposit shall be returned to the Buyer and the parties shall have no further obligations to each other under this Agreement. The Buyer agrees to

BUYER (Initials) *AK*
SELLER (Initials) *ME*
Resale Price

cooperate and comply with all requests for documents and information from the Buyer's chosen lender during the loan application process. Failure of the Buyer to comply with such requests from the lender that results in the denial of the mortgage loan shall be considered a material breach of the Agreement and the Seller shall be entitled to retain any earnest money deposited by Buyer.

If the Agreement is contingent on financing, as a sales condition, Buyer must obtain a pre-approval letter from a branch office of BAC Home Loan Servicing, LP a subsidiary of Bank of America, N.A. for a mortgage loan in an amount and under terms sufficient for Buyer to perform his obligations under the Agreement, and such letter must accompany the Agreement. The pre-approval shall include, but is not limited to, the pre-approval letter, a satisfactory credit report, and proof of funds sufficient to meet Buyer's obligations under the Agreement. Buyer's submission of proof of pre-approval is a condition precedent to Seller's acceptance of Buyer's offer. Seller may require Buyer to obtain, at no cost to Buyer, loan pre-approval as Seller may direct. Notwithstanding any Seller required pre-approval, Buyer is not required to obtain financing from BAC Home Loan Servicing, LP, a subsidiary of Bank of America, N.A. or Seller. Buyer may obtain financing from any source. As an incentive for the Buyer to obtain financing from BAC Home Loan Servicing, LP, a subsidiary of Bank of America, N.A., BAC Home Loan Servicing, LP, a subsidiary of Bank of America, N.A. will offer a free appraisal and a free credit report if the Buyer finances and closes the purchase of the Property through financing from BAC Home Loan Servicing LP, a subsidiary of Bank of America, N.A.

(b) **Cash Offer:** Buyer shall provide Seller proof of liquid funds on deposit in the United States sufficient to close this transaction. Such proof shall be provided within three (3) business days of the Effective Date and shall be subject to Seller's approval. The Property shall remain on the market until such proof of funds is accepted by Seller. Notwithstanding the terms provided in Section 17 for inspection of the Property, in the event of a noncontingent cash offer all inspections shall be completed and any notice of disapproval shall be given to Seller within seven (7) calendar days of the Effective Date. Failure to timely notify Seller of any disapproval shall be deemed acceptance by Buyer of the inspection results and the condition of the Property. Cash offer shall not be subject to any contingency, unless specifically described in Section 19 of this Agreement.

(c) The Buyer is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by the Buyer. Any change of the loan type, loan terms, financing, or Buyer's lender after the Agreement has been entered into shall be subject to Seller's approval and may require, at Seller's sole discretion, renegotiation of all or some of the terms of the Agreement.

6. **Other Financial Terms:**

Requested Closing Costs to Be Paid by Seller on Behalf of Buyer:

| | |
|---------------------------------|--------|
| (Limited to loan guidelines) | |
| FHA/VA Allowable Costs: | \$ N/A |
| Other Loan Types Non-Allowable: | \$ N/A |
| Property Transfer Taxes: | \$ N/A |
| Home Protection Policy: | \$ N/A |
| Other: | \$ |
| Other: | \$ |
| TOTAL: | \$ 0 |

| | |
|---------------------------|--------|
| Requested Repairs: | |
| By Buyer/Lender (etc): | \$ N/A |
| Furniture/Chemical only: | \$ 0 |
| Termite Repairs (etc): | \$ 0 |
| Pest Report Fee (etc): | \$ 0 |
| Other: | \$ 0 |
| TOTAL: | \$ 0 |

BUYER (initials) [Signature]

- 4 -

SELLER (initials) [Signature]

Revised 3/06

Notwithstanding any provision to the Agreement to the contrary, if Seller agrees to the Agreement by any way of Buyer's closing costs, then Seller shall only pay the Buyer's actual closing costs and the closing costs that Seller has agreed to pay to the Agreement. Section 17 has additional provisions pertaining to closing costs.

7. **Time of Final Closing Date**

A. It is agreed that there is of the manner with respect to all dates specified in the Agreement and any addenda, notes, or amendments thereto, meaning that all dates are to be strict and absolute. The Agreement shall terminate automatically, and without notice, if it is not consummated by the Closing Date, or any date prior thereto.

B. The closing shall take place on or before Aug 30, 2013, or within five (5) calendar days of said date approved by the Seller, whichever is earlier ("Closing Date"), unless the Closing Date is extended in writing signed by the Seller and the Buyer, or extended by the Seller under the terms of the Agreement. The closing shall be held in the offices of the Seller's attorney or agent, or at a place as designated and approved by the Seller, unless otherwise required by applicable law. If the closing does not occur (through no fault of Seller) by the date specified in the Section 7 of the Addendum or in any extension, the Agreement is automatically terminated and the Seller shall retain any earnest money deposit as liquidated damages.

C. **Extension of Closing Date. PENALTY NOTICE:** Any request for extension of the Closing Date by Buyer must be in writing and approved by the Seller, and the Buyer agrees to pay to the Seller's per diem of one-half (1/2) of the purchase price, but not less than \$50.00 per day, towards Seller's and her agent's costs, through and including the Closing Date specified in the written extension. If the sale does not close by the date specified in the written extension agreement, the Seller may retain the earnest money deposit and the amount per diem payment as liquidated damages. This provision is not applicable if Buyer obtains FHA/VA financing for the purchase, or for loans created by Seller.

Buyer Initials

[Handwritten initials]

8. The Buyer (check one) does and does not intend to use the Property as Buyer's primary residence.

10. **Additional Terms or Conditions:**

11. **Attachments:**

BUYER SIGNATURE

SELLER SIGNATURE

NOTARIAL SIGNATURE

copy of the Effective Date. The Seller agrees to use reasonable efforts, as determined in the Seller's sole discretion, to assist the Buyer in obtaining a copy of the covenants, conditions and restrictions, and bylaws. The Buyer will be deemed to have accepted the covenants, conditions and restrictions, and bylaws if the Buyer does not notify the Seller in writing within fifteen (15) calendar days of the Effective Date of the Buyer's rejection to the covenants, conditions and restrictions, and/or bylaws.

13. **COVENANTS OF PROPERTY:** THE BUYER UNDERSTANDS THAT THE SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORECLOSURE TAX SALE, OR SIMILAR PROCESS, AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT

BUYER SIGNATURE

SELLER SIGNATURE

12. Inspection

(a) On or before ten (10) calendar days (seven days for noncontingent cash offers as indicated in Section 5 (b) above) from the Effective Date, the Buyer shall inspect the Property or obtain for its own use, benefit and release, inspections and/or reports on the condition of the Property, or Buyer shall be deemed to have 1) waived such inspections and any objections to the condition of the Property, and 2) accepted the condition of the Property. The Buyer shall keep the Property free and clear of liens and encumbrances and hold the Seller and the Indemnified Parties harmless from all Claims arising out of or relating in any way to the Buyer's inspections, and the Buyer shall repair the Property, at Buyer's sole expense, for all such Claims. The Buyer shall not directly or indirectly cause any inspections to be made by any governmental building or zoning inspector or government employees without the prior written consent of the Seller, unless required by law. In which case, the Buyer shall provide reasonable notice to the Seller prior to any such inspection. If the Seller has written consent, the Property and the Buyer desires to have the Property inspected, the listing agent will have the Property re-inspected prior to inspection and re-inspected after inspection. The Buyer agrees to pay the expense in advance to the listing agent. The amount paid under this provision shall be non-refundable.

Within five (5) calendar days of receipt of any inspection report prepared by or for the Buyer, but not later than ten (10) calendar days (seven days for noncontingent cash offers as indicated in Section 5 (b) above) from the Effective Date, whichever first occurs, the Buyer shall provide written notice to the Seller of any items disapproved or problems with the condition of the Property. The Buyer's failure to provide such written notice to Seller shall be deemed as Buyer's acceptance of the condition of the Property. The Buyer shall immediately provide to the Seller, at Buyer's request by the Seller, complete copies of all inspection reports upon which the Buyer's disapproval of the condition of the Property is based. In no event shall the Seller be obligated to make any repairs or replacements, or correct any problems or defects that may be indicated in the Buyer's inspection reports. The Seller may, at its sole discretion, make such repairs, replacements, or corrections to the Property. If the Seller elects not to repair or correct the Property, the Buyer may cancel the Agreement within five (5) calendar days of receiving notice from Seller that Seller elects not to repair or correct the Property. If Buyer timely notifies Seller of such cancellation, then Buyer shall receive all earnest money deposited. If the Seller elects to make any such repairs or corrections to the Property, the Seller shall notify the Buyer after completion of the repairs or corrections and the Buyer shall have five (5) calendar days from the date of such notice, to inspect the repairs or corrections and notify the Seller of any items disapproved. The Buyer's failure to notify Seller of any items disapproved shall be deemed acceptance by Buyer of the condition of the Property.

In instances that are applicable, a structural, electrical, mechanical or similar inspection report may have been prepared for the benefit of the Seller. Upon Buyer's request, the Buyer may review such reports, but the Buyer acknowledges that such inspection reports were prepared for the sole use and benefit of the Seller. Buyer shall not rely upon any such inspection reports obtained by the Seller in making a decision to purchase the Property, and such reports shall not serve as a basis for Buyer to terminate the Agreement.

(b) If the Property is a condominium or planned unit development or co-operative, unless otherwise required by law, the Buyer, at the Buyer's own expense, is responsible for obtaining and reviewing the covenants, conditions and restrictions, and bylaws of the condominium or planned unit development or cooperative within ten (10) calendar days of the Effective Date. The Seller agrees to use reasonable efforts, as determined at the Seller's sole discretion, to assist the Buyer in obtaining a copy of the covenants, conditions and restrictions, and bylaws. The Buyer will be deemed to have accepted the covenants, conditions and restrictions, and bylaws if the Buyer does not notify the Seller in writing within fifteen (15) calendar days of the Effective Date of the Buyer's objection to the covenants, conditions and restrictions, and/or bylaws.

13. CONDITION OF PROPERTY: THE BUYER UNDERSTANDS THAT THE SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORECLOSURE, TAX SALE, OR SIMILAR PROCESS, AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT

BUYER (Initials)

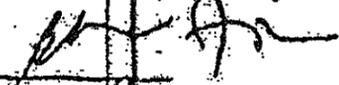
SELLER (Initials)

Revised 3/06

KNOWLEDGE CONCERNING THE CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THE AGREEMENT AS NEGOTIATED AND AGREED TO BY THE BUYER AND THE SELLER, THE BUYER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY HIDDEN DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN, WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT. THE BUYER ACKNOWLEDGES THAT THE SELLER, AND ITS AGENTS, BROKERS, AND REPRESENTATIVES HAVE NOT MADE, AND THE SELLER SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN, WITH RESPECT TO:

- (A) THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL INTEGRITY OR THE QUALITY OR CHARACTER OF MATERIALS USED IN CONSTRUCTION OF ANY IMPROVEMENTS, AVAILABILITY AND QUANTITY OR QUALITY OF WATER, STABILITY OF THE SOIL, SUSCEPTIBILITY TO LANDSLIDE OR FLOODING, SUFFICIENCY OF DRAINAGE, WATER LEAKS, WATER DAMAGE, MOLD OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY;
- (B) THE CONFORMITY OF THE PROPERTY TO ANY ZONING, LAND USE OR BUILDING CODE REQUIREMENTS OR COMPLIANCE WITH ANY LAWS, STATUTES, RULES, ORDINANCES, OR REGULATIONS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AUTHORITY, OR THE GRANTING OF ANY REQUIRED PERMITS OR APPROVALS, IF ANY, OF ANY GOVERNMENTAL BODIES THAT HAD JURISDICTION OVER THE CONSTRUCTION OF THE ORIGINAL STRUCTURE, ANY IMPROVEMENTS, AND/OR ANY REMODELING OF THE STRUCTURE;
- (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, INCLUDING REDHIBITORY VICIS AND DEFECTS, APPARENT OR NON-APPARENT OR LATENT, THAT NOW EXIST OR MAY HEREAFTER EXIST AND THAT, IF KNOWN TO BUYER, WOULD CAUSE BUYER TO REFUSE TO PURCHASE THE PROPERTY; AND
- (D) THE EXISTENCE, LOCATION, SIZE, OR CONDITION OF ANY OUTBUILDINGS OR SHEDS ON THE PROPERTY.

Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in the Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in young children, elderly persons, persons with immune system problems, allergies, or respiratory problems, and pets. Mold has also been reported to cause extensive damage to personal and real property. Buyer is advised to thoroughly inspect the Property for Mold. Mold may appear as discolored patches or cottony or speckled growth on walls, furniture or floors, behind walls and above ceilings. Any and all presence of moisture, water stains, mildew odors, condensation, and obvious mold growth, are all possible indicators of a Mold condition, which may or may not be toxic. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. Buyer acknowledges that, if Seller, or any of Seller's employees, contractors, representatives, brokers, or agents cleaned or repaired the Property or remediated the Mold contamination, that Seller does not in any way warrant the cleaning, repairs, or remediation, or that the Property is free of Mold. Buyer is further advised to have the Property thoroughly inspected for Mold, any hidden defects, and/or environmental conditions or hazards affecting the Property. Buyer is also advised that all areas contaminated with Mold should be properly and thoroughly remediated. Buyer represents and warrants that (A) Buyer accepts full responsibility and liability for all hazards, and claims that may result from the presence of Mold in or around the Property, (B) if Buyer proceeds to close on the purchase of the Property, then Buyer has inspected and evaluated the condition of the Property to Buyer's complete satisfaction, and Buyer is satisfied with the condition of the Property notwithstanding the past or present

BUYER (Initials) 

SELLER (Initials) 

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repairs or treatments shall be performed for functional purposes only and exact restoration of appearance or cosmetic items following any repairs or treatments shall not be required. The Seller shall not be obligated to obtain or provide to the Buyer any receipts for repairs or treatments, written statements indicating dates or types of repairs and/or treatments, copies of such receipts or statements, or any other documentation regarding any repairs and treatments to the Property. **THE SELLER DOES NOT WARRANT OR GUARANTEE ANY WORK, REPAIRS, OR TREATMENTS TO THE PROPERTY.**

15. **Occupancy Status of Property:** The Buyer acknowledges that neither the Seller, nor its representatives, brokers, agents or assigns, has made any warranties or representations, implied or express, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 10 of this Addendum. The Seller, and its representatives, brokers, agents, and assigns, shall not be responsible for evicting or relocating any tenants, occupants, or personal property at the Property prior to or subsequent to closing unless otherwise noted in Section 10 of this Addendum.

The Buyer further acknowledges that, to the best of the Buyer's knowledge, the Seller (A) is not holding any security deposits from former or current tenants, and (B) has no information as to any security deposits that may have been paid by former or current tenants to anyone. Buyer agrees that no sums representing such tenant security deposits or any rights, title, or interest in such deposits shall be transferred to the Buyer as part of this transaction. The Buyer further agrees to assume all responsibility and liability for the refund of such security deposits to any tenants pursuant to the provisions of applicable laws and regulations. All rents that are due and payable and collected from tenants for the month in which closing occurs will be prorated according to the provisions of Section 17 of this Addendum.

The Buyer acknowledges that this Property may be subject to the provisions of local rent control ordinances and regulations. The Buyer agrees that upon the closing all eviction proceedings and other duties and responsibilities of a property owner and landlord, including, but not limited to, those proceedings required for compliance with such local rent control ordinances and regulations, will be the Buyer's sole responsibility.

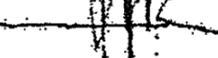
Buyer understands that the Property may be subject to redemption by the prior owner upon payment of certain sums, and Buyer may be dispossessed of the Property. Buyer is advised to consult with an attorney to fully understand the import and impact of the foregoing. Buyer agrees Buyer shall have no recourse against Seller in the event the right of redemption is exercised.

16. **Personal Property:** Items of personal property, including but not limited to, window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes, and garage door openers, now or hereafter located on the Property, are not included in this sale or the purchase price unless the personal property is specifically described and referenced in Section 10 of this Addendum. Any personal property at or on the Property may be subject to claims by third parties, and therefore, may be removed from the Property prior to or after the Closing Date. The Seller makes no representations or warranties as to the condition of any personal property, title therein, or whether any personal property is encumbered by any liens. The Buyer assumes responsibility for any personal property remaining on the Property at the time of closing.

17. **Closing Costs and Adjustments:**

(a) The Buyer and the Seller agree to prorate the following expenses as of closing and funding: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. In determining prorations, the Closing Date shall be allocated to the Buyer. Payment of special assessment district bonds and assessments, and payment of homeowner's association or special assessments shall be paid current and prorated between the Buyer and the Seller as of the Closing Date with payments not yet due and owing to be assumed by the Buyer without credit toward the purchase price. The Property taxes shall be prorated based on an estimate of annual taxes from the previous year on the Property. All prorations shall be based upon a 30-day month and all such prorations shall be final. The Seller shall not be responsible for any amounts due, paid, or to be paid after closing, including, but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised or assessed value of the Property. If the Property is heated by, or has

BUYER (initials) 

SELLER (initials) 

Revised 3/05

storage tanks for fuel oil, liquefied petroleum gases, or similar fuels, the Buyer will buy the fuel in the tank at closing at the current price as calculated by the supplier. In the event the Seller has paid any taxes, special assessments, or other fees and there is a refund of any such taxes, assessments, or fees after closing, Buyer, as the then current owner of the Property, or the closing agent, in the event of a holdback for payment of such items, shall immediately remit the refund to the Seller.

(b) Seller shall only pay those closing costs and fees associated with the transfer of the Property that local custom or practice clearly allocates to Seller and any closing costs and fees specifically agreed to in Section 6, and Buyer shall pay all remaining fees and costs. Notwithstanding the foregoing, FHA/VA allocation of closing costs shall apply when applicable.

(c) The Seller shall pay the real estate commission per the listing agreement between the Seller and the Seller's listing broker. Unless disclosed to Seller, Buyer represents that Buyer is not a real estate licensee, and that the real estate licensee representing Buyer is not related to, or affiliated with Buyer.

18. **Delivery of Funds:** Regardless of local custom or practice, Buyer shall deliver all funds due the Seller from the sale by wire transfer or in the form of cash, bank check, or certified check to the closing agent prior to delivery of the deed by the Seller to the Buyer.

19. **Certificate of Occupancy:** If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification, or any similar certification or permit ("Certificate of Occupancy") or any form of improvement or repair to the Property to obtain such Certificate of Occupancy necessary for the Property to be occupied, the Buyer understands that the Seller requires the Certificate of Occupancy to be obtained by the Buyer at the Buyer's sole cost and expense. The Buyer shall make application for all required Certificates of Occupancy within ten (10) calendar days of the Effective Date. The Buyer shall not have the right to delay the closing due to the Buyer's failure or inability to obtain any required Certificate of Occupancy. Failure of the Buyer to obtain and furnish the Certificate of Occupancy shall be a material breach of the Agreement.

20. **Delivery of Possession of Property:** The Seller shall deliver possession of the Property to the Buyer at closing and funding of the sale. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 15 of this Addendum. If the Buyer alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to closing and funding without the prior written consent of the Seller, then: (A) Such event shall constitute a material breach by the Buyer under the Agreement; (B) The Seller may terminate the Agreement; (C) The Buyer shall be liable to the Seller for all Claims caused by any such alteration or occupation of the Property prior to closing and funding; and (D) Buyer waives all Claims for improvement made by the Buyer to the Property including, but not limited to, any Claims for unjust enrichment.

21. **Deed:** The deed to be delivered at closing shall be a deed that covenants that grantor grants only that title that grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which deed may be known as a Special Warranty, Limited Warranty, Quitclaim or Bargain and Sale Deed). Any reference to the term "deed" or "Special Warranty Deed" herein shall be construed to refer to such form of deed.

22. **Defects in Title:** If the Buyer raises an objection to the Seller's title to the Property, which, if valid, would make title to the Property unmarketable, the Seller shall have the right unilaterally to terminate the Agreement by giving written notice of the termination to the Buyer. However, if the Seller is able to correct the problem through reasonable efforts, as the Seller determines, at its sole and absolute discretion, prior to the closing date set forth in the Agreement, including any written extensions, or if title insurance is available from a reputable title insurance company at regular rates containing affirmative coverage for the title objections, then the Agreement shall remain in full force and the Buyer shall perform pursuant to the terms set forth in the Agreement. The Seller is not obligated to: (A) remove any exception, (B) bring any action or proceeding or bear any expense in order to convey title to the Property, or (C) make the title marketable or insurable. Any attempt by the Seller to remove such title exceptions shall not impose an obligation upon the Seller to remove those exceptions. The Buyer acknowledges that the Seller's title to the Property may be subject to court approval of foreclosure or to a mortgagor's right of redemption. In the event the Seller is not able to (A) make the title insurable or correct all title problems, or (B) obtain title insurance for the Property from a reputable title insurance company,

BUYER (initials)

- 10 -

SELLER (initials)

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either party may terminate the Agreement and any earnest money deposit will be returned to the Buyer as the Buyer's sole remedy, failure or equity.

23. Representations and Warranties

In addition to Buyer's representations and warranties made elsewhere herein, such as those found in Section 11 of this Addendum, the Buyer represents and warrants to the Seller the following:

- (a) The Buyer is purchasing the Property solely in reliance on its own investigation and inspection of the Property and not on any information, representation or warranty provided or to be provided by the Seller, its servants, representatives, brokers, employees, agents, or assigns, including, but not limited to, any information provided on any brochures or web-sites of Seller or Seller's agents or brokers, or any information on the Multiple Listing Service;
- (b) Neither the Seller, nor its servants, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or express, relating to the condition of the Property or its contents based, except as expressly set forth in Section 10 of this Addendum;
- (c) The Buyer has not relied on any representation concerning the Seller, or Seller's agents or brokers regarding the accuracy, or workmanship of any repairs made by the Seller;
- (d) The Buyer will not occupy, or lease or permit others to occupy, the Property prior to closing and funding, and, unless and until any necessary Certificate of Occupancy has been obtained from the appropriate governmental entity, Buyer will not occupy or lease or permit others to occupy the Property after closing; and
- (e) Buyer is not an officer, an employee, a director, or a Business Partner (as defined below) of Bank of America Home Loans or any parent company, subsidiary, or affiliated company. Buyer understands and acknowledges that Seller prohibits such persons from purchasing the Property, directly, indirectly, or through a family member or an interest in a partnership, corporation, joint venture, trust, or other entity. "Business Partner" shall mean any agent, broker, sponsor, advisor, issuer, property inspector or purchaser company, title company, representative, or vendor of Bank of America Home Loans, or its parent company, subsidiary, or affiliated company.

Buyer Initial: *[Signature]*

24. Conditions to the Seller's Performance: The Seller shall have the right, at the Seller's sole discretion, to extend the Closing Date or to terminate the Agreement if:

- (a) full payment of any mortgage insurance claim related to the loan previously secured by the Property is not received prior to the Closing Date or the mortgage insurance company exercises its right to acquire title to the Property;
- (b) the Seller determines that it is unable or it is economically not feasible to convey good and marketable title to the Property insurable by a reputable title insurance company at regular rates;
- (c) a third party having an interest in the Property (or the loan that was secured by the Property) has requested that the servicing lender, or any other party, release the servicing of or repayments such loan or the Property;
- (d) full payment of any property, fire or hazard insurance claim is not received prior to the Closing Date;
- (e) any third party, whether tenant, homeowner's association, or otherwise, exercises rights under a right of first refusal to purchase the Property;

BUYER (initials) *[Signature]*

SELLER (initials) *[Signature]*

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- (f) The Buyer is the former mortgagor of the Property whose interest was foreclosed, or is related to or affiliated in any way with the former mortgagor, and the Buyer has not disclosed this fact to the Seller prior to the Seller's acceptance of the Agreement. Such failure to disclose shall constitute a material breach under the Agreement, entitling the Seller to exercise any of its rights and remedies, including, without limitation, retaining the earnest money deposit; or
- (g) The Seller, at the Seller's sole discretion, determines that the sale of the Property to the Buyer, or any related transactions, are in any way associated with illegal activity of any kind.

In the event the Seller elects to terminate the Agreement as a result of (a), (b), (c), (d), (e) or (f) above, the Seller shall return the Buyer's earnest money deposit and the parties shall have no further obligation under the Agreement, except as to any provision that survives termination pursuant to Section 30 of this Addendum.

25. Seller's Remedies for Buyer's Default:

In the event of Buyer's material breach or material misrepresentation of any fact under the terms of the Agreement, (1) the Seller, at its option, may retain the earnest money deposit and any other funds then paid by the Buyer as liquidated damages and/or invoke any other remedy expressly set out in the Agreement or available under applicable law, (2) the Seller is automatically released from the obligation to sell the Property to the Buyer, and (3) Seller and the Indemnified Parties shall not be liable to the Buyer for any Claims arising out of or relating in any way to the Seller's failure to sell and convey the Property to Buyer.

26. Indemnification: The Buyer agrees to indemnify, defend and hold harmless Seller, and its affiliates, subsidiaries, parent company, representatives, agents, officers, directors, employees, attorneys, shareholders, servicers, tenants, brokers, predecessors, successors, and assigns ("Indemnified Parties") from and against any and all claims, causes of action, whether administrative or judicial, losses, costs (including any and all reasonable attorneys fees, court costs, and reasonable costs of investigation, litigation, and settlement), expenses, sanctions, settlements, interest, liabilities, penalties, fines, demands, liens, judgments, compensation, fees, loss of profits, injuries, death, and/or damages, of any kind whatsoever, whether known or unknown, fixed or contingent, joint or several, criminal or civil, or in law or in equity ("Claims") arising from, in connection with, or in any way relating to:

- (a) inspections or repairs made by the Buyer or its agents, representatives, brokers, employees, contractors, successors or assigns;
- (b) the imposition of any fine or penalty imposed by any governmental entity resulting from the Buyer's failure to timely obtain any Certificate of Occupancy or to comply with equivalent laws and regulations;
- (c) claims for amounts due and owed by the Seller for real property taxes, homeowners' association dues or assessments, or any other items prorated at closing under Section 17 of this Addendum, including any penalty or interest and other charges, arising from the proration of such amounts for which the Buyer received a credit at closing under Section 17 of this Addendum;
- (d) the Buyer or the Buyer's tenants, agents or representatives use and/or occupancy of the Property prior to closing and/or issuance of required Certificates of Occupancy; or
- (e) The Buyer's breach of or failure to comply fully with any provision in the Agreement.

Buyer initials *lt J*

27. Risk of Loss: In the event of fire, destruction, or other casualty loss to the Property after the Seller's acceptance of the Agreement and prior to closing and funding, the Seller may, at its sole discretion, repair or restore the Property, or either Party may terminate the Agreement. If the Seller elects to repair or restore the Property, then the Seller may, at its sole discretion, limit the amount to be expended. If the Seller elects to repair or restore the Property, the Buyer shall either (a) acquire the Property in its AS-IS condition at the time of such acquisition at the purchase price provided in Section 3

BUYER (initials) *lt J*
 SELLER (initials) *WML*

herein with no reduction for such loss, or (b) terminate the Agreement and receive a refund of any earnest money deposit.

28. **Eminent Domain:** In the event that the Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate the Agreement and the earnest money deposit shall be returned to the Buyer and neither Party shall have any further rights or liabilities thereunder, except as provided in Section 30 of this Addendum.

29. **Keys:** Buyer is aware that the property may be on a master key system. Buyer is encouraged to re-key the property after closing. Buyer agrees to hold Seller and the Indemnified Parties harmless for any claims relating in any way to any theft or damage of personal property that occurs after the Closing Date.

30. **Survival:** Delivery of the deed to the Property to the Buyer by the Seller shall be deemed to be full performance and discharge of all of the Seller's obligations under the Agreement. Notwithstanding anything to the contrary in the Agreement, the provisions of Sections 1, 13, 14, 15, 17, 19, 20, 21, 23, 26, 27, 28, 30, and 47 of this Addendum, as well as any other provisions that contemplate performance or observance subsequent to any termination or expiration of the Agreement, shall survive the closing, funding and the delivery of the deed and/or termination of the Agreement by any Party and such provisions shall continue in full force and effect.

31. **Title and Closing:** The providers of title and escrow/closing services shall be designated by Seller. Seller shall pay for Standard ALTA Homeowners policy of title insurance. Buyer is hereby notified that LandSafe Title Company is an affiliate of Seller.

32. **Severability:** If any provision of the Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired thereby, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

33. **Termination of Agreement:** If either Party terminates the Agreement when permitted to do so, the Parties shall have no further obligation to each other, except as to any provision that survives the termination of the Agreement pursuant to Section 30 of this Addendum.

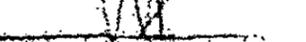
34. **Assignment of Agreement:** The Buyer shall not assign the Agreement. The Seller may assign the Agreement at its sole discretion without prior notice to, or consent of, the Buyer.

35. **Modification and Waiver:** No provision, term or clause of the Agreement shall be revised, modified, amended or waived, except by an instrument in writing signed by the Buyer and the Seller. The waiver by any Party of a breach of the Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No course of dealing between the Parties shall operate as a waiver of any provision of the Agreement.

36. **Rights of Others:** The Agreement does not create any rights, claims or benefits in favor of any person or entity, other than Seller's successors and/or assigns, that is not a Party to the Agreement, nor does it create or establish any third party beneficiary to the Agreement.

37. **Counterparts and Facsimile:** The Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. A signed facsimile or photocopy of the Agreement shall be treated as an original, and shall be deemed to be as binding, valid, genuine, and authentic as an originally signed agreement for all purposes, including all matters of evidence and the "best evidence" rule.

38. **Headings:** The titles to the sections and headings of various paragraphs of the Agreement are placed for convenience of reference only, and in case of conflict the text of the Agreement, rather than such titles or headings, shall control.

BUYER (initials) 
SELLER (initials) 

- 39. **Gender:** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such nouns or pronouns, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.
- 40. **Force Majeure:** Except as provided in Section 27 to this Addendum, no Party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such Party through use of alternate sources, work-around plans, or other means.
- 41. **Attorney Review:** The Buyer acknowledges that Buyer has had the opportunity to consult with its legal counsel regarding the Agreement and that accordingly the terms of the Agreement are not to be construed against any Party because that Party drafted the Agreement or construed in favor of any Party because that Party failed to understand the legal effect of the provisions of the Agreement.
- 42. **Notices:** Any notices required to be given under the Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery or by fax with confirmation of transmission to the numbers below, or five (5) calendar days after mailing by first class mail, postage paid. All notices to the Seller will be deemed sent or delivered to the Seller when sent or delivered to Seller's listing broker or agent or Seller's attorney, at the address or fax number shown below. All notices to the Buyer shall be deemed sent or delivered and effective when sent or delivered to the Buyer or the Buyer's attorney or agent at the address or fax number shown below.
- 43. **Dispute Resolution:** At the request of either Party, any dispute arising under this Agreement shall be submitted to mediation before resorting to arbitration or court action. Mediation fees shall be divided equally and each Party shall bear his or its own attorney's fees and costs. Neither Party may require binding arbitration prior to commencement of court action, although the parties may mutually agree to such arbitration.
- 44. **EFFECT OF ADDENDUM:** THIS REAL ESTATE PURCHASE ADDENDUM AMENDS AND SUPPLEMENTS THE CONTRACT AND, IF APPLICABLE, ESCROW INSTRUCTIONS. IN THE EVENT THERE IS ANY CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT OR ESCROW INSTRUCTIONS OR NOTICE OR OTHER DOCUMENTS ATTACHED AND MADE A PART OF THE AGREEMENT, THE TERMS OF THIS ADDENDUM TAKE PRECEDENCE AND SHALL PREVAIL, EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW. The undersigned, if executing the Agreement on behalf of a Seller and/or a Buyer that is a corporation, partnership, trust or other entity, represents and warrants that he/she is authorized by that entity to enter into the Agreement and bind the entity to perform all duties and obligations stated in the Agreement and shall provide Seller with proof of such authority upon execution of the Agreement.
- 45. **Initials:** Buyer and Seller agree to all of the terms in this Agreement whether any provision on page is separately initialed or not. For emphasis some sections or provisions in the Agreement contain a place for Buyer and/or Seller to separately initial, but the failure by Buyer or Seller to initial any section, provision, or page in the Agreement shall not affect the enforceability of any term or provision in the Agreement.
- 46. **Entire Agreement:** The Agreement (including any disclosure of information on lead based paint or hazards, and other disclosure forms or notices required by law to be provided to Buyer) constitutes the entire agreement between the Buyer and the Seller concerning the subject matter hereof and supersedes all previous written and oral communications, understandings, representations, warranties, covenants, and agreements. Further, Buyer and Seller represent that there are no oral or other written agreements between the Parties. ALL NEGOTIATIONS ARE MERGED INTO THE AGREEMENT, AND NO ORAL OR WRITTEN, EXPRESS OR IMPLIED, PROMISES, REPRESENTATIONS, WARRANTIES, COVENANTS, UNDERSTANDINGS, COMMUNICATIONS, AGREEMENTS, OR INFORMATION MADE OR PROVIDED BY THE SELLER, OR SELLER'S EMPLOYEES, AGENTS, REPRESENTATIVES, OR BROKERS, INCLUDING, BUT NOT LIMITED TO ANY INFORMATION ON SELLER'S OR SELLER'S AGENT OR BROKER'S WEB SITES, SALES

BUYER (Initials) 

SELLER (Initials) 

PROCESSES, OR ON THE MULTIPLE LISTING SERVICE SHALL BE DEEMED VALID OR BINDING UPON THE SELLER, UNLESS EXPRESSLY INCLUDED IN THE AGREEMENT.

47. Attorney's Fees, Costs and Legal Expenses: In any action, proceeding, or arbitration arising out of, brought under, or relating to the terms or enforceability of the Agreement the prevailing Party shall be entitled to recover from the losing Party all reasonable attorney's fees, costs, and expenses incurred in such action, proceeding, or arbitration.

48. LANGUAGE IN BOLD OR CAPITALIZED: FOR EMPHASIS AND BUYER'S BENEFIT SOME PROVISIONS HAVE BEEN BOLDED AND/OR CAPITALIZED LIKE THIS SECTION. BUT EACH AND EVERY PROVISION IN THIS ADDENDUM IS SIGNIFICANT AND SHOULD BE REVIEWED AND UNDERSTOOD. NO PROVISION SHOULD BE IGNORED OR DISREGARDED BECAUSE IT IS NOT IN BOLD OR EMPHASIZED IN SOME MANNER, AND THE FAILURE TO BOLD, CAPITALIZE, OR EMPHASIZE IN SOME MANNER ANY TERMS OR PROVISIONS IN THIS ADDENDUM SHALL NOT AFFECT THE ENFORCEABILITY OF ANY TERMS OR PROVISIONS.

IN WITNESS WHEREOF, the Buyer and the Seller have entered into the Agreement effective as of this date and it is executed by Seller as set forth below.

BUYER(S):

Signature: [Signature]
Date: 3/15/13
Print Name: Erin Ann Foxberg
Address: 74 Via La Cuesta
Redondo Beach, CA 90274

Telephone: 310 378-1915
Fax: 310 378-6979

Signature: [Signature]
Date: 3/15/13
Print Name: Erin Ann Foxberg
Address: 74 Via La Cuesta
Redondo Beach, CA 90274

Telephone: 310 378-1915
Fax: 310 378-6979

SELLER:

Bank of America Home Loan Servicing, LP, a subsidiary of Bank of America, N.A. as Agent in First Party

By: [Signature]
Title: Asset Manager
Date: 3-15-13

BUYER'S AGENT:

Buyer's Agent Name: Siobhan McGill

BUYER (Initials): [Initials]

SELLER (Initials): [Initials]

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SELLER'S AGENT:

Seller's Agent Name: MICHAEL DOIRON

-15-

Address: 2831 St. Rose Pkwy #100
Henderson, NV 89052
Telephone: 702-349-5252
Fax: 702-637-7210

Address:
Telephone:
Fax:

BUYER'S ATTORNEY:

Name:
Address:
Telephone:
Fax:

SELLER'S ATTORNEY:

Name:
Address:
Telephone:
Fax:

CLOSER:

Company Name:
Contact Person:
Telephone:
Fax:

TITLE COMPANY:

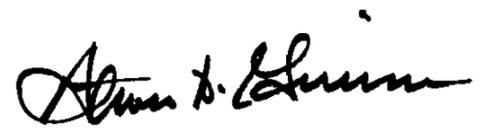
Company Name:
Contact Person:
Telephone:
Fax:

BANK OF AMERICA CLOSING CONTACT:

Escrow/Closing Officer Name:
Escrow/Closing Officer Phone No.:
Escrow/Closing Asst. Name:
Escrow/Closing Asst. Phone No.:

BUYER (initials) 
SELLER (initials) 
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TAB 31



CLERK OF THE COURT

RPLY

Preston P. Rezaee, Esq.
Nevada Bar No. 10729
Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
Sarah Chavez, Esq., of counsel
Nevada Bar No. 11935
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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; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
PARTNERS, a Nevada limited partnership;
DOES I through X, inclusive; and ROE
BUSINESS ENTITY I through XX, inclusive,

Defendants.

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

**DEFENDANT SHAHIN SHANE
MALEK'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

I. Introduction

The Trust attempts to refute Malek's arguments by erecting one straw man in their place and deftly knocking it down. To do this, the Trust ignores its own claims in this case, and instead focuses on how Malek's conduct violates an implied restrictive covenant that it presumes to exist over the Golf Parcel. In doing so, the Trust answers a question no one asked; it proposes a solution to a problem that

1 does not exist. Much as how Trust cannot dictate Malek's right to use his property, it cannot redefine
2 his arguments into those it finds most convenient.

3 The Trust has lost the plot of its own case. Its Opposition blurs its four claims against Malek
4 into one essay about implied restrictive covenants, and fails for the following reasons:

- 5 • Contrary to the Trust's claims, Nevada has repudiated implied restrictive covenants for
6 view, privacy, and light – all of which the Trust has identified as its sole concerns in
7 this case;
- 8 • Skipping to its conclusion, the Trust assumes that an implied restrictive covenant runs
9 throughout MacDonald Highlands and grounds its arguments from that position, but
10 never sets forth how one arose and what its scope may be; and
- 11 • The Trust's principal argument for an implied restrictive covenant is that the Trust
12 thought one existed – yet does not introduce any evidence supporting that contention.

13 The Trust's latest argument is that it is protecting the Dragonridge golf course from changing
14 its character or use. This new theory of the case is especially curious because Barbara Rosenberg, who
15 by all appearances is spearheading this litigation for the Trust, *does not even play golf*. (Dep. of B.
16 Rosenberg at 189:23-190:21) Whatever *post hoc* rationalization the Trust wishes to give, it has
17 repeatedly stated that its concern over Malek's construction is that it will affect the light, view, and
18 privacy of 590 Lairmont. (MSOF 88, 89, 90, 118) These concerns do not create an implied restrictive
19 covenant.

20 In sum, the Trust believes that its \$2.3 million purchase of 590 Lairmont not only bought that
21 property, but the right to dictate its neighbors use of their property as well. Despite the trustees' efforts
22 to portray themselves as a hardscrabble success story that has finally arrived in a prestigious
23 community, 590 Lairmont is only one of many properties owned by the Trust and its trustees. (MSOF
24 52) The Trust knows, or should know, that its property rights do not allow it to dictate Malek's use of
25 his property. This Court should grant Malek's Motion for Summary Judgment and affirm this
26 fundamental tenet of Nevada law.

27 **II. Statement of Relevant Facts**

28 The Trust's Statement of Facts largely aligns with those advanced by Mr. Malek. The Trust's
characterization of certain facts is inadequate, as set forth below. However, the resolution of these
characterizations with the facts on record is consistent with the facts set forth in Malek's motion.

1 First, the Trust states that the Golf Parcel was “part of the in-bound play for the 9th hole.” Yet,
2 it cites to portions of Richard MacDonald’s deposition that do not state whether or not the Golf Parcel
3 is out-of-bounds. (Opp. Exh. A-5 at 30:7-8, 61:16-25, 62:8-13) Simultaneously, Malek has submitted
4 evidence that the Golf Parcel was out-of-bounds. (MSOF 13)

5 Second, the Trust’s contention that Bank of America “denied” receiving notice of the Golf
6 Parcel’s re-zoning is inaccurate. (Opp. at 5:20-21) Instead, Bank of America stated that it had no
7 records of learning about the Golf Parcel’s sale, or Malek’s purchase of it, prior to this litigation. (Opp.
8 Exh. A-9 at 6:21-7:7) During Bank of America’s deposition its designee confirmed that the
9 informational meeting’s notice was sent to a valid address for Bank of America (MSOF 50). This is
10 not a “deni[al]” as the Trust claims.

11 The Trust observes that other property owners have purchased portions of the golf course in the
12 past, and that the City of Henderson granted Malek’s application to re-zone the Golf Parcel. (Opp. at
13 6:7-19) It also correctly notes that Malek purchased 594 Lairmont and the Golf Parcel subject to any
14 of the easements that existed on the land. (*Id.* at 6:20-21) These included requirements that Malek’s
15 home plans are subject to the Design Review Committee’s approval under its guidelines, and an
16 easement for golf balls and golfers retrieving their balls from errant drives. (*Id.* at 5:9-16)

17 **III. Argument**

18 By misstating Malek’s arguments, the Trust attempts to contort Nevada law to serve its
19 purposes and prevent Malek from building his home. The Trust focuses on Nevada’s recognition of
20 implied restrictive covenants, and analyzes their history with depth that would be appropriate in an
21 academic journal. That analysis fails to connect with the issues before the Court in this case. The
22 Trust’s latest attempt to describe its potential loss of light, privacy, and view as preservation of the golf
23 course is unavailing, impermissibly elevates form over substance, and smacks of after-the-fact
24 rationalization.

25 **A. The Trust Takes a Valid Statement of Law and Stretches It Beyond Its Breaking** 26 **Point: Nevada Does Recognize Implied Restrictive Covenants, But Not for the** 27 **Trust’s Purposes in This Case, and Not for the Reasons the Trust has Articulated.**

28 The question before the Court is not whether Nevada recognizes implied restrictive covenants,
but whether the Trust can assert an implied restrictive covenant over Malek’s property to protect its

1 view and privacy. Nevada law has pointedly held that the Trust cannot do so. Nevada, like other
2 states, has “expressly repudiated” implied restrictive covenants for light, view, and privacy. *Probasco*
3 *v. City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969), *citing Boyd v. McDonald*, 81 Nev. 642,
4 651, 408 P.2d 717, 722 (1965).

5 In an attempt to circumvent this legal principle, the Trust cites a raft of Nevada precedent, yet
6 none of it is applicable in this case. The Trust cites to *Boyd*, analogizing the continued use of a
7 driveway and patio on nearby land to the concerns over view and privacy repeatedly identified by the
8 Trust in this case. However, there are no physical equivalents of the patio and driveway from *Boyd* in
9 this case. Here, the Trust seeks only to preserve its view and privacy on the golf course (MSOF 88,
10 89, 90, 118) – interests the *Boyd* court expressly held do not support an implied restrictive covenant.
11 81 Nev. at 651, 408 P.2d at 722.

12 The Trust goes on to cite *Jackson v. Nash* for the proposition that Nevada recognizes implied
13 restrictive covenants as a matter of law. 109 Nev. 1202, 866 P.2d 262 (1993). In that case, the Nevada
14 Supreme Court upheld the district court’s conclusion that no implied restrictive covenant existed.
15 Moreover, the Jackson court declined to find an implied easement by necessity that would allow the
16 plaintiff an appellant to have more convenient access to a roadway. *Id.* at 1211-1212, 866 P.2d at 269.
17 Like *Boyd*, this case contradicts the Trust’s position.

18 Despite the Trust’s effort to frame itself as the savior of MacDonald Highlands by enforcing a
19 putative implied restrictive covenant throughout the community, it has only produced evidence
20 showing that it seeks to preserve 590 Lairmont’s light, view, and privacy from Malek’s construction
21 (MSOF 88, 89, 90, 118). Its newly professed motivation for bringing this case to protect the golf
22 course directly clashes with its own prior testimony. (*Id.*; Dep. of B. Rosenberg at 189:23-190:21)
23 However the Trust describes its concerns over view, privacy, and light, they are the Trust’s only
24 concerns in seeking an implied restrictive covenant against Malek. They are not a proper basis for the
25 Court to entertain an implied restrictive covenant over Malek’s property.

26 ..
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28 ..

1 **B. The Trust Has Not Shown Nevada Recognizes a Cause of Action for Implied**
2 **Restrictive Covenant, or that It has Any Basis for Applying the Doctrine**
3 **Offensively.**

4 The Trust cites to no authority showing that Nevada has weaponized the legal doctrine of
5 implied restrictive covenant into a cause of action. Nor can the Trust do so: No such precedent exists.
6 The Trust makes no effort to show that Nevada would recognize a cause of action for implied
7 restrictive covenant.

8 The Trust does not enact the effort to explain why its claim is valid because it cannot do so.
9 Rather than try in vain to show its claim is cognizable under Nevada law, it makes a tremendous leap
10 of logic: Because Nevada recognizes the legal concept of an implied restrictive covenant, it therefore
11 recognizes a cause of action for the same. (Opp. at 9:8-10) This is a fallacy, and one that would allow
12 parties to turn even the most basic legal concepts into causes of action.

13 The weight of Nevada's legal tradition weighs against recognizing a new cause of action, such
14 as one for an implied restrictive covenant. (*See* Malek. Mot. for Summary Judgment at 16-20) In
15 addition to the precedent detailed in Malek's Motion (*id.*), the Nevada Supreme Court issued a new
16 opinion¹ declining to recognize a new cause of action for tortious discharge in violation of public
17 policy. *Brown v. Eddie World, Inc.*, 131 Nev. Adv. Op. 19 (2015). *Brown* reaffirms the Nevada
18 Supreme Court's unwillingness to recognize expanding Nevada law to recognize new causes of action,
19 and is instructive to this Court. Consistent with the Nevada Supreme Court's history of declining to
20 recognize novel causes of action, this Court should enter judgment in Malek's favor on the Trust's
21 claim for implied restrictive covenant.

22 **C. The Trust's Proffered Evidence Does Not Defeat Malek's Entitlement to Judgment**
23 **in His Favor.**

24 Despite Nevada Rule of Civil Procedure 56(e)'s requirement for the Trust to oppose Malek's
25 motion with admissible evidence, the Trust failed to authenticate a significant amount of the
26 documents used in support of its motion. Yet, even if this evidence were admissible, it would not
27 create the negative view easement the Trust seeks to enforce on Malek's property.

28

¹ The Nevada Supreme Court issued its opinion in *Brown v. Eddie World, Inc.* on April 16, 2015 – the
same day Malek filed his Motion for Summary Judgment.
Page 5 of 11

1 The evidence the Trust relies on relates only to the trustees' subjective beliefs at the time they
2 purchased 590 Lairmont. This evidence does not show the intent of Malek, FHP Ventures, and other
3 land owners who purchased out-of-bounds portions of the Dragonridge golf course to maintain those
4 parcels of land as undeveloped desert land in perpetuity. Similarly, the Trust's attempt to identify a
5 procedural defect with MacDonald Highland's merger of the Golf Parcel into 594 Lairmont does not
6 create an implied restrictive covenant against Malek. Despite the Trust's efforts, it cannot show that
7 an implied restrictive covenant prohibits Malek from developing the Golf Parcel and building his
8 home.

9 **1. Trust's Argument Relies on Inadmissible Evidence.**

10 Nevada Rule of Civil Procedure 56(e) requires a movant to attach sworn or certified copies of
11 any "papers or parts thereof" in support of a motion for summary judgment. Despite its numerous
12 citations of Exhibit A-6 (the MacDonald Highlands Design Guidelines), Exhibit A-7 (the MacDonald
13 Highlands Declaration of Covenants, Conditions and Restrictions), Exhibit A-10 (the Informational
14 Meeting Notice), and Exhibit A-11 (the City of Henderson's Notice of Final Action), among other
15 pieces of evidence, the Trust makes no serious effort to authenticate these exhibits.

16 Instead of using deposition testimony for this purpose, the Trust's counsel relies on an attorney
17 declaration to authenticate these documents. This is insufficient to make the Trust's putative evidence
18 admissible. At best, a party attorney's declaration can render a document "unauthenticated hearsay"
19 that cannot support a summary judgment motion. *Silver State Intellectual Techs., Inc. v. Garmin Int'l,*
20 *Inc.*, 32 F. Supp. 3d 1155, 1170 (D. Nev. 2014). Generally, "a document cannot be authenticated
21 merely by an attorney's declaration stating that the document is true and correct." *Sadeh v. Venetian*
22 *Casino Resort, LLC*, Case No. 2:10-cv-02224-KJD-GWF, 2012 U.S. Dist. LEXIS 104777 at *11 (D.
23 Nev. July 27, 2012), citing *Beyene v. Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1182 (9th Cir.
24 1988). Without proper authentication, these exhibits are inadmissible and cannot be used to create a
25 question of material fact in opposition to Malek's motion. *Henry Prods., Inc. v. Tarmu*, 114 Nev. 1017,
26 1019, 967 P.2d 444, 445 (1998) ("[e]vidence introduced in support of or opposition to a motion for
27 summary judgment must be admissible evidence"). To the extent the Trust relies on these pieces of
28 evidence to dispute Malek's facts in this case, the Court cannot credit those arguments.

1 **2. The CC&R's and Design Guidelines, Among Other Evidence, Do Not**
2 **Show an Implied Restrictive Covenant That Prohibits Malek from**
3 **Building on his Property.**

4 Both Malek and the Trust agree to the language of MacDonald Highlands CC&R's and its
5 Design Review Committee's Design Guidelines. The Trust does not identify anything in either
6 document that prohibits Malek from building on the Golf Parcel. Moreover, it does not offer any facts
7 to contradict the Design Review Committee's approval of Malek's plans to build his home. (Malek
8 Statement of Facts ("MSOF") 97) As the Trust admits, these restrictions have already allowed other
9 property owners in MacDonald Highlands to acquire out-of-bounds portions of the Dragonridge golf
10 course and add them to their own lots. None of this evidence leads to the conclusion that there is an
11 implied restrictive covenant prohibiting Malek from building on the Golf Parcel.

12 In its Opposition, the Trust discusses the importance of all parties' intent in establishing an
13 implied restrictive covenant. (Opp. at 8:15-25) The Trust misses the fact that it is the only party with
14 the intent for the Golf Parcel to remain an out-of-bounds portion of the Dragonridge golf course
15 indefinitely. The opposite is true. MacDonald Highlands sold the Golf Parcel to Malek, and sold other
16 golf course parcels to other owners. This shows MacDonald Highlands, its related entities, Malek,
17 other purchasers of golf course land, or anyone else never had the intent for the Golf Parcel to remain
18 part of the golf course indefinitely.² Similarly, the testimony of Richard MacDonald about the
19 importance of the golf course to MacDonald Highlands does not establish that out-of-bounds portions
20 are prohibited from being sold to adjacent landowners, as they had been since 2004 (Opp. at 6:7-19;
21 Opp. Exh A-5 at 12:4-20).

22 The Trust purchased 590 Lairmont as-is, where-is. (MSOF 69, 70) It also purchased the
23 property subject to the rights and obligations incumbent on it prior to its purchase. *Home Builders*
24 *Ass'n of Cent. Ariz. v. City of Maricopa*, 215 Ariz. 146, 151, 158 P.3d 869, 874 (Ct. App. 2007)
25 (describing successor-in-interest as having the same rights as the original owner); *Augusta Court Co-*
26 *Owners' Ass'n v. Levin, Roth & Kasner*, 971 S.W. 119, 126 (Tex. App. 1998) (describing successor-
27 in-interest as "stepping into the shoes" of another). Its intent is not relevant to determining what
28 implied restrictive covenant existed after FHP Ventures sold the Golf Parcel to Malek (and sold or

² To the contrary, Malek and the MacDonald Highlands entities intended the Golf Parcel to become part of 594 Lairmont. (See MSOF 13-15)

1 leased portions of the golf course to several others). While the Trust purchased 590 Lairmont subject
2 to the easements and covenants on that property, a blanket prohibition against the Golf Parcel being
3 developed into residential property was not among them. The Trust cannot now show that it is.

4 **3. The Homeowners Association Board Implicitly Approved Malek's**
5 **Acquisition and Re-Zoning of the Golf Parcel.**

6 Attempting to find a procedural defect in Malek's acquisition and re-zoning of the Golf Parcel,
7 the Trust asserts that Malek did not obtain the HOA Board's approval for a lot line change. (Opp. at
8 22:2-4) The Trust's argument relies on an incomplete reading of the relevant section of the CC&R's
9 (Opp. Exh. A-7 § 12.9), and ignoring Paul Bykowski and FHP Ventures' controlling position on the
10 Homeowners Association ("HOA") Board. The facts, when fully considered, do not support the
11 Trust's argument.

12 First, the Trust relies on a deliberately narrow reading of Section 12.9 of MacDonald
13 Highlands' CC&R's. (Opp. Exh A-7 § 12.9) The very section the Trust cites for the proposition that
14 Malek required the HOA Board's prior approval before changing his lot lines goes on to state:³

15 Declarant, however [illegible] any transferee of Developmental Rights pursuant to
16 Section 15.1, hereby expressly reserves the right to subdivide, change the boundary line
17 of, and replat any Unit(s) or other portion of the Property owned by Declarant or such
18 transferee. (Opp. Exh. A-7 § 12.9)

19 The Trust does not reference this language in its Opposition. Nor does it include the pages of the
20 CC&R's that include Section 15.1, detailing the circumstances where "Developmental Rights" could
21 be transferred to a third party and not require Board approval to adjust the lot lines. (Opp. Exh. A-7)
22 By the plain language of Section 12.9, the CC&R's contemplate lot line changes that do not require the
23 Board's written approval.

24 Second, even if Board approval were necessary, it was implicitly or explicitly obtained from
25 Paul Bykowski, the Board's President. (Dep. of P. Bykowski Vol. I. at 18:21-25) Bykowski's
26 deposition testimony does not establish that the Board never gave prior written approval for lot line
27 changes on Malek's property – only that he did not know. (Opp. Exh A-12 at 28:22-29:1) Bykowski's
28 deposition does establish, though, that FHP Ventures controls the HOA Board, and controlled it

³ As best as can be discerned from Opposition Exhibit A-7, which is hardly legible in certain portions.

1 throughout the time Malek purchased the Golf Parcel, re-zoned it, and added it to 594 Lairmont.
2 (Bykowski Dep. Vol. I at 17:6-18:20, 19:1-20:5; MSOF 13-15, 26-27) As Bykowski was instrumental
3 in this process, FHP Ventures and the Board's consent to the change of 594 Lairmont's lot lines should
4 be obvious. (MSOF 25, 34-35, 98)

5 Malek followed the required rules for re-zoning and merging the Golf Parcel into 594
6 Lairmont. The Trust's attempts to show otherwise are unavailing, as its own evidence fails to show
7 any failure by Malek to follow the rules. To the contrary, Exhibit A-7 shows that there are
8 circumstances where FHP Ventures retains the right to make lot line changes without prior approval.
9 (Opp. Exh. A-7 § 12.9) Despite the many holes in the Trust's argument, it would not create an implied
10 negative easement over Malek's property even if it were valid.

11 **D. By Failing to Respond to Malek's Motion Seeking Summary Judgment on the**
12 **Trusts Erroneous Claims for Declaratory and Injunctive Relief, the Trust**
13 **Concedes to Malek's Motion.**

14 In its Opposition, the Trust fails to address the case law demonstrating that its claims for
15 injunctive and declaratory relief are remedies, rather than causes of action. By failing to oppose these
16 branches of Malek's motion, the Trust concedes to their merit. EDCR 2.20(e); *Walls v. Brewster*, 112
17 Nev. 175, 178, 912 P.2d 261, 263 (1996). As such, the Court should enter judgment in Malek's favor
18 on those putative claims.

19 **E. The Trust's Policy Analysis Misrepresents Malek's Position and the Consequences**
20 **of this Litigation Proceeding.**

21 The Trust oversimplifies Malek's contention about the stakes of this case. Malek is not arguing
22 that the doctrine of implied restrictive covenants should be abolished, as the Trust claims. The Trust's
23 cited precedent is inapposite to its argument: *Reno v. Matley* discusses the benefits of a restrictive
24 covenant when enforcing its benefits, 79 Nev. 49, 54, 378 P.2d 256, 258-59 (1963), but this case
25 enforces a burden on Malek. The Trust's attempt to justify its trampling of his property rights by
26 describing it as a "benefit" to the Trust does not change the burdens the Trust seeks to place on Malek
27 to protect 590 Lairmont's light, privacy, and view.

28 This case is not broad enough to call for repudiating any particular legal doctrine. All the
Court must do to enter judgment in Malek's favor is to apply Nevada's existing law to the facts of this

1 case. By allowing the Trust to create an implied restrictive covenant over Malek's property out of its
2 speculation and say-so – and for the protection of its light, privacy, and view – contradicts existing
3 law. *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 651, 408 P.2d at 722. If the Trust's
4 theory is allowed to advance, it welcomes neighbors to subject one another to the costs and
5 machinations of civil litigation so they may vie for control over another's land. This very case, and its
6 nearly two years of robust litigation among numerous parties over a 1/3-acre parcel of desert land, is
7 evidence that Malek's concerns are not a hollow warning.

8 **IV. Conclusion**

9 Despite the Trust's considerable research on the subject of implied restrictive covenants, its
10 findings do not connect with the facts of this case. To the extent the Trust's evidence is admissible, it
11 does not contradict Malek's motion or the evidence in support of it. The facts in this case do not show
12 any implied restrictive covenant exists, nor has the Trust has advanced a legal theory entitling it to
13 encumber Malek's development of his land. The Court should grant Malek's Motion for Summary
14 Judgment.

15 DATED this 12th day of May, 2015.

16 THE FIRM, P.C.

17 BY: */s/ Jay DeVoy*

18 Preston P. Rezaee, Esq.

19 Nevada Bar No. 10729

20 Jay DeVoy, Esq., *of counsel*

21 Nevada Bar No. 11950

22 Sarah Chavez, Esq., *of counsel*

23 Nevada Bar No. 11935

24 200 E. Charleston Blvd.

25 Las Vegas, NV 89104

26 Attorneys for Defendant/Counterclaimant

27 SHAHIN SHANE MALEK

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that one this 12th day of May, 2015, pursuant to NRCP 5(b), I served via the Eighth
3 Judicial District Court electronic service system and to be placed in the United States Mail, with first
4 class postage prepaid thereon, and addressed the foregoing **REPLY IN SUPPORT OF MOTION**
5 **FOR SUMMARY JUDGMENT** to the following parties:

6
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of counsel to The Firm, P.C.

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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

1 up until now. Up until now, you have seen
2 nothing that says the 9th hole is being moved,
3 right?

4 A. Nothing has happened yet.

5 Q. You are unaware of anything that will
6 happen to move the 9th hole as of now, correct?

7 A. I am aware a piece of property has
8 been bought and there will be changes made.

9 Q. The piece of property you are talking
10 about is the bare lot, right?

11 A. What was part of the golf course
12 before.

13 Q. I was calling it the bare lot. That
14 lot has no grass on it, correct?

15 A. Yeah.

16 Q. And it doesn't have any part of the
17 green or the fairway on that lot, correct?

18 A. But it is part of the golf course.

19 Q. I am asking you a question.

20 A. Yes.

21 Q. Am I correct?

22 A. Uh-huh.

23 Q. And it does not appear to be any kind
24 of a water hazard or a sand trap for that hole,
25 correct?

1 A. I am not a golfer. I don't know.

2 Q. In fact, if you were to view it today,
3 it appears to be raw desert land; is that
4 correct?

5 A. It looks -- yeah, I guess.

6 Q. You say you are not a golfer. Do you
7 know if that land is inbounds or out of bounds
8 for the 9th hole?

9 A. I don't know.

10 Q. So if that bare lot was out of bounds
11 for the hole, then wouldn't you agree that
12 selling that property to Malek would not be a
13 sale of the 9th hole because it is out of bounds
14 of the 9th hole?

15 A. I don't know what he is going to do
16 there, so I don't know how it is going to affect
17 the 9th hole. I don't know what they would say
18 how they would have to reconfigure it based on
19 what he was doing, so I don't know. You are
20 asking me will it purely stay the way it is. I
21 have no idea.

22 Q. That is not what I am asking.

23 What I am asking is does the sale of
24 that desert land which may be outside the
25 out-of-bounds markers for the hole, will that

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

**CERTIFIED
TRANSCRIPT**

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; 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 PAUL BYKOWSKI

Taken on Wednesday, January 21, 2015

At 10:00 a.m.

At 1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

1 the Laramont property.

2 MR. GUNNERSON: Objection. Form.

3 Foundation.

4 BY MS. CLINE:

5 Q Do you understand what I am asking?

6 A Kind of. Are you asking the relationship

7 between Foothills Partners, the declarant and the

8 Foothills at MacDonald Ranch Master Association?

9 Q Correct.

10 A Yes, I could explain that.

11 Q Will you?

12 A Sure.

13 Q Thank you.

14 A The MacDonald Highlands project was
15 originally named the Foothills at MacDonald Ranch. So
16 sometimes you will hear it referred to as both. For
17 marketing reasons they changed it to MacDonald
18 Highlands. But the reason the association is Foothills
19 at MacDonald Ranch and the developer is Foothills
20 Partners is because the initial master plan name was
21 Foothills at MacDonald Ranch.

22 Foothills Partners was the declarant that
23 recorded the CC&Rs over the property and established
24 the Foothills at MacDonald Ranch Master Association to,
25 I guess, manage the CC&Rs and collect the HOA dues and

1 run the association. There is an association manager
2 that does most of the work, but the Foothills at
3 MacDonald Ranch Master Association is still developer
4 controlled, as the declarant appoints three of the
5 current five members on the board. The association
6 still votes on everything. But because three of the
7 five are appointed and not voted, it's technically
8 developer controlled.

9 Q Is there a point when it may become
10 controlled by someone other than the developer?

11 A Yes.

12 Q Do you know when that is or what conditions
13 would need to happen for that to happen?

14 A I do. I believe there are two conditions.
15 Either a time, which I am not sure what it is, or at
16 50 percent of the allotted units, which I believe there
17 were 2,000. So I think once we pass 1,000 units, the
18 association gets another elected member and then would
19 technically have control of the board. I am not
20 positive, but I believe that is how it works.

21 Q Okay. Do you have a position within the
22 homeowners association now?

23 A Yes.

24 Q What is that?

25 A I am the president.

1 Q And what are your responsibilities as
2 president of the association?

3 A I run the homeowners association meetings. I
4 am a signature on maps, applications, checks and any
5 other legal documents.

6 Q What kind of applications?

7 A Could be an insurance application. I know I
8 fill out bank forms.

9 Q Okay. So, like, when the association is
10 doing business, they might get insurance, they might
11 get a bank account and you would sign?

12 A Yes.

13 Q Is there anything else that you have the
14 responsibility as a president of the association?

15 A Exclusively as president or as a member of
16 the board?

17 Q Well, let's go with exclusively as president
18 first, and then we can talk about as member of the
19 board. How about that?

20 A Okay. I believe exclusively as president you
21 mainly run the homeowners association meetings and sign
22 things.

23 Q Okay. So as a member of the board?

24 A As a member of the board, I would vote -- or
25 I don't know if I vote because I am the president. So

1 I mostly abstain from the voting. As a member I have
2 input on the expenditures of the association, the post
3 orders for the guards, the landscape maintenance. I am
4 on the Compliance Committee, which is a committee that
5 reviews any violations and the Modifications Committee.

6 Q What does a Modifications Committee do?

7 A The Modifications Committee reviews any
8 modifications to completed properties within the
9 community, such as patio covers, paint changes,
10 landscape changes, pool additions and other
11 architectural changes to a completed property.

12 Q Okay. So besides having input on
13 expenditures, posting orders for the guards,
14 landscaping for the Compliance Committee and
15 Modifications Committee, is there anything else that
16 you have responsibility for as a member of the board?

17 A I think I may, but I can't recall anything
18 specific right now.

19 Q That's okay. If you think of it later, just
20 let me know. Later if we take a break for lunch and
21 you think of something over lunch, you can always bring
22 it back up again, or when we do your deposition as the
23 30(b)(6) witness for the association, we can talk about
24 it then.

25 Can you tell me about the design review

TAB 32

CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)
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Attorneys for Defendants
 7 *MacDonald Highlands Realty, LLC,*
Michael Doiron and FHP Ventures,
 8 *A Nevada Limited Partnership*

9
 10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA

12 THE FREDRIC AND BARBARA
 ROSENBERG LIVING TRUST,

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

13 Plaintiff,

14 vs.

**REPLY IN SUPPORT OF
 MACDONALD REALTY, MICHAEL
 DOIRON AND FHP VENTURES'
 MOTION FOR SUMMARY
 JUDGMENT**

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

Hearing Date: May 19, 2015

Hearing Time: 9:00 a.m.

23 Defendants.

24
 25 **I.**

26 **INTRODUCTION**

27 Plaintiff concedes that it signed a real estate Purchase Agreement that contained an
 28 "as-is" provision imposing the duty of due diligence upon it, not the Moving Defendants.

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

1 See Motion at Undisputed Facts 12 and 13 and Opposition at 3:13-15 (conceding the
2 Motion's Undisputed Facts 1 through 20). It admits that the Purchase Agreement, read
3 closely and reviewed by the Rosenbergs, contained a provision that said Plaintiff was not
4 relying on any representation by the broker or its agent, and waived claims relating to those
5 representations. Undisputed Facts 8 and 13. It admits that the Purchase Agreement provided
6 that it is Plaintiffs' responsibility, no one else's, to determine "whether there [were]
7 unsatisfactory conditions surrounding or otherwise affecting the Property." Undisputed Fact
8 12. Most importantly, perhaps, Plaintiff has no answer to the Nevada Supreme Court's
9 pronouncement that a seller or broker's failure to disclose a condition cannot serve as the
10 basis for a cause of action unless "the seller knows [1] of facts materially affecting the value
11 or desirability of the property which are known or accessible only to [the seller] and [2] also
12 knows that such facts are not known to, or within the reach of the diligent attention and
13 observation of the buyer." Mackintosh v. Jack Matthews & Co., 855 P.2d 549, 552 (Nev.
14 1993).

15 The Opposition confirms what this Court read in the original motion: Plaintiff does
16 not have the facts or law to support her claims against the Moving Defendants. Even in the
17 absence of crystal-clear, unambiguous waivers and other provisions in the Purchase
18 Agreement, the law as set down by the Nevada Supreme Court makes it clear that Plaintiff
19 simply does not have a leg on which to stand. While Plaintiff would like for this Court to
20 focus on what the Moving Defendants knew, when they knew it, and whether it was material
21 to the sale of the subject property, those questions are irrelevant in light of the conceded
22 facts: (1) Plaintiff, not Moving Defendants, had the duty of due diligence under the contract
23 and Nevada law and (2) Plaintiff specifically waived the claims she is trying to pursue
24 against Moving Defendants. **The questions of what the Moving Defendants knew or
25 whether that knowledge was material is irrelevant to the motion before the Court and
26 therefore does not constitute a genuine dispute of material fact.**

27 Even if that were not the case, Nevada law has conclusively demonstrated that the
28 right Plaintiff seeks to enforce simply does not exist. Plaintiff tries to obscure this fact by

1 stating that it is not seeking an easement for view, but that is exactly what it wants: a right to
2 be able to stop adjoining property owners from utilizing their property in a certain way so
3 **that her view can be preserved.** Plaintiff can use whatever label it likes, but the fact is that
4 the Supreme Court ruled on this issue back in 1965 in the Boyd v. McDonald case. While
5 Plaintiff wants to argue that Boyd actually supports its position, it should be noted that the
6 easement in Boyd was one for physical use of a property (a driveway and patio) as opposed
7 to an easement to preserve an adjacent landowner's view. Because Plaintiff can never come
8 to grips with this distinction, its legal argument fails. Accordingly, this Court should grant
9 Moving Defendants instant motion for summary judgment for all of the above-stated reasons.

10 **II.**

11 **ARGUMENT**

12 **A. Plaintiff has conceded the necessary material facts that are dispositive of this**
13 **motion.**

14 Plaintiff begins its opposition by outright conceding Undisputed Facts 1 through 20
15 from the motion for summary judgment; even though Plaintiff makes a superficial objection
16 to "argumentative language," it is clear that Plaintiff concedes that Undisputed Facts 1
17 through 20 are "factually correct."¹ **This means that Plaintiff has fully conceded the**
18 **following dispositive facts:**

- 19 • Plaintiff initially offered to take the property "as-is" in Barbara Rosenberg's
20 original letter of intent. Undisputed Facts 1 and 2.
- 21 • Barbara and Frederic Rosenberg reviewed the Purchase Agreement **in detail**
22 before signing it. Undisputed fact 8.
- 23 • Plaintiff had **12-day due diligence period** in which to conduct any and all
24 investigations under the Purchase Agreement. Undisputed Fact 11.
- 25 • The due diligence required of Plaintiff by the Purchase Agreement mandated
26 that "**Buyer shall take such action as Buyer deems necessary to determine**

27
28 ¹ Unless specifically stated otherwise, all references in this Reply to "Undisputed Facts" refer to the Statement of Undisputed Facts in the original motion.

1 whether the property is satisfactory to Buyer including, . . . whether there
2 are unsatisfactory conditions surrounding or otherwise affecting the
3 Property . . .” Undisputed Fact 12 (emphasis added).

- 4 • Plaintiff expressly agreed that it was **not relying upon any representations**
5 **made by the Broker or the Broker’s agent** in the purchase of the property.
6 Undisputed Facts 13 and 14.
- 7 • Plaintiff waived all claims against the Broker and its agents regarding, among
8 other things, property defects, inaccurate estimate of acreage or square footage,
9 the Property’s proximity to nuisances, the Property’s zoning, and any “**factors**
10 **related to [Plaintiff’s] failure to conduct walk-through, inspections, and**
11 **research . . .**” Undisputed Fact 13 (emphasis added).
- 12 • **Plaintiff’s remedies are contractually limited to, at most, \$5,000 by the**
13 **Real Estate Purchase Addendum attached to the Motion as Exhibit H.**
14 Undisputed Fact 15. This fact went completely unaddressed by the Opposition.
- 15 • Plaintiff contractually waived “**ANY CLAIMS ARISING OUT OF OR**
16 **RELATING IN ANY WAY TO ENCROACHMENTS, EASEMENTS,**
17 **BOUNDARIES, SHORTAGES IN AREA OF ANY OTHER MATTER**
18 **THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR**
19 **INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC**
20 **RECORDS.”** Undisputed Fact 16 (emphasis original).
- 21 • Plaintiff could have accessed the publicly available records regarding the
22 zoning change for what would become Malek’s property in January and
23 February of 2013, before the Rosenbergs signed the Purchase Agreement.
24 Undisputed Fact 20. Even a cursory look at the City of Henderson’s zoning
25 maps indicates information not only about the subject property, but the
26 surrounding properties as well. See map attached hereto as Exhibit A.²

27
28 ² This map was originally a page from Exhibit E to Michael Tassi’s deposition taken February 5,
2015.

1 As detailed infra, these conceded facts render most, if not all, of the Opposition
2 immaterial to the questions presented by the instant motion. Plaintiff also attempts to inject
3 its own facts into the Opposition, the vast majority of which are irrelevant to the
4 determination of this motion. The rest tend to be misleading. For example, Plaintiff's facts 9
5 and 10 imply that the Moving Defendants made a misrepresentation regarding the timing of
6 the zoning approval for Malek's property. Doiron's testimony on this, though it indicates
7 only that she became aware of the zoning approval at some point, and she did not appear to
8 recall exactly when she learned of it. See Exhibit 1-A to the Opposition at 165:18. Even if
9 this "fact" raises a question in the mind of the Court, however, Moving Defendants have
10 already established that a zoning disclosure instructing Plaintiff to follow up with the City
11 was provided to Plaintiff³ and that Plaintiff had taken sole responsibility for discovering all
12 such matters in the Purchase Agreement.⁴ Therefore, the question of whether and when
13 Doiron had knowledge of a zoning change is completely irrelevant to the question at issue
14 before this Court. Fact 12 from the Opposition is misleading in that it suggests old maps
15 were presented to Plaintiff as current maps. This is not true, and is in fact directly
16 contradicted by the zoning disclosure attached to the original Motion as Exhibit K. The maps
17 to which Plaintiff refers were not labeled as current; they were plainly from 2003 and 2004.
18 See Deposition Transcript of Michael Doiron, attached to the Motion as Exhibit P, at 175:2-
19 177:5. Doiron also testified that zoning maps in her office were updated approximately
20 every six months. See id. at 199:13-21.

21 The Opposition's Fact 13 is simply incorrect. The Zoning and Land Use Disclosure,
22 which was in fact attached to the original Motion as Exhibit K, states that "[t]his information
23 is current and plotted as of **February 2010**." See Exhibit 1-G to the Opposition, on file
24 herein (emphasis original). It also informed plaintiff that the pertinent information was
25 subject to change and that more current information could be obtained directly from the City
26

27 ³ See the Motion's Undisputed Fact 19 (conceded by Plaintiff in the Opposition) and Exhibit K.

28 ⁴ See the Motion's Undisputed Fact 13 (conceded by Plaintiff in the Opposition) and Exhibit G at
BANA 8-9, ¶ 22.

1 of Henderson. See id. Accordingly, this exhibit cuts against Plaintiff's claims instead of
2 bolstering them.

3 Similarly, the Opposition's Fact 16 overstates Doiron's testimony to say that no re-
4 zoning disclosure was made. What Doiron actually said was that she did not recall having
5 conversations with the Rosenbergs about Malek purchasing a section of the golf course, and
6 she was not specifically aware of conversations that her deceased partner may have had with
7 the Rosenbergs on the subject. See Exhibit 1-A to the Opposition at 184:14-185:5. As
8 demonstrated by the Exhibit 1-G to the Opposition, zoning disclosures were in fact made,
9 though Exhibits G and H to the motion (the Purchase Agreement and an addendum,
10 respectively) indicate that Plaintiff agreed **not** to rely upon Doiron's disclosures and took the
11 responsibility for those matters upon itself. So again, this inaccurate factual statement ends
12 up immaterial to the question at hand.

13 The Opposition's fact 17 is also incorrect in that, as pointed out supra, the **Purchase**
14 **Agreement and its addenda directly refer to off-site conditions and place the**
15 **responsibility for discovering those conditions on Plaintiff, not Doiron or anyone else.**

16 Substantively, then, Plaintiff opposes the instant motion for summary judgment with
17 only three arguments: (1) that there are genuine issues of material fact regarding the Moving
18 Defendants' duty to disclose; (2) that there are genuine issues of material fact regarding
19 alleged misrepresentations made by Moving Defendants to Plaintiff; and (3) there are
20 genuine issues of material fact as to whether a restrictive covenant exists.

21 **B. Whether there was a failure to disclose or a misrepresentation is immaterial**
22 **under Mackintosh because information regarding Malek's property was publicly**
available before the Rosenbergs even signed the Purchase Agreement.

23 Issues (1) and (2) are completely disposed of by the facts Plaintiff concealed in the
24 Opposition. Whether or not Michael Doiron failed to make a disclosure⁵ or whether she
25 misrepresented a fact regarding the neighboring properties is immaterial when all parties
26 conceded that **it was Plaintiff's job to investigate and obtain that information.** The only
27

28 ⁵ Plaintiff has conceded that Doiron made just such a disclosure regarding the currentness of zoning
and land use maps. See Undisputed Fact 19 and Exhibit K to the Motion.

1 possible exception would be if the information regarding Malek’s property had not been
2 publicly available, **but Plaintiff has conceded that it was in fact available before the**
3 **Purchase Agreement was ever signed.** Undisputed Fact 20. Accordingly, the Mackintosh
4 decision renders any issue of a failure to disclose or misrepresentation moot. See
5 Mackintosh, supra, 855 P.2d at 552 (holding that a claim for failure to disclose cannot be
6 maintained unless the facts that went undisclosed were “[1] of facts materially affecting the
7 value or desirability of the property which are known or accessible only to [the seller] and [2]
8 also knows that such facts are not known to, or within the reach of the diligent attention and
9 observation of the buyer”).

10 Plaintiff argues against this conclusion by stating that it “had absolutely no reason” to
11 believe there had been a transaction with Malek regarding the golf course and “would have
12 needed a reason to inspect the zoning.” These assertions have no basis in Nevada law.
13 Moving Defendants, though assert that Plaintiff did have a reason: it undertook, as part of its
14 duties under the Purchase Agreement, a duty of due diligence that encompassed these issues.
15 Undisputed Facts 12 through 14.⁶ Regardless of the subjective expectations of the
16 Rosenbergs, the contract they entered into specifically and unambiguously assigned them
17 responsibility for ensuring their satisfaction with the property and all conditions affecting the
18 property. See id. That contract must be strictly construed and enforced by this Court. See,
19 e.g., Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) and
20 Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003) (both acknowledging
21 that unambiguous terms in contracts will be enforced).

22 Plaintiff attempts to wriggle out of these duties by arguing that the duty of diligence
23 was solely limited to the subject property itself and did not extend to any off-site conditions
24 that might affect the property. Again, this is squarely contradicted by the undisputed
25 language of the Purchase Agreement, which provides that Plaintiff due diligence extended to
26

27
28 ⁶ While Plaintiff maintains that the “as-is” condition of the property applied only to structural defects, that interpretation is not supported by the language of the agreement itself, and Plaintiff is unable to cite any source other than Barbara Rosenberg’s own testimony to the contrary.

1 “whether there are unsatisfactory conditions surrounding or otherwise affecting the Property
2 (such as location of flood zones, airport noise, noxious fumes or odors, environmental
3 substances or hazards, whether the Property is properly zoned, locality to freeways, railroads,
4 places of worship, schools, etc.) or any other concerns Buyer may have related to the
5 Property.” Undisputed Fact 12. By agreement, then, Plaintiff specifically undertook the
6 responsibility to not only to determine conditions on the property, but conditions **affecting**
7 the property from offsite. See id.; see also Exhibit G to the Motion at BANA 6, ¶ 12(b).
8 Although the Opposition attempts to muddle the issue by citing to other, less relevant parts of
9 the documents, the unambiguous truth as reflected by the Purchase Agreement is that these
10 items were the sole responsibility of Plaintiff, and Plaintiff knew this because the Rosenbergs
11 closely read and reviewed the Purchase Agreement prior to signing it.

12 As a last resort, Plaintiff argues that the Moving Defendants should be held liable for
13 what it alleges were the misrepresentations of Bank of America, the seller in the transaction.
14 First, it is unclear that Bank of America made any misrepresentations about its knowledge,
15 and Plaintiff does not introduce any evidence addressing the point of Bank of America’s
16 knowledge.

17 Second, without evidence indicating Moving Defendants’ knowledge of these alleged
18 misrepresentations, Plaintiff cannot even begin to show a genuine issue of material fact on
19 this point. See NEV. REV. STAT. § 645.259(1)(a). Additionally the fact that the information
20 at issue was available as a matter of public record indicates that Moving Defendants have no
21 liability for any of Bank of America’s alleged misrepresentations. See id. at subsection 2
22 (holding that a real estate license cannot be held liable for failure to disclose a matter in
23 public record). See also, e.g., Moore v. Prudential Residential Services Ltd. Partnership, 849
24 So.3d 914, 926 (Ala. 2002) (holding that “a real estate agent cannot be held liable where the
25 agent serves as a ‘conduit of information’ between the seller and the buyer” and there was no
26 evidence of bad faith.) The question of what Bank of America did or did not know is
27 immaterial in light of Plaintiff’s voluntarily assumed contractual duty of due diligence. This
28 is even more true for these alleged misrepresentations, as Plaintiff was aware that Bank of

1 America had already provided some incorrect information. See Opposition, on file herein, at
2 11:21-24. Why Plaintiff would fail to exercise the rest of its due diligence investigative
3 power after that is a mystery, and Plaintiff has no one to blame for its mistake other than
4 itself.

5
6 **C. Plaintiff's strained interpretation of Boyd v. McDonald to allow something it explicitly forbids cannot defeat the instant motion for summary judgment.**

7 The third argument offered by Plaintiff for why there is a genuine issue of material
8 fact is that it may still be able to prove that a restrictive covenant exists which would protect
9 Plaintiff's right to the exact view that existed on the subject property at the time of purchase.
10 When confronted with the Boyd case, which states in no uncertain terms that Nevada does
11 not recognize an implied easement for view, Plaintiff changes its argument to state that it is
12 simply asking that an implied restrictive covenant keep the extra 1/3 acre property that Malek
13 purchased as a golf course, and to enforce that specific use. The problem with this argument,
14 apart from the fact that Barbara Rosenberg said on several occasions that the purpose is
15 indeed to retain her property's view,⁷ is that the 1/3 acre purchased by Malek was not ever
16 used as part of the golf course and was always surplusage land or "natural area" that abutted
17 the golf course. See Exhibit L to the Motion at 62:1-10. Plaintiff's new contention, then, that
18 it is asking for the 1/3 acre portion of Malek property to be used as a golf course is requesting
19 a use the subject property has never had.

20 Plaintiff's contention that it "reasonably expected" the use of the property to remain
21 vacant is undercut by the fact that, even if Plaintiff could meet all of the other requirements
22 for an implied restrictive covenant, it would still lose because the only "use" that Plaintiff
23 had for the neighboring property is a view, which Boyd unequivocally said is an invalid use
24 of an implied easement under Nevada law. See Boyd. McDonald, 408 P.2d 717, 722 (Nev.
25 1965). Regardless of whether Plaintiff wants to refer to it as an easement or a covenant, the
26 result is the same, and Nevada law simply does not allow for that result.

27
28

⁷ See, e.g., Exhibit A to the Motion at 171:10-20.

1 **D. Plaintiff further waived any rights of action based on disclosure of off-site**
2 **conditions or conditions regarding zoning and property boundaries, and even if it**
3 **hadn't, it undisputedly limited its remedies in this action.**

4 Another issue inadequately addressed by the Opposition is that the Purchase
5 Agreement and related documents contained waivers that apply to all of Plaintiff's claims
6 against the Moving Defendants in this action. As discussed supra, Plaintiff has conceded that
7 paragraph 22 of the Purchase Agreement waives all claims against MacDonald Highlands
8 Realty and Michael Doiron. Undisputed Fact 13. That waiver applied specifically to all
9 factors related to Plaintiff's failure to conduct inspections and research on the property. See
10 id. The Purchase Agreement also contained a second waiver, in one of its addenda,
11 pertaining to any matter that would have been revealed by a search of public records.
12 Undisputed Fact 16. Plaintiff has further conceded that it could have found everything it
13 needed regarding the lot line adjustment in January and February of 2013, before the
14 Purchase Agreement was even signed. Undisputed Fact 20. There is accordingly no
15 reasonable dispute that the waivers in the Purchase Agreement apply to throw out all of
16 Plaintiff's claims as a matter of simple contract law.

17 Even if, for some reason, the Court chose not to enforce either of the above-referenced
18 waivers, both the Purchase Agreement and one of its addenda limited Plaintiff's available
19 remedies – a key point that is unaddressed and therefore conceded by the Opposition.
20 Undisputed Facts 13 and 15. According to those limitations on remedies, it appears that the
21 maximum amount that the Plaintiff could obtain on its claims would be no more than \$5,000.
22 Undisputed Fact 15. Plaintiff's concession of this point requires at least partial summary
23 judgment limiting her remedies to \$5,000 even if the Court does not grant the broader motion
24 for summary judgment.
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III.

CONCLUSION

Accordingly, and for all the foregoing reasons, Moving Defendants respectfully request that the Court grant the instant motion for summary judgment on all of Plaintiffs' claims asserted against the Moving Defendants.

DATED this 12 day of May, 2015.

Respectfully submitted by:



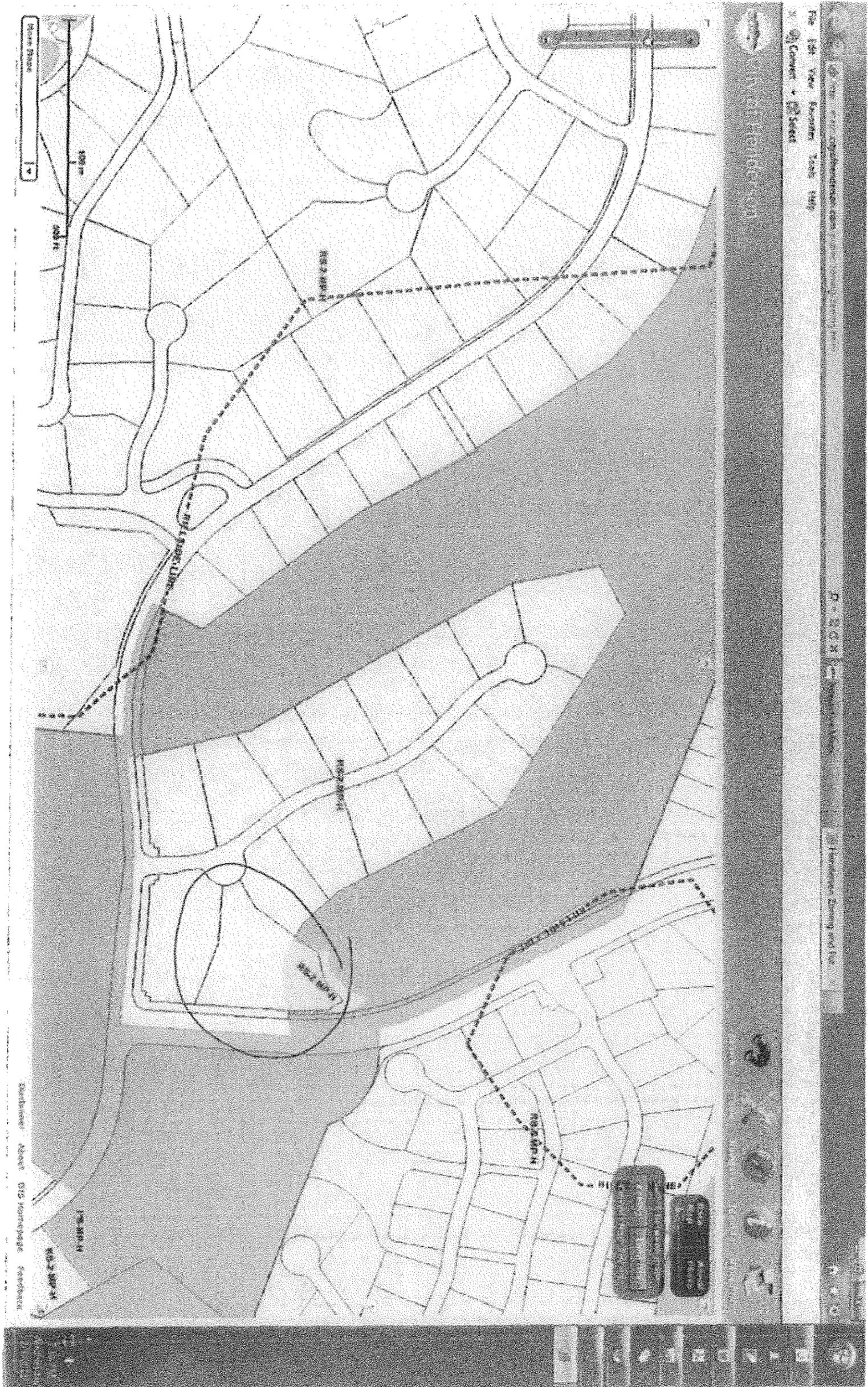
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*Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership*

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of May, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **REPLY IN SUPPORT OF MACDONALD REALTY, MICHAEL DOIRON AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT** to all parties on the e-service list.


An employee of Kemp, Jones & Coulthard

EXHIBIT A



TAB 33



CLERK OF THE COURT

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7 *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.

**MOTION TO AMEND COMPLAINT TO
CONFORM TO EVIDENCE**

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

21
22 Defendants.

23
24 Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, respectfully
25 requests that this Honorable Court, pursuant to NRCP 15(b) grant leave to permit Plaintiff to amend its
26 complaint to conform to the evidence in this matter. A copy of the proposed amended complaint is
27 attached as **Exhibit 1**.
28

1 This motion is based on the papers and pleadings on file herein, the following points and
2 authorities, and such evidence/and oral argument as may be presented at the time of the hearing on this
3 matter.

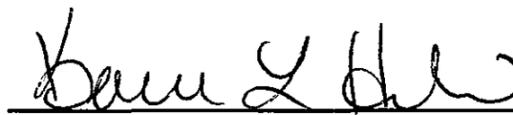
4 **NOTICE OF MOTION**

5 PLEASE TAKE NOTICE that on 06 day of JULY, 2015, in Department I of
6 the above-entitled Court, at the hour of CHAMBERS a.m./p.m., or as soon thereafter as counsel may be
7 heard, the undersigned will bring Plaintiff's Motion for Leave to Amend Complaint before this Court
8 for hearing.

9 DATED this 3rd day of June, 2015.

10
11 Respectfully submitted by:

12 HOWARD KIM & ASSOCIATES

13 

14 KAREN L. HANKS, ESQ.

Nevada Bar No. 009578

MELISSA BARISHMAN, ESQ.

Nevada Bar No. 12935

1055 Whitney Ranch Drive, Suite 110

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Attorneys for Plaintiff,

The Fredric and Barbara Rosenberg Living Trust

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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. PREFATORY STATEMENT**

22 This case arises from the sale of a custom home located in MacDonald Highlands. Specifically, on
23 or about May 15, 2013, Bank of America, N.A. sold real property commonly known as 590 Lairmont
24 Place, Henderson, Nevada 89012 (hereinafter "the Subject Property") to Plaintiff, The Fredric and
25 Barbara Rosenberg Living Trust. Bank of America had acquired the Subject Property via a foreclosure.
26 The Subject Property is a 10,000+ square foot custom home located on the 9th hole of the Dragon Ridge
27 Golf Course, and boasts golf course, city and mountain views. At the time Plaintiff purchased the Subject
28

1 Property, the lot adjacent to it, 594 Lairmont Place, was vacant. This lot had been previously sold to
2 Defendant Malek on or about August 8, 2012, but Mr. Malek had not begun construction.

3 Unbeknownst to Plaintiff, at the time Defendant Malek purchased 594 Lairmont, he entered into
4 an agreement to also purchase a portion of the golf course to extend the rear of his lot by 1/3 of an acre
5 (hereinafter the "Golf Parcel"). Before this purchase could be finalized, however, The Foothills Partners
6 had to apply to the City of Henderson to amend MacDonald Highland's comprehensive plan, change the
7 zoning, and revise the land use. This process took approximately eight (8) months, and on April 8, 2013,
8 the Golf Parcel was transferred to Malek. Among many things, this process included notice to Bank of
9 America because of the impact it had on the Subject Property.
10

11 The extension of 594 Lairmont to include the Golf Parcel, changes the Dragon Ridge Golf Course
12 and significantly impairs Plaintiff's views, privacy and otherwise open feeling of the Subject Property. By
13 way of this litigation, Plaintiff alleges an implied restrictive covenant exists over the Golf Parcel that
14 prohibits Malek from constructing any part of his home on this piece of land, and therefore seeks both
15 injunctive and declaratory relief against Malek.¹ Plaintiff also alleges money damages against Defendants
16 Bank of America, Doiron and MacDonald Realty for failing to disclose the Golf Parcel purchase by
17 Malek.
18

19 To the extent an implied restrictive covenant is not found to exist on the Golf Parcel, Plaintiff, by
20 way of this Motion, seeks to withdraw its claims for injunctive and declaratory relief against The Foothills
21 Partners, now known as FHP Ventures, and amend its complaint to include claims for money damages
22 and specific performance against FHP Ventures.
23

24 II. STATEMENT OF RELEVANT FACTS

25 The MacDonald Highlands CC&Rs provide that The Foothills Partners ("Foothills Partners") now
26 known as FHP Ventures, is the Declarant. See excerpts from the CC&Rs, p. 4, attached hereto as **Exhibit**
27

28 ¹ Currently, Plaintiff also alleges these claims against Defendant The Foothills Partners, now known as FHP Ventures. By way of this Motion, Plaintiff seeks to withdraw these claims against FHP Ventures, and allege different claims against FHP Ventures.

1 2. The CC&Rs, and its amendments, also provide that FHP Ventures shall control developmental rights
2 for MacDonald Highlands through December 31, 2042. *See* First Amended to CC&Rs attached hereto as
3 **Exhibit 3**. In addition to controlling development rights, FHP Ventures also controls the Design Review
4 Committee, which is a Committee existing under the CC&Rs, and which is responsible for approving all
5 initial construction on vacant lots within MacDonald Highlands. *Id.* at p. 39. All initial residential
6 construction is governed by both the CC&Rs and the Design Guidelines.

7
8 The Design Guidelines impose numerous set back restrictions (the distance in which structures
9 may be placed within a given lot) and other restrictions on construction so that view corridors and the
10 overall aesthetic look of MacDonald Highlands is preserved. *See* excerpts from Design Guidelines
11 attached hereto as **Exhibit 4**. In fact, the Design Guidelines impose specific restrictions on lots abutting
12 the golf course i.e. the Subject Property and Malek's property. By way of example, all golf course lots
13 must have view fences on the rear property lines, no golf course lots may contain accessory structures i.e.
14 sheds, on the rear property line, and most importantly, a golf course lot may not plant anything taller than
15 4 feet within a distance of 15 feet from the rear yard property corner (known as the "rear yard cone of
16 vision") so that view corridors of adjacent properties are preserved. *Id.* at pp. 2.15; 2.36; 2.41; 3.10; 5.20.

17
18 Through the course of discovery, particularly, the depositions of Richard MacDonald, Paul
19 Bykowski, Michael Doiron, the 30(b)(6) designees for The Foothills Partners, DRFH Ventures, LLC f/k/a
20 Dragon Ridge, LLC, FHP Ventures, and MacDonald Properties Limited, and expert witnesses, Plaintiff
21 spent considerable time addressing the CC&Rs and the Design Guidelines' impact of Malek's potential
22 and approved construction on the Golf Parcel.

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III. LEGAL ARGUMENT

NRCP 15(b) provides in pertinent part:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

See also, United Tungsten Corp. v. Corp. Service, Inc., 76 Nev. 329, 331, 353 P.2d 452, 454 (1960); *Close v. Isbell Const. Co.*, 86 Nev. 524, 527, 471 P.2d 257, 260 (1970).

In the present case, Plaintiff seeks to amend the complaint to conform to the evidence. Specifically, Plaintiff seeks to add the following claims against FHP Ventures: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; and (3) breach of fiduciary duty. These claims have been tried by implied consent of the parties as the facts and circumstances surrounding these claims were extensively addressed during the depositions of Richard MacDonald, Paul Bykowski, Michael Doiron, the 30(b)(6) designees for The Foothills Partners, DRFH Ventures, LLC f/k/a Dragon Ridge, LLC, FHP Ventures, and MacDonald Properties Limited, and expert witnesses. In all of these depositions, Plaintiff's counsel spent considerable time addressing the CC&Rs and the Design Guidelines' impact of Malek's potential and approved construction on the Golf Parcel. As such, Plaintiff seeks leave to amend the complaint to conform to the evidence.

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IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Honorable Court, pursuant to NRCP 15(b), grant leave to permit Plaintiff to amend its complaint to conform to the evidence in this matter.

DATED this 3rd day of June, 2015.

Respectfully submitted by:
HOWARD KIM & ASSOCIATES


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*Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust*

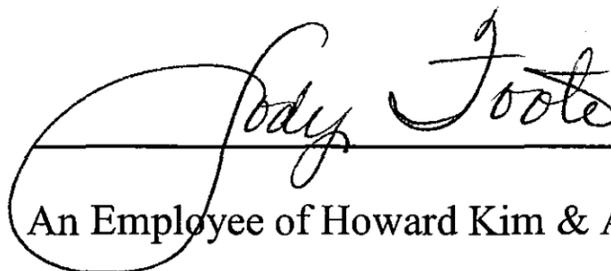
CERTIFICATE OF SERVICE

1
2 I hereby certify that on the 3rd day of June, 2015, pursuant to NRCP 5(b), I served via the
3 Eighth Judicial District Court electronic service system the foregoing, Motion to Amend Complaint to
4 Conform to Evidence to the following parties:
5

6 THE FIRM, P.C.
7 Preston P. Rezaee, Esq.
8 Preston.thefirm-lv.com
Attorneys for Shahen Shane Malek

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

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

15
16
17 
18 _____
19 An Employee of Howard Kim & Associates
20
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Ex. 1

EXHIBIT 1

Ex. 1

ACOM

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Telephone: (702) 485-3300
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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; FHP VENTURES fka THE
FOOTHILLS PARTNERS, a Nevada limited
partnership; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-13-689113-C

Dept. No. I

**PROPOSED SECOND AMENDED
COMPLAINT**

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

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I.

THE PARTIES

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

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

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

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

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

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

7. Plaintiff is informed and believes and therefore alleges that Defendant FHP VENTURES fka THE FOOTHILLS PARTNERS is and at all times relevant to this action was, a Nevada limited partnership and the Declarant for THE FOOTHILLS at MACDONALD RANCH.

8. Plaintiff does not presently know the true names and/or capacities of the individuals, corporations, partnerships and entities sued and identified herein in fictitious names DOES, I through XX, inclusive and ROE BUSINESS ENTITY I through XX, inclusive. Plaintiff alleges said DOES

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

4 **II.**

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

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

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

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

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

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

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

27 17. Situated on the GOLF PARCEL were certain easements/restrictive covenants.

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

5 19. The VACATION APPLICATION was submitted in conjunction with associated
6 applications for Comprehensive Plan Amendment (CCPA-2012500313), Zone Change (CZCA-201
7 250031 4) and Tentative Map (CTMA-201 2500316) (collectively hereinafter “MACDONALD
8 APPLICATIONS”).

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

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

14 22. The MACDONALD APPLICATIONS sought to amend Ordinance No. 2869, the
15 zoning map, to reclassify certain real property within the city limits of the city, described as a portion
16 of section 27, township 22 south, range 62 east, M.D. & M., Clark County, Nevada, located within the
17 MacDonald Highlands Master Plan, off MacDonald Ranch Drive and Stephanie Street from PS-MP-H
18 (public/semipublic with master plan and hillside overlays) TO RS-2-MP-H (low-density residential
19 with master plan and hillside overlays), and other matters relating thereto.

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

28

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

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

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

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

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

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

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

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

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

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

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

27 35. In or around January 2013, the MACDONALD APPLICATIONS were approved
28 subject to certain conditions.

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

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

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

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

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

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

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

24 43 On or about March, 21, 2013, BANK OF AMERCIA, as Seller, executed Addendum
25 No. 2 to the Purchase Agreement amending the purchase price to \$2,302,000.00, an increase of
26 \$142,000.00 from the original agreed upon price.

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

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

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

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

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

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

15 50. At no time did MICHAEL DOIRON, Seller's representative, disclose to PLAINTIFF
16 that the adjacent MALEK PROPERTY lot lines were other than as presented and had been amended in
17 such a way as to alter the golf course and negatively impact the value of the SUBJECT PROPERTY
18 and its use in an adverse manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 67. The members of the DRC are appointed by the Declarant, FHP Ventures.

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

16 69. The Design Guidelines are adopted by the DRC.

17 70. Each property in MacDonald Highlands is also bound by a restrictive covenant that all
18 plans and specifications submitted to the DRC for proposed construction on a property be in
19 compliance with the Design Guidelines in order to preserve the unique views of each property and
20 neighboring properties (Deed Restrictions Applicable to Construction of Residence, hereinafter
"Construction Deed Restriction").

21 71. The CC&Rs, and its amendments, provide that FHP VENTURES shall control
22 developmental rights for MacDonald Highlands through December 31, 2042.

23 72. The CC&Rs further provide that a five-foot strip known as the "Perimeter Strip" exists
24 between the golf course and each Unit (lot) abutting the golf course.

25 73. Section 12.9 of the CC&Rs provides that "[n]o Unit shall be subdivided or its boundary
26 lines changed except with the prior written approval of the Board of Directors."
27
28

1 74. FHP VENTURES also controls the Design Review Committee, a Committee existing
2 under the CC&Rs, and is responsible for approving all initial construction on vacant lots within
3 MacDonald Highlands.

4 75. All initial residential construction is governed by both the CC&Rs and the Design
5 Guidelines.

6 76. The Design Guidelines impose numerous set back restrictions (the distance in which
7 structures may be placed within a given lot) and other restrictions on construction so that view corridors
8 and the overall aesthetic look of MacDonald Highlands is preserved.

9 77. The Design Guidelines impose specific restrictions on lots abutting the golf course i.e. the
10 Subject Property and Malek's property.

11 78. All golf course lots must have view fences on the rear property lines, no golf course lots
12 may contain accessory structures i.e. sheds, on the rear property line, and most importantly, a golf course
13 lot may not plant anything taller than 4 feet within a distance of 15 feet from the rear yard property corner
14 (known as the "rear yard cone of vision") so that view corridors of adjacent properties are preserved.
15

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

19 80. MALEK's construction plans for the MALEK PROPERTY do not comply with the
20 Golf Course Deed Restriction and the Construction Deed Restriction.
21

22 81. All Defendants, and each of them, are, in some manner, legally responsible and liable to
23 Plaintiff for the harm and injury to Plaintiff and the damages incurred by Plaintiff as the result of said
24 harm and injury which damages are in an amount in excess of Ten Thousand and No/100 Dollars
25 (\$10,000.00), to be proven at time of trial.

26 83. Plaintiff has been required to engage the services of an attorney to prosecute this action
27 and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.
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FIRST CLAIM FOR RELIEF
(Breach of Contract against BANK OF AMERICA)

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

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

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

78. BANK OF AMERICA materially breached the Contract as detailed in paragraphs 1 through 73 herein.

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

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

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

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

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

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

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

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

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

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

1 lot lines were other than presented and had in fact been amended in such a way as to negatively impact
2 the value of the SUBJECT PROPERTY or its use in an adverse manner.

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

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

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

13
14 **FIFTH CLAIM FOR RELIEF**
15 **(Negligent Misrepresentation – BANK OF AMERICA, BAC HOME LOANS SERVICING, LP,**
16 **MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL DOIRON)**

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

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

25 100. Plaintiff justifiably relied upon the representations of BANK OF AMERICA, BAC
26 HOME LOANS SERVICING, LP, MACDONALD HIGHLANDS REALTY, LLC, and MICHAEL
27 DOIRON.
28

1 injury to Plaintiff, for which there is no adequate remedy at law.

2 119. Plaintiff is entitled to a mandatory injunction, ordering MALEK to comply with the
3 Golf Course Deed Restriction and the Construction Deed Restriction.

4 **TENTH CLAIM FOR RELIEF**
5 **(Implied Restrictive Covenant - MALEK)**

6 120. Plaintiff repeats and re-alleges each and every allegation as contained above and
7 Incorporates them by reference as if fully set forth herein.

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

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

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

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

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

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

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

22 128. The implied restrictive covenant binds MALEK.

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

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

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

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 01:00 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 7

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

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|-------------------|------------|-------------------|---|---------------------|
| 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 |
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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,

and as depicted in Exhibit A attached hereto, consisting of one page (the "Land"), changed from PS (Public/Semipublic) to VLDR (Very Low-Density Residential); and

WHEREAS, in accordance with Nevada Revised Statutes, the City of Henderson, Nevada, has deemed it necessary to amend the Land Use Policy Plan for the purpose of changing the land use designations, which, if implemented, would affect territory within Henderson's jurisdiction; and

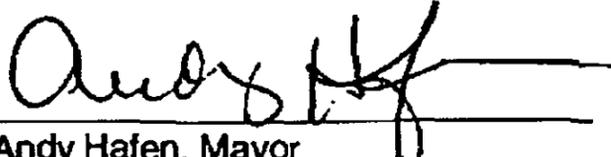
WHEREAS, the Henderson Planning Commission has conducted the appropriate public hearing, received public comment, duly deliberated the proposal, and recommends approval of the Land Use Plan amendment; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Henderson, Nevada, that the Land Use Policy Plan amendment be approved, and that the Policy Plan be revised to reflect the change in land use for the Land from PS (Public/Semipublic) to VLDR (Very Low-Density Residential).

PASSED, ADOPTED, AND APPROVED THIS 4th DAY OF DECEMBER, 2012, BY THE FOLLOWING ROLL-CALL VOTE OF COUNCIL

Those voting aye: Andy Hafen, Mayor
 Councilmembers:
 Debra March
 John F. Marz
 Gerri Schroder

Those voting nay: None
Those abstaining: None
Those absent: Sam Bateman



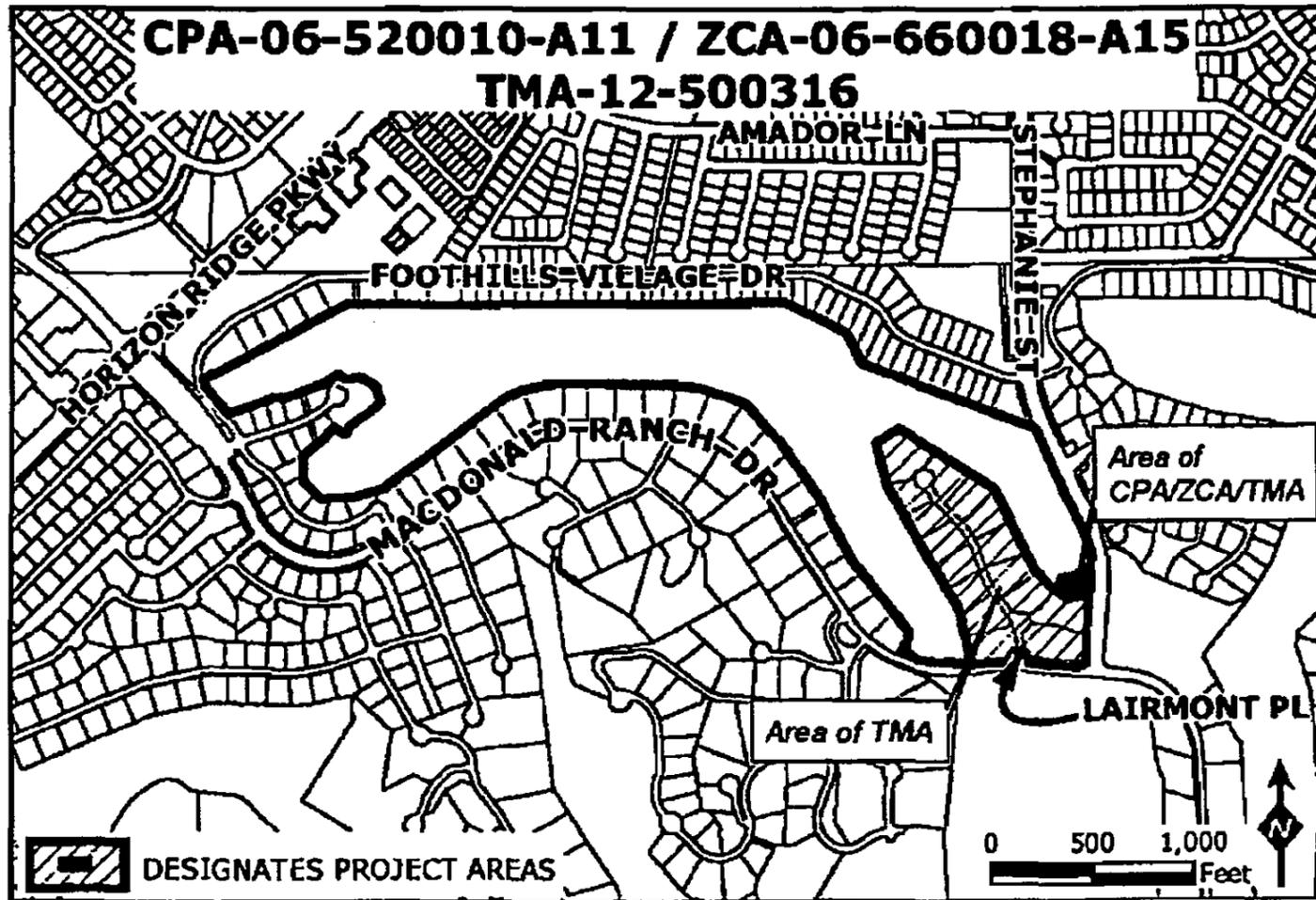
Andy Hafen, Mayor

ATTEST



Sabrina Mercadante, MMC, City Clerk

EXHIBIT A
CPA-06-520010-A11 – MacDonald Highlands (Golf Hole 9)



Ex. A-12

EXHIBIT A-12

Ex. A-12

In Re:

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

*Paul Bykowski
February 3, 2015*

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1 Q. Okay. And, so is a better way to
2 describe it is a five foot strip bordering the golf
3 course that abuts the unit owner's property?
4 A. Yes.
5 Q. And then just on that same page, since
6 I know we used different terms, when we talk about
7 an owner's piece of property, at the bottom it
8 defines unit. "Means a portion of the property
9 whether improved or unimproved that may be
10 independently owned and conveyed." And I'll stop
11 there.
12 I just want it make sure we're
13 basically talking about another term you could use
14 as lots, correct? Unimproved unit would be another
15 term as lot that we've used in this case?
16 A. A lot is a unit, but not all units are
17 lots.
18 Q. Right. Some units could include
19 properties that have a house located on them,
20 correct?
21 A. That is another unit.
22 Q. Now, if you turn to page 21, should be
23 the next page. In Subsection C, it says "other
24 property."
25 Do you see that?

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1 A. Yes.
2 Q. And it indicates that "the association
3 may maintain other property which it does not own
4 including the perimeter strip."
5 So as of 2012 and 2013, was the
6 association responsible for maintaining the
7 perimeter strip?
8 A. No.
9 Q. Who was responsible for maintaining the
10 perimeter strip in 2012 and 2013?
11 A. DRFH Ventures.
12 Q. If the CC&R's provide the association
13 may provide for, is there any reason why DFRH
14 decided to?
15 Did I say that name right?
16 A. Yes.
17 MS. HANKS: DRFH? I'll get it eventually?
18 MR. GUNNERSON: You got it this time.
19 BY MS. HANKS:
20 Q. What was that agreement? I mean, why
21 did the golf course decide to maintain that
22 perimeter strip as opposed to the association?
23 A. Because it was their property.
24 Q. Has that changed in 2014 with the new
25 ownership of the golf course?

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1 A. No. They still maintain that. The new
2 owner maintains that area, because it's their
3 property.
4 Q. Now, if you turn to the next page, it's
5 page 46. It's BANA181. There's a subsection, 12.9.
6 And I apologize, this is the best copy I have or
7 that I can find of the CC&R's. And maybe you can
8 help me determine some of the words I might not be
9 able to read.
10 Is there a better copy in that
11 binder? Probably should have looked there first.
12 Let me know if I read it incorrectly.
13 For 12.9 it says "subdivision of
14 the unit and timesharing. No unit shall be
15 subdivided or its boundary lines changed except with
16 the prior written approval of the board of
17 directors. Declarant, however, for" -- what's that
18 word there?
19 A. Itself.
20 Q. "For itself and any transferee of
21 developmental rights pursuant to section 15.1 hereby
22 expressly reserves the right to subdivide, change
23 the boundary line of and re-plat any units or other
24 portions of the" -- what's that next word?
25 A. Of the project.

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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?

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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

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1 reserves the right to subdivide, change the boundary
2 line of, and re-plat any units or other portion of
3 the project owned by the declarant."
4 Right? So they have to own it
5 before they have that reservation of right, correct?
6 A. Or such transferee.
7 Q. Who would be the transferee in the
8 changing of the boundary lines for 594 Lairmont
9 Place?
10 A. That's a legal question.
11 Q. But as far as you know, Foothills, the
12 declarant, did not own the golf course, correct?
13 A. Correct.
14 Q. So do you know why written approval
15 wasn't received from the board of directors?
16 MR. GUNNERSON: Objection. Asked and
17 answered.
18 THE WITNESS: I would say because DRFH and
19 Foothills were part of the same umbrella company.
20 That's why it's DRFH, Dragon Ridge Foothills.
21 BY MS. HANKS:
22 Q. And that's because it's all connected
23 to Richard MacDonald?
24 A. Correct.
25 Q. But they are separate and distinct

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1 entities, correct?
2 MR. GUNNERSON: Objection. Calls for legal
3 conclusion, but you can answer if you know.
4 THE WITNESS: I can't speak to the exact
5 relationships of the companies, but there is some
6 sort of an umbrella group of companies together.
7 BY MS. HANKS:
8 Q. What is that company?
9 A. I think the Foothills had DRFH as part
10 of the company. I know they -- I don't know the
11 exact technical relationship between the companies,
12 but there is subsidiaries and cross relationships
13 between Foothills and DRFH.
14 Q. Who would be the best person to know
15 the actual relationship in terms of whether it's a
16 subsidiary?
17 A. Rich MacDonald.
18 Q. What is the Design Review Committee?
19 A. That's the committee that reviews and
20 approves the initial construction within MacDonald
21 Highlands.
22 Q. And who serves on that committee
23 currently?
24 A. Myself, Rich MacDonald, and Michael
25 Doiron.

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1 Q. Who served on that committee in 2006?
2 A. To the best of my knowledge, it was
3 myself, Rich MacDonald, Paula Gibson, and Art
4 Elliott. And I can't recall if Michael was on the
5 committee at that time or not.
6 Q. What is the purpose of the Design
7 Review Committee?
8 A. To ensure that the construction within
9 MacDonald Highlands is done in accordance to the
10 design guidelines.
11 Q. When someone purchases -- and we'll
12 limit it to 2012 and '13.
13 When someone purchased a vacant
14 property lot in MacDonald Highlands, did they
15 purchase it subject to the CC&R's that we just
16 discussed?
17 A. Yes.
18 Q. Did they purchase it subject to the
19 design guidelines?
20 A. Yes.
21 Q. Can you turn to page 52 in the CC&R's?
22 Referring to section 13.5, "Easement over resort
23 properties for benefit of association." I'm just
24 going to read the first sentence.
25 It indicates that "The declarant

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1 Q. When you came up with the exhibit for
2 the proposed outline of the new boundary lines, were
3 they ever changed?
4 In other words, did any of the
5 other people involved in the process say, no, I
6 think the lines should be moved here or there?
7 A. The lines on the exhibit were not
8 exactly the same on the final map.
9 Q. Is that just because of the actual
10 survey or changing it or because someone with the
11 Design Review Committee suggested a change?
12 A. I believe it was the civil engineer and
13 I discussed the -- how the lines would go, whether
14 it would be an arc or a straight line and how it
15 would connect to the common element parcel.
16 Q. And let's take a look at Exhibit 5. I
17 think that's the best map we have right now that
18 kind of shows us the addition of that parcel, and it
19 has a little bit of a triangle at the top or peak so
20 to speak at the top.
21 Do you agree with that
22 description?
23 A. Yes.
24 Q. And so the ultimate lot lines that you
25 see here on Exhibit 5, they came about after

Page 138

1 speaking with the civil engineer; is that correct?
2 A. Yes.
3 Q. The lot lines that we see on Exhibit 5
4 that include the additional parcel of the golf
5 course to 594 Lairmont Place, were they changed in
6 anyway after the applications were submitted to the
7 City of Henderson?
8 A. Not that I'm aware of.
9 Q. Now, you had testified earlier two
10 weeks back when you were here in your individual
11 capacity, there were some other properties in
12 MacDonald Highlands where similar lot line changes
13 were completed, meaning parts of the golf course
14 were added to existing lots.
15 Do you remember that testimony?
16 A. Yes.
17 Q. Okay. Can you go through -- I think
18 there was one on St. Croix. Can you explain what
19 that involved?
20 A. What do you mean by what did it
21 involve?
22 Q. What property was it and where in the
23 MacDonald Highlands is that property located, what
24 planning area and in terms of how much golf parcel
25 was added?

Page 139

1 A. Planning area 15 and 16. I believe it
2 was around a quarter of an acre on a hill that was
3 out of play.
4 Q. Do you know if that area can be seen on
5 Exhibit O within the Design Guidelines? It may or
6 may not be.
7 A. I see the area.
8 Q. Okay. Is that the actual lot
9 delineated on this particular map?
10 A. Kind of.
11 Q. Can you point me into the direction
12 where it is, and then we'll go from there?
13 A. That's the area that it was adding.
14 Q. Okay. So it looks like there is this
15 little -- almost looks like an island that's marked
16 in red, and it's flanked by two our other, I guess,
17 kidney bean shaped types.
18 So this is the St. Croix property
19 area?
20 A. Yes.
21 Q. And the little circle that you marked
22 on Exhibit O within the Design Guidelines is the
23 area that MacDonald Highlands added to that other
24 red property?
25 A. Not the red property. The red and two

Page 140

1 yellows were actually combined to one giant lot. So
2 that whole area with white, red, and yellow is one
3 lot. And the little circle was added to the back of
4 that.
5 Q. Okay. And what hole is this on the
6 golf course?
7 A. That is the tenth.
8 Q. Now, when this property, this piece was
9 added as a whole to the two yellow kidney bean
10 shaped properties and the red property marked on
11 this map, did it stay in line with the rear property
12 lines for the other parcels we see along this golf
13 hole?
14 A. No.
15 Q. How far did it extend beyond those
16 other rear property lines of the other parcels?
17 A. I'm not sure of the exact dimension.
18 Q. Has that addition been approved by the
19 City of Henderson, that lot line change?
20 A. Yes.
21 Q. Has the map been finalized reflecting
22 the change in those lot lines?
23 A. The map has been finalized, but I'm not
24 sure of the status of the final signatures.
25 Q. What was the purpose of changing the

Page 141

1 lot lines to that -- we'll call the St. Croix
2 property?
3 MR. GUNNERSON: Objection. Foundation. Calls
4 for speculation.
5 THE WITNESS: To add additional rear yard,
6 they kind of flat lower area to the larger lot it
7 connected to.
8 BY MS. HANKS:
9 Q. Was the building already constructed, a
10 housing structure on that area?
11 A. Yes.
12 MR. GUNNERSON: Objection. Form as to area.
13 BY MS. HANKS:
14 Q. The additional golf parcel that's going
15 to become a part of those three parcels that we see
16 delineated on Exhibit O, is it going to just be a
17 landscaped area?
18 MR. GUNNERSON: Objection. Foundation.
19 THE WITNESS: The current plans, yes, but it
20 could be more.
21 BY MS. HANKS:
22 Q. How can it change to be more?
23 A. Well, after the map was signed, a
24 casita can be constructed in that area.
25 Q. And why is that? In other words, how,

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1 if the plans don't show the casita now, how can that
2 be changed later after the map is finalized?
3 A. Well, the map just creates the new
4 property lines. And then if the owner would like,
5 he could submit to the modifications committee a
6 plan for an accessory structures in that area.
7 Q. Okay. But right now the Design Review
8 Committee has approved just landscaping in that
9 area, the new addition area?
10 A. No.
11 Q. Okay. Who has approved what's going to
12 go in that area as of now?
13 A. There are no changes proposed to the
14 area.
15 Q. As it stands now?
16 A. Correct.
17 Q. And, I'm sorry. I realize I should
18 have known that. It wouldn't be in the Design
19 Review Committee's purview anymore, because you said
20 there is already a house built on the existing lots?
21 A. Correct. If there is any changes to
22 that area, it would go through the MacDonald
23 Highlands modifications committee, but there aren't
24 currently any plans.
25 Q. Okay. What is the next property that

Page 143

1 was rezoned to include a portion of the golf course?
2 MR. GUNNERSON: Objection. Form as to next.
3 THE WITNESS: What do you mean?
4 BY MS. HANKS:
5 Q. Well, we agreed in our notice that
6 we're going to put the areas that we talked about in
7 your last deposition and I have. You said there was
8 -- your testimony says there is an area north of
9 planning area 11 that has been rezoned but not met.
10 Does that --
11 A. Correct.
12 Q. Does that refresh your recollection?
13 Where is area 11?
14 A. This map has been changed but in
15 generalities, here.
16 Q. And how has this map been changed?
17 A. This is area 11. That street alignment
18 is not accurate within 11.
19 Q. Okay. So the Design Guidelines have a
20 different, a newer Exhibit O now?
21 A. No.
22 Q. Okay. So when you say, "this map has
23 been changed", Exhibit O hasn't been changed, you're
24 just saying that the Exhibit O map that's reflected
25 here or, I guess, what Exhibit O took from has

Page 144

1 changed?
2 A. The area that Exhibit O shows the
3 layout of the lots has changed, and Exhibit O wasn't
4 updated to reflect the new street alignment.
5 Q. And that's only for area 11 that there
6 is a difference, right?
7 A. From the red lots, it's fairly close.
8 Q. Okay. So can you mark with a circle or
9 an "X" like you did with the first, the St. Croix
10 property, and tell me how the addition of the golf
11 parcel portion of the property was added to a
12 specific lot in planned area 11?
13 A. It's zoned, but it has not been mapped.
14 Q. And it looks like -- is that two or
15 three parcels that --
16 A. I believe it's three.
17 Q. So three parcels, I'm going to mark
18 them with a dot.
19 A. The first one, I don't think so. The
20 next three or so.
21 Q. Okay.
22 A. Those three had sections that were a
23 little deeper in the back. So this might be -- like
24 I said, the lot lines changed. So I think this was
25 a custom layout, and when it was sold the total lots

Page 145

1 got a little smaller. In general, the street
2 alignment is the same. So the exhibit can still be
3 followed, because it's representative of the lots
4 that border the golf course within 11. We didn't go
5 back and change the actual lot lines, but I believe
6 there is three lots that have extended rear yard
7 developed.
8 Q. How much did the yard get extended for
9 those three lots?
10 A. I don't recall the exact square
11 footage. I can't remember the exact square footage.
12 Q. Before we go to that one, when did this
13 rezoning happen? When did the applications get
14 submitted for the St. Croix property?
15 I'm not concerned with an exact
16 date. I'm just looking for the year.
17 A. It was about a year ago, so it was
18 probably late 2013 or early 2014. So around that
19 timeframe would be my estimation.
20 Q. And how about for planning area 11,
21 those three lots that we've marked with the dots,
22 when did that application get submitted?
23 A. That was a long time ago. It was
24 during the construction of that area which I think
25 was 2004 or '05. So it could have been anywhere

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1 from 2004 to 2006 probably timeframe.
2 Q. Do you know what that area includes
3 whether it be a structure or landscaping?
4 A. There is nothing in there. It was
5 mountain. That area was rezoned, because when they
6 developed the lots from that street, there was a big
7 knob there that stuck up in the air and blocked the
8 view from these homes.
9 Q. Views of the golf course?
10 A. View of the golf course. So even
11 though it was outside of that developable area, we
12 decided to take down the area and blast it down to
13 grade so that you could see through that area.
14 So after it was blasted, it was no
15 longer natural. It was just broken rock. So the
16 lots had previously stopped on the other side of the
17 mountain. And now you had a blasted rock area
18 between the lots and the golf course. And the golf
19 course was really far away from the backs of those
20 lots.
21 So initially the lots went up to
22 the mountain, but then it didn't make a whole lot of
23 sense to have three lots that were looking at a
24 little hill when it had this beautiful golf course
25 on the other side. So we blasted it down and then

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1 went through the rezoning process so that the land
2 could be added to those three lots at a future time.
3 If they chose to purchase it, we
4 could then remap it and sell them to it, sell the
5 area to the residents that lived in those lots so
6 that they could extend their backyard.
7 Q. So at this juncture, 2015, those three
8 parcel owners have not actually purchased that
9 additional land?
10 A. No.
11 Q. Is it just a natural desert landscape
12 there now, or is it still that --
13 A. It is just broken rock.
14 Q. Who owns that portion of the land?
15 A. The Pacific Links entity, Dragon Ridge,
16 whoever we sold the golf course to. I'm not
17 positive what their entity name is. It's some sort
18 of Dragon Ridge related.
19 Q. So the new entity, the entity that
20 bought the golf course from Dragon Ridge now owns
21 that sliver that you've marked on the Exhibit O?
22 A. Yes.
23 Q. And then there is a third one that you
24 indicated in your deposition. You said lot one in
25 area 20?

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1 A. Yes.
2 Q. Where is that located?
3 A. (Witness indicates.)
4 Q. Okay. And you've marked the corner.
5 You've kind of drawn a triangle on this big yellow
6 section on Exhibit O at the very top.
7 What does that yellow section
8 represent? What piece of land is that?
9 A. Planning area 20.
10 Q. Okay. I don't see any individual lines
11 within that larger area.
12 Are there individual lots within
13 that yellow?
14 A. Yes.
15 Q. Is there any reason why that area
16 doesn't have the delineations of the individual
17 lots?
18 A. Yes.
19 Q. Why?
20 A. At the time the exhibit was made, there
21 were no lots in there.
22 Q. Okay. What hole of the golf course is
23 this property abutting?
24 A. Fifteen.
25 Q. And when was this application for

Page 149

1 rezoning submitted?
2 A. The same as the St. Croix application.
3 Q. So around late 2013, early 2014 is your
4 best estimate?
5 A. That's my estimate.
6 Q. How much property was added to this
7 particular parcel?
8 A. I think it was less than a quarter of
9 an acre.
10 Q. And what was the purpose of adding that
11 less than a quarter of an acre to that parcel?
12 A. Increase the size of the lot and the
13 buildable area for the home.
14 Q. Was the lot already sold when that
15 addition was applied for?
16 A. Yes.
17 Q. Was it already built? Was it already
18 improved?
19 A. No.
20 Q. Did the owner approach you -- I'm
21 saying you -- any of the entities you're here on
22 behalf of to purchase that parcel?
23 A. No.
24 Q. How did that come about then?
25 A. One of our representatives suggested it

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1 to the owner to see if they were interested.
2 Q. And what representative?
3 A. I believe Michael contacted the owner.
4 Q. And do you know why she recommended it?
5 A. Yes.
6 Q. Why?
7 A. I had received preliminary plans for
8 that area for the house, and it was really tight.
9 They were trying to squeeze some improvement in that
10 corner. And it wasn't working real well just
11 because of the site constraints. And the area next
12 to it in that triangle that I've outlined is between
13 two "T Boxes". It's not playable. And it was
14 fairly flat so that she could build on it if it was
15 added.
16 So I thought it would probably
17 help the design of her house if we added that into
18 the lot.
19 Q. Has the lot owner submitted -- or,
20 excuse me.
21 Has the City of Henderson approved
22 that lot line change?
23 A. Which entity within Henderson?
24 Q. Well, I guess at what point in the
25 process of the rezoning is that particular parcel?

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1 A. It's in final signature. So the last
2 update I had was being signed, the final map by all
3 the individual departments that need to sign the
4 last maps.
5 So it had been approved through
6 all the public hearings. The map has been approved
7 for final signature, and it was routing for the
8 physical signature on the map.
9 Q. Who owns that parcel, the extra golf
10 parcel that is going to ultimately be rezoned?
11 A. Right now it's owned by Pacific Links
12 entity that bought the course.
13 Q. Is that who that lot owner is going to
14 pay to purchase that portion?
15 A. No.
16 Q. Was there an exception carved out from
17 the purchase from Dragon Ridge to the Pacific Links
18 that Dragon Ridge would still get the sale of
19 proceeds from the sale of that portion of the golf
20 course?
21 A. There is an exception, but I don't know
22 if it's technically the sale.
23 Q. You mean the parcel that's going to be
24 added to that -- what is it? Lot one, planning area
25 20, you're not sure if it's actually a sale?

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1 A. Correct.
2 Q. You said it might be an exception?
3 A. There was an exception in the agreement
4 that the property would be deeded without cost to --
5 back to DRFH.
6 Q. That less than a quarter of an acre
7 that we're talking about adding to lot one in
8 planning area 20?
9 A. Correct. That's why I don't think that
10 it might not technically be a sale.
11 Q. But then will DRFH then sell it to lot
12 owner one? I mean, is that the plan?
13 A. The way the deal is currently
14 structured, I don't know if it's technically a sale.
15 I think the way escrow is
16 currently set up is that DRFH is being paid to
17 coordinate the map signatures so that the boundary
18 line is adjusted.
19 Q. Is the same true for St. Croix? How
20 was that deal done?
21 A. St. Croix, I do not believe anyone is
22 being paid through escrow. That one is not in
23 escrow.
24 Q. Do you know when the map that changed
25 the lot lines for 594 Lairmont Place was recorded?

Ex. A-13

EXHIBIT A-13

Ex. A-13

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SHAHEN SHANE MALEK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME)
LOANS SERVICING, LP, a foreign limited)
partnership; 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'S RESPONSE TO
PLAINTIFF'S REQUESTS FOR
ADMISSIONS**

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DEFENDANT’S RESPONSE TO PLAINTIFF’S REQUESTS FOR ADMISSIONS

TO: Plaintiff THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST; and
TO: Howard C. Kim, Esq., Diana S. Cline, Esq., Jacqueline A. Gilbert, Esq., KIM & ASSOCIATES, its attorneys.

Pursuant to Rule 36 of the Nevada Rules of Civil Procedure, Defendant Shahin Shane Malek (hereinafter “Defendant”) by and through his attorneys, Sarah M. Chavez, Esq. of The Law Office of Sarah M. Chavez, PLLC, and Preston P. Rezaee, Esq., and Ryan E. Alexander, Esq. of The Firm, P.C., hereby respond to Plaintiff’s first Requests for Admissions as follows:

PRELIMINARY STATEMENT

These responses and objections are based on information presently known to Defendant. Further discovery may lead to additions to, changes in, or modification of these responses. Accordingly, these responses are being given without prejudice to Defendant’s right to produce subsequent discovery evidence and to introduce same at trial.

REQUEST FOR ADMISSION NO. 1: Admit that the MacDonald Applications to re-zone the Golf Course Parcel were submitted upon your request.

RESPONSE: Defendant objects on the grounds that this request is overly broad, vague and ambiguous. Without waiving said objections Defendant responds as follows: I admit that I requested the Golf Course Parcel be re-zoned, but I was not involved in the further preparation or submission of the MacDonald Applications. To my understanding, the MacDonald Applications were prepared and submitted by among possibly others who are unknown to Defendant, Paul Bykowski, MacDonald Properties, Ltd. and Dragonridge Properties. There may be additional parties who were involved in the MacDonald Applications to which I am unaware of because again, I did not prepare or submit the MacDonald Applications.

REQUEST FOR ADMISSION NO. 2: Admit that, at the time the MacDonald Applications were submitted, if the MacDonald Applications were subsequently approved, you intended to purchase the Golf Course Parcel.

RESPONSE: Admit.

1 REQUEST FOR ADMISSION NO. 3: Admit that, prior to March 13, 2013, you knew that the Golf
2 Course Parcel had been successfully rezoned.

3 RESPONSE: Defendant is without sufficient information or knowledge to admit or deny the truth of
4 this paragraph and therefore denies same. Nevertheless, Defendant became aware of the rezoning once
5 it became successfully rezoned.

6 REQUEST FOR ADMISSION NO. 4: Admit that, prior to March 13, 2013, you entered into an
7 agreement to purchase the Golf Course Parcel from Dragonridge Properties, LLC.

8 RESPONSE: Admit.

9 REQUEST FOR ADMISSION NO. 5: Admit that, prior to March 13, 2013, you had not recorded
10 your interest in the Golf Course Parcel.

11 RESPONSE: Defendant objects on the grounds that this request is vague and overly burdensome in
12 that it seeks information already readily available to Plaintiff via public records. Without waiving said
13 objection Defendant responds as follows: I admit that I did not record an interest in the Golf Course
14 Parcel prior to March 13, 2013, as this is prior to the date that I possessed an ownership interest in the
15 Golf Course Parcel with which to record.

16 REQUEST FOR ADMISSION NO. 6: Admit that, prior to May 15, 2013, you did not place anything
17 on the Golf Course Parcel (i.e. stakes, construction material, etc.) that would indicate that the Golf
18 Course Parcel had been re-zoned and was now your property.

19 RESPONSE: I admit that I did not personally place anything on the Golf Course Parcel.
20 Nevertheless, construction material and stakes were placed on the Golf Course Parcel by professional
21 surveyor Wallace Morris Surveyors prior to May 15, 2013 which would indicate the re-zoning and
22 ownership change of the Golf Course parcel.

23 REQUEST FOR ADMISSION NO. 7: Admit that, prior to May 15, 2013, you did not inform
24 Frederic, Barbara, and/or David Rosenberg—or any of their agents, including but not limited to, their
25 real estate agent—that you owned the Golf Course Parcel.

26 RESPONSE: Defendant objects on the grounds that this request is overly broad, vague and ambiguous
27 and therefore denies same. Without waiving said objections Defendant responds as follows: Admit as
28 Defendant did not know Frederic, Barbara, and/or David Rosenberg or their realtor, or have reason to

1 seek them out to advise them of his ownership interest which was a matter of public record. Further,
2 Defendant is unaware of the identities of their “agents” and/or whether he may have informed such
3 agents of his ownership of the Golf Course Parcel without realizing the connection. Defendant did not
4 hide or keep secret the fact that he owned the Golf Course Parcel.

5 REQUEST FOR ADMISSION NO. 8: Admit that you purchased the Golf Course Parcel with an
6 intent to build or develop onto the Golf Course Parcel, beyond the original boundaries of Malek Lots 1
7 and 2.

8 RESPONSE: Admit. I purchased the Golf Course Parcel with the intent to include this in the area
9 surrounding my home.

10 REQUEST FOR ADMISSION NO. 9: Admit that you intend to build or develop onto the Golf Course
11 Parcel, beyond the original boundaries of Malek 1 and 2.

12 RESPONSE: Admit.

13 REQUEST FOR ADMISSION NO. 10: Admit that you are subject to any easements existing on the
14 Golf Course Parcel at the time you purchased it.

15 RESPONSE: Defendant objects on the grounds that this request calls for a legal conclusion rather than
16 an admission of fact. Without waiving said objections Defendant responds as follows: Admit.

17 REQUEST FOR ADMISSION NO. 11: Admit that if you build or develop beyond the original
18 boundaries of Malek lots 1 and 2, it will materially and negatively affect the value of the Rosenberg
19 Property.

20 RESPONSE: Deny. To the contrary, Defendant believes the improvement of the Golf Course Parcel
21 will further enhance and beautify the area as the Golf Course Parcel is an unimproved bare piece of
22 bare desert land which could benefit from professionally designed work. Further, any proposed design
23 changes, landscaping and/or construction will be subject to final review and approval by the
24 community’s design review committee, thus ensuring this result.

25 REQUEST FOR ADMISSION NO. 12: Admit that if you build or develop, beyond the original
26 boundaries of Malek Lots 1 and 2, it will allow you to invade the privacy of those living on the
27 Rosenberg Property.

28

1 RESPONSE: Deny. To the contrary, Defendant is a very private person and he will continue to utilize
2 his property accordingly. Defendant has and will continue to not invade the privacy of his neighbors
3 including but not limited to those living on the Rosenberg Property, nor does Defendant wish to open
4 himself up to such an invasion of privacy.

5 DATED this 10 day of November, 2014.

6 /s/ Sarah M. Chavez
7 SARAH M. CHAVEZ, ESQ.
8 THE LAW OFFICE OF SARAH M.
9 CHAVEZ, PLLC
10 200 E. Charleston Blvd.
11 Las Vegas, Nevada 89104
12 Phone: (702) 720-6033
13 Fax: (702) 252-3476
14 s.chavez.esq@gmail.com

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that one this 10 day of November, 2014, pursuant to NRCP 5(b), I served via
3 the Eighth Judicial District Court electronic service system and to be placed in the United States Mail,
4 with first class postage prepaid thereon, and addressed the foregoing **DEFENDANT'S RESPONSE**
5 **TO PLAINTIFF'S REQUESTS FOR ADMISSIONS** to the following parties:

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

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

Ex. A-14

EXHIBIT A-14

Ex. A-14

- [Community Map \(/community-map\)](/community-map)
- [Video Tour \(/video-tour\)](/video-tour)
- [Clubhouse \(/clubhouse\)](/clubhouse)
- [Golf Course \(/golf-course\)](/golf-course)
- [Fitness Center \(/fitness-center\)](/fitness-center)

Golf Course

Golf Course

Named after a rocky ridge, known to residents as the "Sleeping Dragon," this 18-hole championship golf course is catching the attention of locals as well as the world's best players. DragonRidge Country Club has already built a reputation as one of the finest private golf courses in the Southwest. It played host to the first two Tiger Woods charity golf events and 2003's Wendy's Three Tour Challenge. With exceptional services, impeccable course conditions, your experience at DragonRidge will be unmatched by any other.

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- [Community Map \(/community-map\)](#)
- [Video Tour \(/video-tour\)](#)
- [Clubhouse \(/clubhouse\)](#)
- [Golf Course \(/golf-course\)](#)
- [Fitness Center \(/fitness-center\)](#)

Clubhouse

Club House

More Information (<http://www.dragonridge.com/sites/courses/layout9.asp?id=767&page=42010>)

The golf course is complemented by a beautiful clubhouse featuring a steakhouse, two separate mixed grills and lounges, a ballroom, swimming pool and an extensive golf pro shop.

The DragonRidge clubhouse hosts monthly events for members within MacDonald Highlands.

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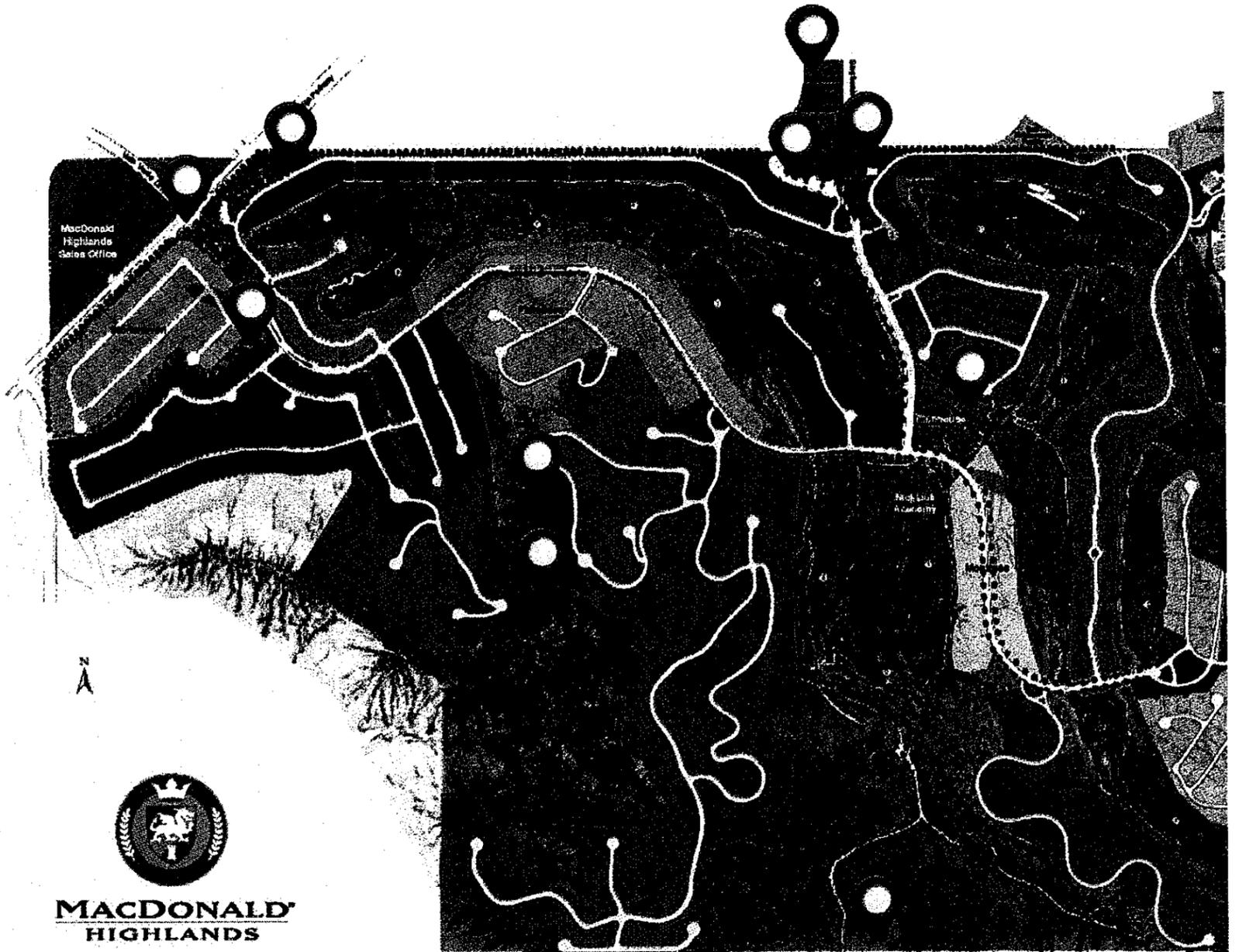
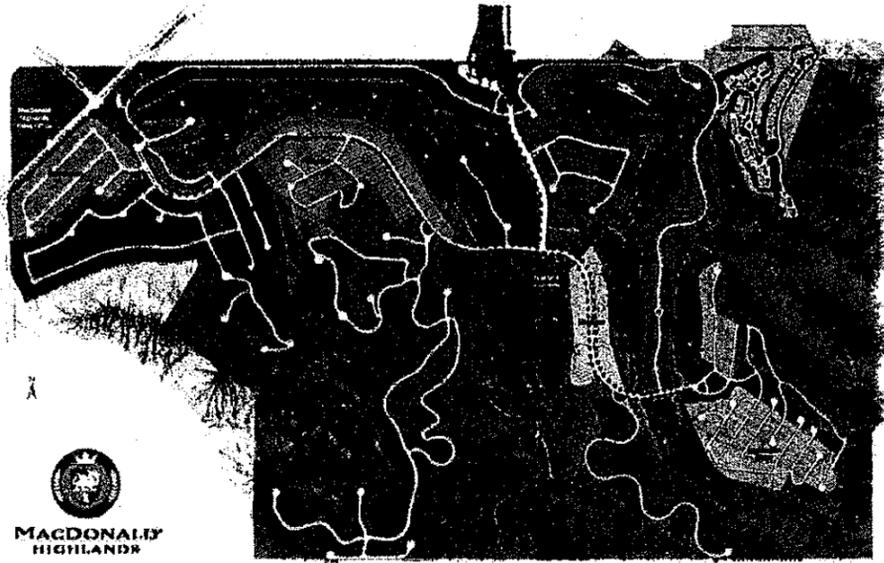
Ex. A-15

EXHIBIT A-15

Ex. A-15

Community Map

- Community Map (/community-map)
- Video Tour (/video-tour)
- Clubhouse (/clubhouse)
- Golf Course (/golf-course)
- Fitness Center (/fitness-center)



Blain Canyon National Conservancy

Ex. A-16

EXHIBIT A-16

Ex. A-16

PROJECT INFORMATION

PROJECT NUMBER

VAC-12-500376

PUBLIC HEARING NOTIFICATION

| | |
|-----------------------------|--|
| Notice Published | December 3, 2012 |
| Notice Mailed | December 3, 2012 |
| Notices Sent | 3 |
| Notice Radius | Adjacent Properties and all registered HOAs or MHPs within buffer area |
| Neighborhood meeting | N/A |

EXISTING ZONING

PS (Public/Semipublic)

RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays)

EXISTING LAND USE

PS (Public/Semipublic)

VLDR (Very-Low-Density Residential)

NEIGHBORHOOD CHARACTERISTICS

| | Zoning | Land Use | Existing Use |
|--------------|---------------|-----------------|-----------------------------|
| North | PS-MP-H | PS | Dragon Ridge Golf Course |
| South | RS-2-MP-H | VLDR | Undeveloped Residential Lot |
| East | RS-2-MP-H | VLDR | Single-Family Residence |
| West | PS-MP-H | PS | Dragon Ridge Club House |

BACKGROUND AND PRIOR ACTIONS

| Date | Action |
|-----------------|--|
| 6/20/07 | City Council approved Comprehensive Plan Amendment CPA-06-520010-A9 and an amendment to Zone Change ZCA-06-660018 (A12) for Planning Areas 18 and 20. |
| 8/5/08 | City Council approved Comprehensive Plan Amendment CPA-06-520010-A10 and an amendment to Zone Change ZCA-06-660018 (A13) for Planning Areas 18 and 20. |
| 11/15/12 | The Planning Commission recommended approval to amend Comprehensive Plan Amendment CPA-06-520010 (A11) and Zone Change ZCA-06-660018 (A15). Both applications are scheduled to be heard at the December 4, 2012, City Council meeting. |

PLTF1812

The 14,841 square-foot non-exclusive utility easement proposed to be vacated was granted April 3, 2007, per Book 136, Page 21 of Plats, Clark County, Nevada.

ANALYSIS

The applicant is requesting to vacate and remove existing “blanket easements” over a portion of Golf Hole #9, northwest of MacDonald Ranch Drive and Stephanie Street. This approximately 14,841-square-foot common area is now being proposed for inclusion into an adjacent undeveloped single-family parcel.

The applicant states the amendment to this area will allow for the appropriate design and development of a custom home, while having little or no impact on the adjacent properties.

Staff concurs with the proposed vacation and recommends approval.

RECOMMENDATION

RECOMMENDED APPROVAL, subject to conditions

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. Certification by the City Surveyor.
3. Vacation map shall record concurrently with amended final maps.

BA/dap/CW2



PUBLIC WORKS DEPARTMENT CONDITIONS OF APPROVAL

STAFF REVIEW DATE: November 7, 2012

APPLICATION NO. VAC-12-500376

PROJECT: MacDonald Highlands - Golf Hole #9

- P_01 **Standard condition already on all applications.**
- P_02 Applicant shall submit a drainage study (update) for Public Works' approval.
- P_03 Commercial driveways shall be dedicated and constructed per Clark County Area Standard Drawings No 225 & 226.
- P_04 Applicant shall obtain and provide all necessary permission/approvals from _____.
- P_07 Applicant shall submit a traffic analysis (update) 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 R/W.
- P_08 Applicant shall construct full offsites per Public Works' requirements and dedicate any necessary R/W.
- P_10 Mapping shall be required and completed prior to Certificate of Occupancy.
- P_11 Applicant shall dedicate _____ right-of-way per Public Works' requirements within _____ of approval.
- P_14 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 (Certificate of Occupancy/approval of Civil Improvement Plans/Final Map/Parcel Map).
- P_15 Applicant shall comply with Standard Drawing No. 201.1, which refers to major intersections and dedicate any necessary R/W.
- P_16 Nuisance water drains shall be required after 1,000 feet of surface street flow for public residential streets.
- P_17 FHA Type B drainage shall be allowed only where lots drain directly to public drainage facilities, public parks, or golf courses.
- P_18 Applicant shall apply and receive approval of a revocable permit for development within the public right-of-way (or City-owned property).
- P_19 Streets shall be privately owned and maintained and delineated as a private street for the benefit of all lots shown on the map. Any pavement replaced by the City during any road repairs due to utility maintenance shall be standard paving only. The replacement of any non-standard street or sidewalk materials such as, but not limited to, pavers and stamped concrete, will be the responsibility of those responsible for the private streets.
- P_20 Applicant shall provide paved off-street parking.
- P_24 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.
- P_26 Applicant shall conduct a noise study and install sound walls adjacent to _____ frontage of the subject property per NDOT and City requirements.
- P_27 _____ shall not be located within public right-of-way or the sight visibility restriction zone per Clark County Area Standard Drawing No. 201.2.
- P_28 Vacation map shall record concurrently with amended final maps.
- P_29 Developer shall pay all required apportionment fees for this project prior to submittal of final map for City Council approval.
- P_30 Applicant shall comply with all conditions of _____.
- P_31 Applicant shall complete the offsite improvements on _____ within 9 months of entitlement approvals.
- P_32 Applicant must apply to Council for approval to cut a 5-year no-cut street. If applicant receives approval, all offsite improvements must be completed within 9 months of entitlement approvals.
- P_33 Dedication and/or vacation of rights-of-way and/or easements shall be completed prior to approval of Civil Improvement Plans.
- P_34 Applicant shall provide copies of cross-access agreements, permission to grade and/or construct on adjacent properties, and/or maintenance agreements.
- P_35 Applicant shall revise Civil Improvement Plans per Public Works' requirements.
- P_36 Gated commercial or residential driveways must be dedicated per Public Works' requirements and constructed per Clark County Area Standard Drawing No 222.1
- NO COMMENT/CONDITIONS**
- P_CUSTOM Custom condition: _____

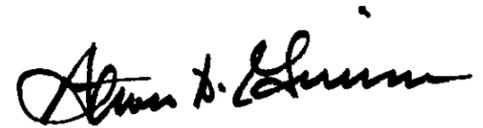
**DEPARTMENT OF UTILITY SERVICES
CONDITIONS OF APPROVAL**

STAFF REVIEW DATE: 11/7/2012

| | | | |
|-----------------|---------------|----------|---|
| APPLICATION NO: | VAC-12-500376 | PROJECT: | <u>MacDonald Highlands - Golf Hole #9</u> |
|-----------------|---------------|----------|---|

| | | |
|-------------------------------------|-------|--|
| <input checked="" type="checkbox"/> | | NO COMMENTS/CONDITIONS |
| <input type="checkbox"/> | | Same conditions as previously approved (MUST ATTACH CONDITIONS PAGE FROM BACKUP) |
| <input type="checkbox"/> | US_01 | Applicant shall submit a utility plan and utility analysis for Department of Utility Services' approval. |
| <input type="checkbox"/> | US_02 | Applicant shall comply with the requirements of the master utility plan established for the project area. |
| <input type="checkbox"/> | US_03 | Applicant shall be required to construct a full-frontage water main extension along _____. |
| <input type="checkbox"/> | US_04 | Applicant shall be required to construct a full-frontage sewer main extension along _____. |
| <input type="checkbox"/> | US_05 | Applicant shall participate in the Southwest Henderson Refunding Agreement for sewer and water. |
| <input type="checkbox"/> | US_06 | Applicant shall participate in the 2610 Rhodes/Lewis Water Refunding Agreement. |
| <input type="checkbox"/> | US_07 | Applicant shall participate in the MacDonald Ranch 2370 Refunding Agreement. |
| <input type="checkbox"/> | US_08 | Applicant shall participate in the P-4/R-15 (2720) refunding agreement. |
| <input type="checkbox"/> | US_09 | Applicant shall participate in the P8A Refunding Agreement (SR-10). |
| <input type="checkbox"/> | US_10 | Applicant shall participate in the Bluegrass Interceptor Agreement. |
| <input type="checkbox"/> | US_11 | Applicant shall participate in the _____. |
| <input type="checkbox"/> | US_12 | Applicant shall grant a municipal utility easement per the Department of Utility Services' requirements. |
| <input type="checkbox"/> | US_13 | Applicant shall resolve all mapping concerns per Utility Department requirements. |
| <input type="checkbox"/> | US_14 | Applicant shall establish separate water and sewer service for each use classification in accordance with the Department of Utility Services' requirements. |
| <input type="checkbox"/> | US_15 | All onsite utilities shall remain privately owned and maintained. |
| <input type="checkbox"/> | US_16 | All water and sewer services shall comply with HMC Title 14 regarding public-public or private-private service requirements. |
| <input type="checkbox"/> | US_17 | Vacation shall not occur until such time as the existing utility is abandoned and the new line is in place and accepted, with all appropriate easements granted and/or rights-of-way being dedicated. |
| <input type="checkbox"/> | US_18 | Applicant shall verify cell tower does not interfere with the line-of-sight transmission of the City's HEN-NET System. |
| <input type="checkbox"/> | US_19 | Civil improvement plans shall comply with the requirements of the Uniform Design and Construction Standards for Water Distribution Systems and the Design and Construction Standards for Wastewater Collection Systems. |
| <input type="checkbox"/> | US_20 | Applicant shall prepare water and sewer system design in accordance with the Department of Utility Services' requirements. Approval of this application does not infer Department of Utility Services' approval for the water and sewer system layout as reflected on the application. |
| <input type="checkbox"/> | US_21 | 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. |
| <input type="checkbox"/> | US_22 | 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. |

TAB 27



CLERK OF THE COURT

STAT

1 HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
2 E-mail: howard@hkimlaw.com
KAREN L. HANKS, ESQ.
3 Nevada Bar No. 009578
E-mail: karen@hkimlaw.com
4 MELISSA BARISHMAN, ESQ.
Nevada Bar No. 12935
5 E-mail: melissa@hkimlaw.com
HOWARD KIM & ASSOCIATES
6 1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
7 Telephone: (702) 485-3300
Facsimile: (702) 485-3301
8 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

13 Plaintiff,

14 vs.

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

23 Defendants.
24

Case No. A-13-689113-C

Dept. No. I

**RESPONSE TO MALEK'S STATEMENT
OF UNDISPUTED FACTS**

25 Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through
26 its counsel of record, HOWARD KIM & ASSOCIATES, hereby responds to Malek's statement of
27 undisputed facts.
28

1
2
3 Defendant Malek's statement of undisputed facts is riddled with irrelevant facts, includes
4 argumentative or suggestive language that renders the statement false or misleading, and contains
5 blatant misstatements of fact. Because Plaintiff's claims against Malek rest on the issue of whether an
6 implied restrictive covenant exists over the golf course land that was sold to Malek, Plaintiff will not
7 address facts that do not relate to this issue, as they are not material, and have no bearing on the issue.
8 These facts include Nos. 6-8; 11-12; 16-24; 28-47; 49-50; 52-59; 63-64; 67-68; 71-85; 88-89; 92-93;
9 95-97; 106-107; 109-113; 116-121. See Defendant Malek's Statement of Undisputed Material Facts on
10 file herein. The decision to forego any discussion regarding these irrelevant facts should not be
11 construed as an admission that Malek's summary of these facts is accurate. In fact, Plaintiff disputes
12 most of Malek's characterization of these facts.

13 As for the remaining facts alleged by Malek, Plaintiff states as follows:

14 1. *Golf courses with Las Vegas' exclusive communities sell pieces of land to adjacent*
15 *landowners.*

16 Disputed: This statement is made within the context of diminution of value which
17 is not at relevant to the claims against Malek.

18 2. *Red Rock Country Club has sold parts of golf course land to landowners within*
19 *community*

20 Disputed: The citation for this statement is incorrect.

21 3. *Southern Highlands' Golf Community has sold parts of gold course land to property*
22 *owners within the community.*

23 Disputed: The citation for this statement is incorrect.

24 4. *The MacDonald Highlands Community has sold or leased out-of-bound portions of its*
25 *golf course to property owners within the community.*

26 Disputed: There were three instances wherein the Golf Course was severed. The first
27 was in planning area 15 and 16, which occurred in 2013 or 2014, and involved an out-of-play area
28

1 located on a hill.¹ This Richard MacDonald's property, and he testified, "I had an area of the golf
2 course that I basically moved into, moved into with my yard so to speak. It was technically part of the
3 golf course, but I haven't bothered to subdivide it, move it in..."² Mr. Bykowski testified that there
4 are "no changes proposed for the area."³ The second instance took place in 2004 or 2005, and
5 involved a hill-like area that was blocking the view to the Golf Course for three houses.⁴ MacDonald
6 Highlands leveled the hill, but this area was never sold to the property owners, and is still owned by
7 the Golf Course.⁵ The third, and final instance, involved planning area 20, and occurred in 2013 and
8 2014.⁶ This area has not been sold, but included the addition of a corner of non-playable area between
9 two T boxes to a lot so the owner could adequately fit his house on the lot.⁷

10 5. *DRFH Ventures LLC sold approximately 15,000 square feet of land, APN 178-28-520-*
11 *001, to Shane Malek.*

12 Not disputed.

13 9. *The Golf Parcel went through a re-zoning process before its sale to Malek was*
14 *recorded.*

15 Not disputed.

16 10. *Malek has lived in MacDonald Highlands since 2006.*

17 Not disputed.

18 13. *Malek learned from his agent that 594 Lairmont's prior owner planned to acquire an*
19 *out-of-bounds portion of the golf course to add to the lot.*

20 Disputed: Michael Doiron testified that she did not believe that the prior owner of 594
21 Lairmont planned to purchase a portion of the golf course.⁸

22 14. *Malek planned to buy 594 Lairmont as well as the Golf Parcel to increase his lot size*
23 *and building area.*

25 ¹ See Bykowski Dep. II, 139:1-3; 145:13-18

26 ² See MacDonald Dep., 127:19-24.

27 ³ See Bykowski Dep. II, 142:13-14.

28 ⁴ See Bykowski Dep. II, 146:4-25 through 147:1-10.

⁵ See Bykowski Dep. II, 147:7-22.

⁶ See Bykowski Dep. II, 148:9; 149:3-4

⁷ See Bykowski Dep. II, 150:12-25 through 152:1-18.

⁸ See Doiron Dep. II, 164:14-18.

1 Not disputed.

2 15. *Malek planned to merge the Golf Parcel into 594 Lairmont.*

3 Not disputed.

4 25. *MacDonald Highlands hired B2 Development to apply for the Golf Parcel's re-zoning.*

5 Not disputed.

6 26. *MacDonald Highlands has re-zoned other portions of the golf course to residential use,*
7 *and added them to adjacent residential lots.*

8 Disputed: The prior severances to the Golf Course have not been rezoned.⁹

9 27. *MacDonald Highlands complied with the steps necessary to re-zone the Golf Parcel*
10 *from public/semi-public to residential.*

11 Disputed: Bank of America has denied receiving notice of the application for zoning
12 changes.¹⁰

13 48. *The City of Henderson's final map showing the changed zoning for the Golf Parcel was*
14 *not recorded until on or about June 26, 2013, although maps showing the new zoning were available*
15 *from the City of Henderson before recordation.*

16 Disputed: Michael Tassi, City of Henderson planning manager, could not recall the
17 when the final map was recorded.¹¹

18 51. *BANA did not take any action in response to B2's notice of the October 22, 2012*
19 *neighborhood meeting about a proposed zoning change to the Golf Parcel.*

20 Disputed: Bank of America has denied receiving notice of the application for zoning
21 changes.¹²

22 60. *None of the Rosenbergs ever researched or investigated the zoning near 590 Lairmont,*
23 *and never contacted the City of Henderson about the same.*

24 Not disputed.

25 61. *The Trust waived much of its rights to inspections of 590 Lairmont.*

26

27 ⁹ See Bykowski Dep. II, 142:13-14; 147:7-22; 150:12-25 through 152:1-18.

28 ¹⁰ See Bank of America's Answers to Interrogatories, No. 15, attached as Exhibit A-8.

¹¹ See Tassi Dep.; 51:19-22.

¹² See Exhibit A-8, No. 15.

1 Disputed: To the extent this statement includes the surrounding areas, the Trust did not
2 a sign a waiver of rights to inspections.

3 62. *Barbara Rosenberg did not look onto Malek's property when walking through 590*
4 *Lairmont.*

5 Not disputed.

6 65. *The Trust's representatives signed a disclosure regarding the nearby zoning*
7 *classifications for 590 Lairmont, advising that its data was only current through February 2010.*

8 Disputed: The Trust signed an out-dated disclosure form.

9 66. *The zoning notice the Trust signed advised the Trust, in bold type, that it could obtain*
10 *more current information from the City of Henderson, and contained the address and phone number*
11 *for Henderson's city hall.*

12 Not disputed: The document speaks for itself.

13 69. *The Trust bought 590 Lairmont from BANA "as-is", where is" and understood that it*
14 *agreed to those terms.*

15 Disputed: The Trust understood "as-is," and "where is" to pertain to 590 Lairmont only,
16 and not the surrounding areas.

17 70. *The Trust bought 590 Lairmont from BANA agreeing to satisfy itself as to the*
18 *property's condition before closing on May 10, 2013.*

19 Disputed: The condition of 590 Lairmont only and not the surrounding areas.

20 86. *The Golf Parcel contains rocks and brush, consistent with undeveloped desert.*

21 Disputed: MacDonald Highlands has three landscape pallets it uses and the Golf Parcel
22 is a natural landscape pallet.¹³

23 87. *Beyond the desert of the Golf Parcel, 590 Lairmont looks out to Stephanie Street and*
24 *the Dragon Ridge Country Club employee parking lot.*

25 Disputed: This is a mischaracterization about what the view is comprised of and is
26 argumentative.

27
28

¹³ See MacDonald Dep.; 30:5-25.

1 90. *The Trust's discovery responses identify damages to its view, privacy, and access to air*
2 *and light as the harms caused by Malek's potential building.*

3 Disputed: The Trust does not make a claim for air and light.

4 91. *Development is considered to improve views compared to undeveloped land.*

5 Disputed: Misstates testimony.

6 94. *The deed restrictions do not prohibit Malek from developing the Golf Parcel.*

7 Disputed: The Grant, Bargain, Sale Deed between DRFH Ventures and Malek,
8 specifically states,

9 SUBJECT TO:

- 10 1. Taxes for the current fiscal year, not delinquent, including personal property
11 taxes of any former owner, if any:
12 2. Restrictions, conditions, reservations, rights, rights of way and easements
13 now of record, if any, or any that actually exist on the property.¹⁴

14 Malek admitted he is subject to any easements existing on the Golf Course Parcel at the time he
15 purchased it.¹⁵

16 98. *As part of its re-zoning of the Golf Parcel, B2 submitted an application to vacate any*
17 *easements on that property.*

18 Disputed: The application was to vacate utility easements only.

19 99. *The City of Henderson found there were no easements on the Golf Parcel to vacate.*

20 Disputed: The City of Henderson found there were no utility easements on the Golf
21 Parcel.¹⁶

22 100. *The Trust asserts a cause of action against Malek is for implied restrictive covenant.*

23 Not disputed.

24 101. *The Trust claims "an implied restrictive covenant running with the land requires the*
25 *Golf Parcel to be used as part of the 18-hole golf course and for no other purpose."*

26 Not disputed.

27
28 ¹⁴ See Grand, Bargain, Sale Deed, attached as Exhibit A-1.

¹⁵ See Defendant's Responses to Plaintiff's Requests for Admission, No. 10, attached as Exhibit A-11.

¹⁶ See Project Information sheet, attached as Exhibit A-16.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2015, pursuant to NRC 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **RESPONSE TO MALEK'S STATEMENT OF UNDISPUTED FACTS** to the following parties:

| Akerman | | | |
|----------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Deb Julien | debbie.julien@akerman.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

| Akerman LLP | | | |
|--------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | 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"/> |

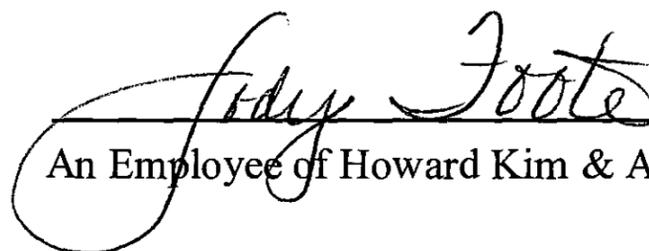
| Kemp Jones & Coulthard | | | |
|-----------------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Ian P. McGinn | ipm@kempjones.com | <input checked="" type="checkbox"/> | <input checked=""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

| Kemp, Jones & Coulthard | | | |
|------------------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| J. Randall Jones | jrj@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 | jlq@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Matthew Carter | m.carter@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sandy Sell | s.sell@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Spencer Gunnerson | s.gunnerson@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

| Kemp, Jones & Coulthard, LLP | | | |
|---|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | Select |
| Pamela Montgomery | p.montgomery@kempjones.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

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

| The Firm, P.C. | | | |
|-------------------------|--|-------------------------------------|-------------------------------------|
| Name | Email | <input checked="" type="checkbox"/> | 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-1

EXHIBIT A-1

Ex. A-1

Inet #: 201306260005003
Fees: \$20.00 N/C Fee: \$25.00
RPTT: \$1020.00 Ex: #
06/26/2013 03:16:09 PM
Receipt #: 1671325
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: KGP Fgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

Escrow #12-08-0699-RLB

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

GRANT, BARGAIN, SALE DEED

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

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

COMMONLY KNOWN ADDRESS:

Bare Lot, , NV

SUBJECT TO:

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

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

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

Escrow #12-08-0699-RLB

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

GRANT, BARGAIN, SALE DEED

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

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

COMMONLY KNOWN ADDRESS:

Bare Lot, , NV

SUBJECT TO:

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

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

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

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

[Signature]
By: Richard C. MacDonald, Manager

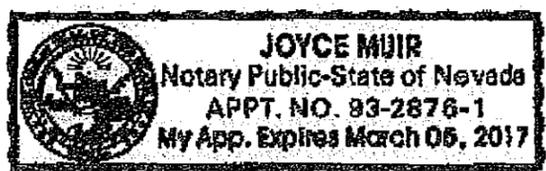
Richard C. MacDonald

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

[Signature]
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 CENTERLINE OF SAID 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, 389.11 FEET;
THENCE DEPARTING SAID LINE, NORTH 85°58'25" WEST, 40.00 FEET, SAID POINT
BEING THE NORTHEAST CORNER OF THE EXTERIOR BOUNDARY LINE OF THE
FOOTHILLS AT MACDONALD RANCH, LOT 10" A.K.A., PLANNING AREA 10" AS PER MAP
RECORDED IN BOOK 92, PAGE 100 OF PLATS;
THENCE ALONG THE NORTHERLY EXTERIOR BOUNDARY LINE OF SAID BOOK 92,
PAGE 100 OF PLATS, SOUTH 81°15'00" WEST, 20.51 FEET TO THE
POINT OF BEGINNING;
THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES:
SOUTH 81°15'00" WEST, 106.47 FEET;
THENCE NORTH 62°21'00" WEST, 73.00 FEET;
THENCE DEPARTING SAID LINE, NORTH 36°04'33" EAST, 65.60 FEET;
THENCE NORTH 20°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 20°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;~~

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 SOUTH 00°02'58" WEST 12.61 FEET TO THE NORTHERLY LINE OF THE

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'/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 \$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 **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 Print Name: Shahin Share Malek
 Address: 552 S. Stephanie Street Address: 544 Regents Gate
 City: Henderson City: Henderson
 State: NV Zip: 89012 State: NV Zip: 89012

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
 Print Name: Nevada Title Company Esc. #: 12-08-0699-REB
 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'/Ind'l
 g. Agricultural h. Mobile Home
 Other

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

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

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

5. Partial Interest: Percentage being transferred: 100%
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: GRANTOR/SELLER

Signature: _____ Capacity: GRANTEE/BUYER

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: DRFH Ventures, LLC, a Nevada limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company
 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-8

EXHIBIT A-8

Ex. A-8

870115123



RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions and Earnest Money Receipt)

Date: March 13, 2013

1
2
3
4
5 Barbara and Fredric Rosenberg ("Buyer"), hereby offers to purchase
6 590 Lairmont Place ("Property"),
7 within the city or unincorporated area of Henderson, County of Clark,
8 State of Nevada, Zip 89012, A.P.N. # 178-27-218-003 for the purchase price of \$ 2,160,000.00
9 (Two million one hundred sixty thousand dollars) ("Purchase Price") on the terms
10 and conditions contained herein:
11 BUYER does -OR- does not intend to occupy the Property as a residence.
12

Buyer's Offer

13
14 **I. FINANCIAL TERMS & CONDITIONS:**
15 \$ 325,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is presented with this offer -OR-
16 to escrow company within 24 hours of acceptance
17 (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
18 check for which there are insufficient funds. NRS 193.130(2)(d))
19
20 \$ _____ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) _____. The
21 additional deposit will -OR- will not be considered part of the EMD. (Any conditions on the additional
22 deposit should be set forth in Section 2B herein.)
23
24 \$ _____ C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN ON
25 THE FOLLOWING TERMS AND CONDITIONS:
26 Conventional, FHA, VA, Other (specify) CASH
27 Interest: Fixed rate, _____ years -OR- Adjustable Rate, _____ years. Initial rate of interest not to
28 exceed _____ %, Initial monthly payment not to exceed \$ _____, not including taxes, insurance
29 and/or PMI or MIP.
30
31 \$ _____ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE
32 FOLLOWING EXISTING LOAN(S).
33 Conventional, FHA, VA, Other (specify) _____
34 Interest: Fixed rate, _____ years -OR- Adjustable Rate, _____ years. Initial rate of interest not to
35 exceed _____ %, Monthly payment not to exceed \$ _____, not including taxes, insurance and/or PMI or MIP.
36
37 \$ _____ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS
38 IN "FINANCING ADDENDUM."
39
40 \$ 1,835,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to
41 Close of Escrow ("COE").
42
43 \$ 2,160,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees
44 and costs associated with the purchase of the Property as defined herein.)
45

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 Lairmont Place SELLER(S) INITIALS: [Signature]

BANA000001

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

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

19 3. **SALE OF OTHER PROPERTY:**

20 This Agreement

21 is not -OR-

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

23 Said Property

24 is currently listed

25 is not -OR- is

26 presently in escrow with _____

27 Escrow Number: _____ Proposed Closing Date: _____

28 When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to
29 Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will
30 terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a
31 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
32 written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and
33 closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver
34 of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's
35 ability to obtain financing is not contingent upon the sale and/or close of any other property.

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

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

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

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

Rev. 12/11

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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):

| A. TITLE AND ESCROW FEES: | | PAID BY SELLER | PAID BY BUYER | 50/50 | N/A |
|----------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|-------------------------------------|
| TYPE | | | | | |
| Escrow Fees | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lender's Title Policy | <input type="checkbox"/> | <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"/> | <input type="checkbox"/> |
| Real Property Transfer Tax | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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

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: [Signature]
Property Address: 590 Lairmont Place Henderson, NV 89012 SELLER(S) INITIALS: [Signature]
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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 | Termites/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).

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.

| 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"/> |

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 \$ 2000 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: ML

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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 **H. 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 \$ 190.00. 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 the 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 Post 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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1 11. ADDITIONAL DISCLOSURES:

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

7
8 B. In addition, for NEW CONSTRUCTION, to the extent applicable, Seller will provide: Public Offering
9 Statement (NRS 116.4103); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial
10 Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridor (NRS 113.070); Water/Sewage
11 (NRS 113.060); Impact Fees (NRS 278B.320); Surrounding Zoning Disclosure (NRS 113.070); FTC Insulation Disclosure (16
12 CFR 460.16); and Other: _____

13
14 C. AIRPORT NOISE: Buyer hereby acknowledges the proximity of various overflight patterns, airports
15 (municipal, international, military and/or private) and helipads. Buyer also fully understands that existing and future noise
16 levels at this location, associated with existing and future airport operations, may affect the livability, value and suitability of
17 the Property for residential use. Buyer also understands that these airports have been at their present location for many years,
18 and that future demand and airport operations may increase significantly. For further information, contact your local
19 department of aviation or the Federal Aviation Administration.

20
21 D. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without
22 regard to race, color, religion, sex, national origin, ancestry, handicap or familial status and any other current requirements of
23 federal or state fair housing law.

24
25 12. BUYER'S DUE DILIGENCE:

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

36
37 B. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such
38 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,
39 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise
40 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or
41 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other
42 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to have non-destructive
43 inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa,
44 survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified
45 professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to
46 indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request
47 while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any
48 injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence
49 or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with
50 appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and
51 adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection;
52 other governmental services; existing and proposed transportation; construction and development; noise or odor from any
53 source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report,
54 Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone
55 number of the inspector.

56 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: [Handwritten initials]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Handwritten initials]

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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 COB 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: [Signature]
Property Address: 590 Laimont Place Henderson, NV 89012 SELLER(S) INITIALS: [Signature]
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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 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 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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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
38 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each
39 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be
40 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.
41

42 B. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for
43 Seller or Buyer if represented.
44

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

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Handwritten initials]

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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 _____

40

Earnest Money Receipt

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, 2011 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: [Initials]
Property Address: 580 Laimont Place SELLER(S) INITIALS: [Initials]

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Buyer's Acknowledgement of Offer

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

Buyer's Signature: [Signature] Buyer's Printed Name: Barbara Rosenberg Date: 3/13/13 Time: [] AM [] PM

Buyer's Signature: [Signature] Buyer's Printed Name: Fredric Rosenberg Date: 3/13/13 Time: [] AM [] PM

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

Confirmation of Representation: The Buyer is represented in this transaction by: Buyer's Broker: Kathryn Bovard, Agent's Name: Stobhan McGill, Company Name: Realty ONE Group, Agent's Public ID: 214400, Phone: 702-898-7575, Office Address: 2881 St. Rose Parkway # 100, Email: stobhanmcgill@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 this offer presented herein is not accepted.

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

Seller's Signature: [Signature] Seller's Printed Name: Max Fumleed Bank of America Date: 3/13/13 Time: 3:33 PM [] 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: 652 S Stephanie Street, Phone: 702-614-9100, City, State, Zip: Henderson, NV 89012, Email: _____, Fax: 702-614-9400

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

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

Buyer's Name: Barbara and Fredric Rosenbarg BUYER(S) INITIALS: [Initials]

Property Address: 690 Larmont Place Henderson, NV 89012 SELLER(S) INITIALS: [Initials]

Ex. A-11

EXHIBIT A-11

Ex. A-11



FILED
CITY CLERK
CITY OF HENDERSON
RECEIVED

2012 DEC -6 A 9:29

**NOTICE OF HENDERSON CITY COUNCIL FINAL ACTION
(NRS 278.0235)**

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

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

- A) Amend the Land Use Policy Plan from PS (Public/Semipublic) to VLDR (Very Low-Density Residential) on 0.34 acres;
- B) Amend an approved master plan by rezoning a 0.34-acre portion of a 1,162-acre master plan from PS-MP-H (Public/Semipublic with Master Plan and Hillside Overlays) to RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays) and remove the 0.34-acres (14,841 square feet) from Planning Area 3 (Golf Hole #9) and add it to Lot 2 of Planning Area 10; and
- C) An 18-lot residential subdivision (16 single-family, 2 common); located within the MacDonald Highlands master plan, off MacDonald Ranch Drive and Stephanie Street, in the MacDonald Ranch Planning Area.

ACTION TAKEN: Approved with the following conditions:

PLTF1785

2A

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.

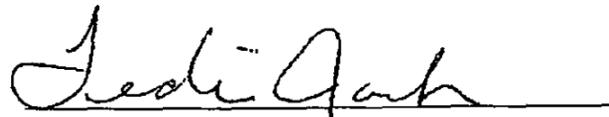
TMA-12-500316

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;

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,

and as depicted in Exhibit A attached hereto, consisting of one page (the "Land"), changed from PS (Public/Semipublic) to VLDR (Very Low-Density Residential); and

WHEREAS, in accordance with Nevada Revised Statutes, the City of Henderson, Nevada, has deemed it necessary to amend the Land Use Policy Plan for the purpose of changing the land use designations, which, if implemented, would affect territory within Henderson's jurisdiction; and

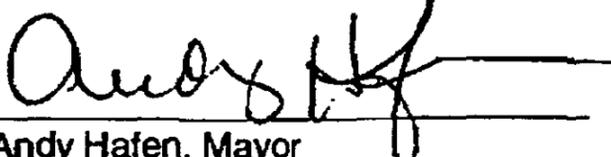
WHEREAS, the Henderson Planning Commission has conducted the appropriate public hearing, received public comment, duly deliberated the proposal, and recommends approval of the Land Use Plan amendment; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Henderson, Nevada, that the Land Use Policy Plan amendment be approved, and that the Policy Plan be revised to reflect the change in land use for the Land from PS (Public/Semipublic) to VLDR (Very Low-Density Residential).

PASSED, ADOPTED, AND APPROVED THIS 4th DAY OF DECEMBER, 2012, BY THE FOLLOWING ROLL-CALL VOTE OF COUNCIL

Those voting aye: Andy Hafen, Mayor
 Councilmembers:
 Debra March
 John F. Marz
 Gerri Schroder

Those voting nay: None
Those abstaining: None
Those absent: Sam Bateman



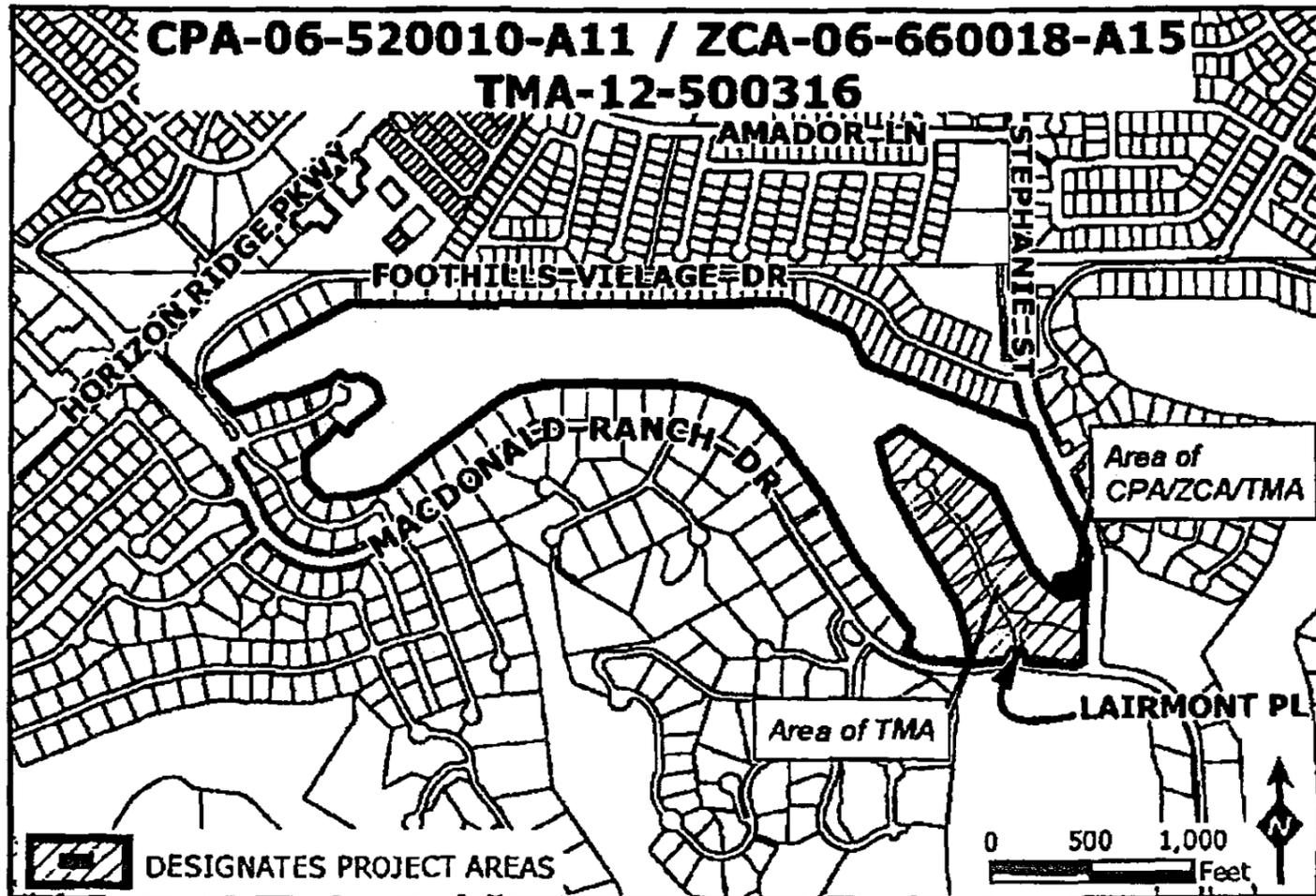
Andy Hafen, Mayor

ATTEST



Sabrina Mercadante, MMC, City Clerk

EXHIBIT A
CPA-06-520010-A11 – MacDonald Highlands (Golf Hole 9)



Ex. A-16

EXHIBIT A-16

Ex. A-16

PROJECT INFORMATION

PROJECT NUMBER

VAC-12-500376

PUBLIC HEARING NOTIFICATION

| | |
|-----------------------------|--|
| Notice Published | December 3, 2012 |
| Notice Mailed | December 3, 2012 |
| Notices Sent | 3 |
| Notice Radius | Adjacent Properties and all registered HOAs or MHPs within buffer area |
| Neighborhood meeting | N/A |

EXISTING ZONING

PS (Public/Semipublic)

RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays)

EXISTING LAND USE

PS (Public/Semipublic)

VLDR (Very-Low-Density Residential)

NEIGHBORHOOD CHARACTERISTICS

| | Zoning | Land Use | Existing Use |
|--------------|---------------|-----------------|-----------------------------|
| North | PS-MP-H | PS | Dragon Ridge Golf Course |
| South | RS-2-MP-H | VLDR | Undeveloped Residential Lot |
| East | RS-2-MP-H | VLDR | Single-Family Residence |
| West | PS-MP-H | PS | Dragon Ridge Club House |

BACKGROUND AND PRIOR ACTIONS

| Date | Action |
|-----------------|--|
| 6/20/07 | City Council approved Comprehensive Plan Amendment CPA-06-520010-A9 and an amendment to Zone Change ZCA-06-660018 (A12) for Planning Areas 18 and 20. |
| 8/5/08 | City Council approved Comprehensive Plan Amendment CPA-06-520010-A10 and an amendment to Zone Change ZCA-06-660018 (A13) for Planning Areas 18 and 20. |
| 11/15/12 | The Planning Commission recommended approval to amend Comprehensive Plan Amendment CPA-06-520010 (A11) and Zone Change ZCA-06-660018 (A15). Both applications are scheduled to be heard at the December 4, 2012, City Council meeting. |

PLTF1812

The 14,841 square-foot non-exclusive utility easement proposed to be vacated was granted April 3, 2007, per Book 136, Page 21 of Plats, Clark County, Nevada.

ANALYSIS

The applicant is requesting to vacate and remove existing “blanket easements” over a portion of Golf Hole #9, northwest of MacDonald Ranch Drive and Stephanie Street. This approximately 14,841-square-foot common area is now being proposed for inclusion into an adjacent undeveloped single-family parcel.

The applicant states the amendment to this area will allow for the appropriate design and development of a custom home, while having little or no impact on the adjacent properties.

Staff concurs with the proposed vacation and recommends approval.

RECOMMENDATION

RECOMMENDED APPROVAL, subject to conditions

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. Certification by the City Surveyor.
3. Vacation map shall record concurrently with amended final maps.

BA/dap/CW2

PLTF1813



PUBLIC WORKS DEPARTMENT CONDITIONS OF APPROVAL

STAFF REVIEW DATE: November 7, 2012

APPLICATION NO. VAC-12-500376

PROJECT: MacDonald Highlands - Golf Hole #9

- P_01 **Standard condition already on all applications.**
- P_02 Applicant shall submit a drainage study (update) for Public Works' approval.
- P_03 Commercial driveways shall be dedicated and constructed per Clark County Area Standard Drawings No 225 & 226.
- P_04 Applicant shall obtain and provide all necessary permission/approvals from _____.
- P_07 Applicant shall submit a traffic analysis (update) 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 R/W.
- P_08 Applicant shall construct full offsites per Public Works' requirements and dedicate any necessary R/W.
- P_10 Mapping shall be required and completed prior to Certificate of Occupancy.
- P_11 Applicant shall dedicate _____ right-of-way per Public Works' requirements within _____ of approval.
- P_14 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 (Certificate of Occupancy/approval of Civil Improvement Plans/Final Map/Parcel Map).
- P_15 Applicant shall comply with Standard Drawing No. 201.1, which refers to major intersections and dedicate any necessary R/W.
- P_16 Nuisance water drains shall be required after 1,000 feet of surface street flow for public residential streets.
- P_17 FHA Type B drainage shall be allowed only where lots drain directly to public drainage facilities, public parks, or golf courses.
- P_18 Applicant shall apply and receive approval of a revocable permit for development within the public right-of-way (or City-owned property).
- P_19 Streets shall be privately owned and maintained and delineated as a private street for the benefit of all lots shown on the map. Any pavement replaced by the City during any road repairs due to utility maintenance shall be standard paving only. The replacement of any non-standard street or sidewalk materials such as, but not limited to, pavers and stamped concrete, will be the responsibility of those responsible for the private streets.
- P_20 Applicant shall provide paved off-street parking.
- P_24 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.
- P_26 Applicant shall conduct a noise study and install sound walls adjacent to _____ frontage of the subject property per NDOT and City requirements.
- P_27 _____ shall not be located within public right-of-way or the sight visibility restriction zone per Clark County Area Standard Drawing No. 201.2.
- P_28 Vacation map shall record concurrently with amended final maps.
- P_29 Developer shall pay all required apportionment fees for this project prior to submittal of final map for City Council approval.
- P_30 Applicant shall comply with all conditions of _____.
- P_31 Applicant shall complete the offsite improvements on _____ within 9 months of entitlement approvals.
- P_32 Applicant must apply to Council for approval to cut a 5-year no-cut street. If applicant receives approval, all offsite improvements must be completed within 9 months of entitlement approvals.
- P_33 Dedication and/or vacation of rights-of-way and/or easements shall be completed prior to approval of Civil Improvement Plans.
- P_34 Applicant shall provide copies of cross-access agreements, permission to grade and/or construct on adjacent properties, and/or maintenance agreements.
- P_35 Applicant shall revise Civil Improvement Plans per Public Works' requirements.
- P_36 Gated commercial or residential driveways must be dedicated per Public Works' requirements and constructed per Clark County Area Standard Drawing No 222.1
- NO COMMENT/CONDITIONS**
- P_CUSTOM Custom condition: _____

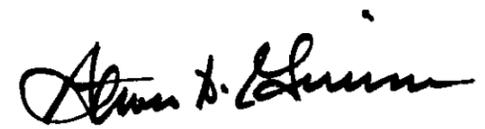
**DEPARTMENT OF UTILITY SERVICES
CONDITIONS OF APPROVAL**

STAFF REVIEW DATE: 11/7/2012

| | | | |
|-----------------|---------------|----------|------------------------------------|
| APPLICATION NO: | VAC-12-500376 | PROJECT: | MacDonald Highlands - Golf Hole #9 |
|-----------------|---------------|----------|------------------------------------|

| | | |
|-------------------------------------|-------|--|
| <input checked="" type="checkbox"/> | | NO COMMENTS/CONDITIONS |
| <input type="checkbox"/> | | Same conditions as previously approved (MUST ATTACH CONDITIONS PAGE FROM BACKUP) |
| <input type="checkbox"/> | US_01 | Applicant shall submit a utility plan and utility analysis for Department of Utility Services' approval. |
| <input type="checkbox"/> | US_02 | Applicant shall comply with the requirements of the master utility plan established for the project area. |
| <input type="checkbox"/> | US_03 | Applicant shall be required to construct a full-frontage water main extension along _____. |
| <input type="checkbox"/> | US_04 | Applicant shall be required to construct a full-frontage sewer main extension along _____. |
| <input type="checkbox"/> | US_05 | Applicant shall participate in the Southwest Henderson Refunding Agreement for sewer and water. |
| <input type="checkbox"/> | US_06 | Applicant shall participate in the 2610 Rhodes/Lewis Water Refunding Agreement. |
| <input type="checkbox"/> | US_07 | Applicant shall participate in the MacDonald Ranch 2370 Refunding Agreement. |
| <input type="checkbox"/> | US_08 | Applicant shall participate in the P-4/R-15 (2720) refunding agreement. |
| <input type="checkbox"/> | US_09 | Applicant shall participate in the P8A Refunding Agreement (SR-10). |
| <input type="checkbox"/> | US_10 | Applicant shall participate in the Bluegrass Interceptor Agreement. |
| <input type="checkbox"/> | US_11 | Applicant shall participate in the _____. |
| <input type="checkbox"/> | US_12 | Applicant shall grant a municipal utility easement per the Department of Utility Services' requirements. |
| <input type="checkbox"/> | US_13 | Applicant shall resolve all mapping concerns per Utility Department requirements. |
| <input type="checkbox"/> | US_14 | Applicant shall establish separate water and sewer service for each use classification in accordance with the Department of Utility Services' requirements. |
| <input type="checkbox"/> | US_15 | All onsite utilities shall remain privately owned and maintained. |
| <input type="checkbox"/> | US_16 | All water and sewer services shall comply with HMC Title 14 regarding public-public or private-private service requirements. |
| <input type="checkbox"/> | US_17 | Vacation shall not occur until such time as the existing utility is abandoned and the new line is in place and accepted, with all appropriate easements granted and/or rights-of-way being dedicated. |
| <input type="checkbox"/> | US_18 | Applicant shall verify cell tower does not interfere with the line-of-sight transmission of the City's HEN-NET System. |
| <input type="checkbox"/> | US_19 | Civil improvement plans shall comply with the requirements of the Uniform Design and Construction Standards for Water Distribution Systems and the Design and Construction Standards for Wastewater Collection Systems. |
| <input type="checkbox"/> | US_20 | Applicant shall prepare water and sewer system design in accordance with the Department of Utility Services' requirements. Approval of this application does not infer Department of Utility Services' approval for the water and sewer system layout as reflected on the application. |
| <input type="checkbox"/> | US_21 | 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. |
| <input type="checkbox"/> | US_22 | 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. |

TAB 28



CLERK OF THE COURT

OPPM

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANT SHAHIN SHANE
MALEK'S OPPOSITION TO PLAINTIFF
/ COUNTERCLAIM DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: May 19, 2015
Hearing Time: 9:00 am

I. Introduction

The Trust's motion for summary judgment is inadequate and the Court should deny it. In an attempt to defeat Shane Malek's counterclaim, the Trust relies on cherry-picked and dubiously admissible evidence. A more complete review of the record shows that not only are the Trust's

1 contentions false, but that the opposite result is proper: Not only should the Court deny the Trust's
2 motion for summary judgment on Malek's Counterclaim, it should grant Malek's cross-motion for
3 summary judgment on the same claim.

4 **II. Statement of Facts**

5 On January 23, 2013, the City of Henderson's publicly available zoning maps showed that a
6 1/3-acre piece of undeveloped land in the Dragonridge Country Club golf course, near certain parcels
7 of land on Lairmont Place, had been zoned for residential use. (Dep. of M. Tassi at 27:17-30:15) This
8 information was readily available on the City of Henderson's website by mid-February of 2013, and
9 could be accessed in less than five minutes. (*Id.* at 26:14-27:16, 56:16-24) This 1/3-acre piece of land
10 (the "Golf Parcel") was situated in the out-of-bounds area of Dragonridge Country Club's ninth hole,
11 and adjacent to the vacant lot at 594 Lairmont Place – a lot owned by Shane Malek, and the reason he
12 is a defendant in this lawsuit. (Dep. of B. Rosenberg at 190:2-5; Dep. of S. Malek at 14:17-15:17,
13 47:4-17) Upon being re-zoned, Malek would add the Golf Parcel to 594 Lairmont and begin building
14 his home (Rosenberg Dep. at 46:19-47:10; Malek Dep. at 47:4-17).

15 In late February 2013, the Trust's representatives, Barbara and David Rosenberg, attempted to
16 purchase 590 Lairmont Place – the lot adjacent to 594 Lairmont – from defendant Bank of America
17 National Association. (*See* Rosenberg Dep. at 50:10-51:4) In its rush to acquire the property, the Trust
18 attempted to buy 590 Lairmont from Bank of America before it was publicly listed for sale.
19 (Rosenberg Dep. at 50:10-51:25, 55:13-57:19) The Trust waived its walk-through of 590 Lairmont,
20 and wanted to buy the property as quickly as it could. (*Id.* at 129:1-130:2) In its haste, the Trust's
21 representatives failed to conduct any research about 590 Lairmont, including the zoning or planned use
22 of nearby properties. (*Id.* at 47:11-24, 115:12-116:15, 121:23-123:4, 129:1-130:2; Tassi Dep. at 55:21-
23 56:12) In fact, the Trust knew that Malek would be building on his next-door lot when it purchased
24 590 Lairmont. (Rosenberg Dep. at 47:21-24) The Trust later decided it did not want Malek to build on
25 his own property, and filed this lawsuit seeking injunctive relief against his planned construction. (*See*
26 *generally* Compl.; Am. Compl.)

27 The Trust knew that merely filing a lawsuit would not stop Malek from building his home. In
28 order to prevent his construction, the Trust filed a *lis pendens* on 594 Lairmont immediately after filing

1 this lawsuit. (Not. of *Lis Pendens*) The Trust then filed an amended *lis pendens* on 594 Lairmont on
2 October 24, 2013. (Am. Not. of *Lis Pendens*) According to Barbara Rosenberg, one of the Trust's
3 trustees, the *lis pendens*' purpose was to prevent Malek from building on his property. (Rosenberg
4 Dep. at 265:3-266:9)

5 Malek moved to expunge the *lis pendens* the Trust wrongfully filed on his property. Finding
6 there was no basis for the Trust to file a *lis pendens* on Malek's property, the Court granted Malek's
7 motion in December 2013. The Court entered its final order expunging the Trust's *lis pendens* from
8 Malek's property on January 9, 2014. In the course of defending this litigation and expunging the
9 Trust's *lis pendens*, Malek incurred attorney's fees and costs. (Malek's Fourth Supplemental
10 Disclosures, attached as Exhibit 1, at 5) Malek brought his counterclaim for slander of title against the
11 Trust for filing its *lis pendens* that the Court later expunged, seeking his attorneys' fees and costs
12 incurred in removing the false *lis pendens* from 594 Lairmont.

13 **III. Legal Standard**

14 Nevada Rule of Civil Procedure 56(c) allows a Court to enter summary judgment in favor of a
15 moving party only when there is no genuine issue as to any material fact, and the moving party is
16 entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,
17 1029 (2005). To defeat a motion for summary judgment, the non-movant must only show that a
18 genuine issue of material fact exists to be resolved at trial. Nev. R Civ. P. 56(e); *Wood*, 121 Nev. at
19 131, 121 P.3d at 1030-31. In the Court's evaluation of the motion, "the evidence, and any reasonable
20 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood*,
21 121 Nev. at 729, 121 P.3d at 1029. When a question of material fact exists, the Court must deny the
22 motion for summary judgment. *St. James v. Diversified Commercial Fin. Corp.*, 102 Nev. 23, 27, 714
23 P.2d 179, 182 (1986) (reversing district court's grant of summary judgment where genuine issue
24 remained as to a material fact).

25 Analogous Federal precedent that Nevada's Supreme Court has cited favorably also holds that
26 the test before the Court is to determine whether a question of material fact exists. *Wood*, 121 Nev. at
27 730, 121 P.3d at 1030, citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Anderson v. Liberty*
28 *Lobby*, 477 U.S. 242 (1986). "The inquiry performed is the threshold inquiry of determining whether

1 there is the need for trial.” *Anderson*, 477 U.S. at 250. The non-moving party’s burden merely is to
2 produce evidence “showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 321 n. 3. When
3 the non-moving party meets this burden, the Court must deny a motion for summary judgment.

4 **IV. Argument**

5 Malek’s counterclaim for slander of title requires him to show the Trust made a false statement
6 about his property, with malice, that caused him damage. *Exec. Mgt. Ltd. v. Ticor Title Ins. Co.*, 114
7 Nev. 823, 824, 963 P.2d 465, 478 (1998). Under this test, Malek must show that the Trust made its
8 false statements about his property with knowledge of their falsity or reckless disregard for their truth.
9 *See Pond Place Partners v. Poole*, 567 S.E.2d 881, 892 (S.C. Ct. App. 2002) (finding malice where
10 statement is knowingly false or made with reckless disregard for the truth). Nevada law recognizes
11 that filing a false document, such as a *lis pendens* when there is no dispute as to possession or title of
12 property, is a basis for slander of title. *Summa Corp v. Greenspun*, 96 Nev. 247, 254, 607 P.2d 569,
13 573 (1980).

14 **A. The Trust Acted with Malice in Filing Its *Lis Pendens* on Malek’s Property.**

15 The Trust’s primary defense to Malek’s counterclaim, that it relied on the advice of counsel, is
16 based on equivocation and of no avail in this case. As set forth in the Trust’s own motion, “evidence
17 of a defendant’s reliance on the advice of counsel *tends to negate* evidence of malice.” *Rowland v.*
18 *Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983) (emphasis added). Instead of presenting a
19 shield against liability, *Rowland* sets forth a two-step process that merely lets a defendant explain away
20 – but not contradict – its own evidence. First, a defendant must show evidence that the defendant
21 “reli[ed]” on the advice of counsel. *Id.* Once a defendant produces such evidence, it merely “tends to”
22 mitigate evidence of malice, but does not disprove it. *Id.*

23 In an attempt to satisfy this standard, the Trust relies on the deposition of Barbara Rosenberg
24 and a declaration from Peter Bernhard. Barbara Rosenberg, a seasoned real estate professional,
25 testifies that she knew what a *lis pendens* was, wanted to stop Malek from building his house, and
26 hoped he would not build a house on his property. (Rosenberg Dep. at 265:3-266:9) Mr. Bernhard’s
27 declaration contains a cursory opinion of the Trust’s actions, and lacks any facts that would make it a
28 credible justification for the Trust’s conduct. (Trust Mot. for Summary Judgment (“Trust MSJ”) Exh.

1 2) For these reasons, there is ample reason to find the Trust acted with actual malice in filing its *lis*
2 *pendens* on Malek's property.

3 **1. Barbara Rosenberg's Testimony Shows The Trust Knew a *Lis Pendens***
4 **Was Baseless, But Harmed Malek's Property as It Desired.**

5 The Trust's motion for summary judgment admits it filed the *lis pendens* "to try to stop
6 [Malek] from building." (Trust MSJ at 5:19-22, *quoting* Exh. 1-A) This is not a proper basis for filing
7 a *lis pendens*. Nevada law permits the filing of a *lis pendens* in an action affecting possession or title
8 to property. NRS 14.010, 14.015; *Weddell v. H20, Inc.*, 128 Nev. Adv. Rep. 9, 271 P.3d 743, 751
9 (2012) (holding that *lis pendens* was improperly filed in action to enforce an option contract), *quoting*
10 *Thomas v. Nevans*, 67 Nev. 122, 130, 215 P.2d 244, 247-48 (1950); *see Coury v. Tran*, 111 Nev. 652,
11 656, 895 P.2d 650, 652 (1995) (holding that a *lis pendens* is only properly filed in cases "affecting the
12 title or possession of real property").

13 This lawsuit did not relate to either of these issues. (*See generally*, Compl.) The *lis pendens*
14 thus falsely communicated that the Trust claimed an ownership or possessory interest in Malek's
15 property. *De Carnelle v. Guimont*, 101 Nev. 412, 415, 705 P.2d 650, 651-652 (1985) (holding that a *lis*
16 *pendens* filed without a claim to possession or title of real property is false). Accordingly, the Court
17 expunged the Trust's *lis pendens* by its Order entered January 9, 2014.

18 Barbara Rosenberg's attempts to deflect accountability for the Trust's wrongful filing of a *lis*
19 *pendens* in this action are unavailing. Barbara Rosenberg is a real estate agent with more than 25 years
20 of experience selling residential property, and previously purchased numerous pieces of real estate for
21 herself or the Trust. (Rosenberg Dep. at 12:19-22, 15:6-16:13) During her career, Barbara Rosenberg
22 has closed more than 500 sales. (*Id.* at 88:8-25) She is familiar with the documents and principles
23 underlying residential property sales. (*Id.*) For her to have this depth of knowledge about residential
24 real estate, and then claim she did not know whether it was proper to file a *lis pendens* in this case –
25 while admitting the Trust did so to keep Malek from building his home (*Id.* at 265:17-21) – strains
26 credulity past its breaking point.

27 Despite her real estate knowledge, Barbara Rosenberg repeatedly states that she is "not a
28 lawyer," as if that provides immunity against the consequences of her actions. (Rosenberg Dep. at

1 147:7-148:22, 172:16-173:11, and 265:3-266:9 (stating, repeatedly, that she is not a lawyer, while
2 admitting her knowledge of elements to her case)) Barbara Rosenberg’s lack of legal training does not
3 change or defeat the plain meaning of her words, or the Court’s right to rely on them. *LifeScan, Inc. v.*
4 *Polymer Technology Int’l Corp.*, Case No. C94-672R 1995 U.S. Dist. LEXIS 4916 at *32-33 (W.D.
5 Wash. Jan. 3, 1995) (crediting testimony of witness even where he stated he was “a scientist, not a
6 lawyer”). Barbara Rosenberg knew what a *lis pendens* was, knew that she did not want Malek to
7 build on his own property, and did not care whether or not the *lis pendens* was proper. (Rosenberg
8 Dep. at 265:3-266:12) Barbara Rosenberg’s testimony demonstrates the Trust’s reckless disregard for
9 the *lis pendens*’ truth, if not knowledge of its falsity.

10 **2. Peter Bernhard’s Untimely Declaration Fails to Justify the Trust’s**
11 **Conduct.**

12 Peter Bernhard’s declaration fails to justify the Trust’s conduct. Mr. Bernhard testifies only
13 that “[i]n [his] opinion,” the Trust relied on him in filing the *lis pendens*. (Trust MSJ Exh 2 ¶ 4) This
14 opinion is not accompanied by any surrounding facts, circumstances, or other explanation that would
15 indicate whether this opinion is valid. (*Id.*) Moreover, even if the Court finds Mr. Bernhard’s
16 testimony creditable, and further finds the Trust relied on his advice, it is not a bar to the Court finding
17 the Trust acted with actual malice in filing its *lis pendens*. *Rowland*, 99 Nev. at 313, 662 P.2d at 1335.

18 Mr. Bernhard goes on to state that he is “not aware of any ulterior motive or purpose” for the
19 Trust’s wrongful *lis pendens*. (*Id.*) This statement is found in the same two-sentence paragraph as Mr.
20 Bernhard’s prior statement of opinion. (*Id.*) Like the prior statement, this one also is conspicuously
21 free of any facts or circumstances that provide the grounds for his knowledge – or lack thereof. (*Id.*)
22 To the extent this Court may consider Mr. Bernhard’s declaration as admissible evidence, as discussed
23 below, it does nothing to exonerate the Trust’s actions. While Mr. Bernhard states that he “is not
24 aware” of any ulterior motive or purpose of the Trust in filing its *lis pendens* on Malek’s property (*id.*),
25 Barbara Rosenberg’s testimony demonstrates that the Trust acted to stop Malek from building his
26 home. (Rosenberg Dep. at 265:3-266:9) This lone declaration does not entitle the Trust to summary
27 judgment on Malek’s counterclaim, nor defeat his cross-motion for judgment in his favor.

1 **B. Malek Has Pled and Produced Evidence of Special Damages Arising from the**
2 **Trust’s *Lis Pendens* Filings.**

3 Contrary to the Trust’s arguments, Malek’s attorneys’ fees costs are not only identified in his
4 counterclaim, but substantiated by evidence as well. Malek’s counterclaim made obvious his pursuit
5 of attorneys’ fees in this case as a form of damages. He also produced evidence of his damages during
6 the course of this litigation. The Trust, however, neglected to apprise the Court of this fact. As set
7 forth below, neither of these arguments entitle the Trust to summary judgment.

8 **1. The Trust’s Legal Arguments Against Malek’s Slander of Title Claim Are**
9 **Erroneous.**

10 Malek’s Counterclaim sufficiently identifies his attorneys’ fees expended in removing the
11 Trust’s *lis pendens* from his property as special damages. “[E]xpenses sustained in removing the cloud
12 on plaintiff’s title caused by the false statement” constitute damages for a slander of title claim. *Tai-si*
13 *Kim v. Kearney*, 838 F. Supp. 2d 1077 (D. Nev. 2012), *citing Summa Corp. v. Greenspun*, 98 Nev.
14 528, 655 P.2d 513 (1982). These attorneys’ fees are available as damages in slander of title actions.
15 *Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007). Malek sets these damages forth in his
16 counterclaim as required by Nevada Rules of Civil Procedure.¹ (Counterclaim at 8:1-11) Malek
17 alleges that that trust’s slander of title injured him in an amount of more than \$10,000 (*id.* ¶ 22), and
18 goes on to claim his attorneys’ fees and costs as a portion of his damages in this action (*id.* at 8:1-11).

19 The Trust’s cited precedent is inapposite. Relying on footnotes, dictum, and a court that
20 “implicitly acknowledge[ed]” that attorneys’ fees should be specifically pled, the Trust ignores the
21 plain language of Malek’s counterclaim. In addition to alleging more than \$10,000 in damages
22 separate from any diminution of value in his property, Malek requests an award of his attorneys’ fees
23 and costs in the Counterclaim (Counterclaim at 8:1-11). The counterclaim goes on to request exactly
24 the damages that may be awarded for slander of title: “reasonable attorneys’ fees and costs incurred in
25 removing the Trust’s slander of title in this action.” (*Id.*)

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28

¹ Curiously, this is the very first time the Trust has raised this issue. If the question of Malek’s special damages and incurred attorneys’ fees were as clear as the Trust represents in its motion for summary judgment, it theoretically could have prevailed on Malek’s counterclaim months ago upon a motion to dismiss. The Trust never filed such a motion, indicating that this issue is of far less significance and certainty than the Trust now claims.

1 **2. Malek Produced Evidence of His Damages in This Litigation, which the**
2 **Trust Neglected to Provide to the Court.**

3 First and foremost, the Trust relies on Malek’s deposition to reach an unsupportable
4 conclusion. The Trust’s motion for summary judgment attempts to discredit Malek’s evidence of his
5 attorney’s fees by pointing out that he did not know the exact amount he had incurred as he sat in the
6 deposition. (Trust MSJ Exh. 1-D) Malek’s testimony was not that he had incurred no attorneys’ fees,
7 but only that he did not know – when asked well into his deposition – the exact amount. (*Id.*) This
8 statement cannot be twisted to mean that Malek suffered no damages. Malek went on to testify that he
9 would provide an amount of attorneys’ fees he had incurred (*id.*), and did so through his counsel.

10 Malek provided evidence of his special damages to the Trust, which the Trust neglected to tell
11 the Court. In his Fourth Supplemental Initial Disclosures, Malek informed the Trust and all other
12 parties that his attorneys’ fees and costs in the action amounted to more than \$45,000 – a number that
13 continues to grow. (Exhibit 1 at 5) As Malek stated in his deposition, the calculation of attorneys’ fees
14 and costs he incurred would be disclosed, and it was. This evidence not only contradicts the Trust’s
15 contentions, but compels the opposite result: Finding the Trust liable for slander of title.²

16 The attorneys’ fees and costs Malek incurred to remove the slander of title in this action should
17 be obvious. Malek retained counsel to respond to the lawsuit and remove the Trust’s *lis pendens* from
18 his property. In fact, Malek’s prior counsel extensively litigated this issue before the Court ordered the
19 Trust’s *lis pendens* expunged.³ This Court’s very record demonstrates that Malek retained counsel and
20 incurred attorneys’ fees to remove the Trust’s false *lis pendens* from his property. It defies credulity
21 for the Trust to claim that there is no evidence showing Malek incurred attorneys’ fees as damages in
22 support of his counterclaim.

23 **C. The Trust Impermissibly Relies on Inadmissible Evidence in Support of its**
24 **Motion.**

25 A party seeking summary judgment must present facts that “would be admissible as evidence”
26 to prevail on its motion. Nev. R. Civ. P. 56(e); *see Rossi v. Trans World Airlines, Inc.* 507 F.2d 404,

27 _____
28 ² *See generally* Malek’s Motion for Summary Judgment.

³ *See* Malek’s Nov. 13, 2013 Mot. to Expunge, Dec. 3, 2013 Reply in support of Mot. to Expunge, Dec. 18, 2013 Supp. Brief in support of Mot. to Expunge, Dec. 19, 2013 Hrg. on Mot. to Expunge.

1 406 (9th Cir. 1974) (affirming summary judgment where affidavits contained inadmissible information
2 and were properly disregarded under Rule 56(e)). The Trust's motion is based on several pieces of
3 inadmissible evidence. The Court cannot credit that evidence in support of the Trust's motion, and the
4 Trust's legal arguments based on inadmissible evidence necessarily fail.

5 **1. The Trust's Ambush Declaration of Peter Bernhard, Executed Long**
6 **After the Close of Discovery, Is Inadmissible.**

7 Discovery in this case ended on March 16, 2015. In attempt to shift blame from itself to its
8 prior counsel, the Trust filed a declaration from Peter Bernhard that was executed on April 15, 2015, in
9 support of its motion for summary judgment. (Trust MSJ Exh. 2) By sheer logic alone, this declaration
10 never could have been produced prior to the close of discovery. Further, the Trust never disclosed Mr.
11 Bernhard as a potential witness until just six days before the close of discovery. (Plaintiff's Ninth
12 Supplemental Initial Disclosures at 9:10-19, attached as Exhibit 2) By timing its disclosure of Mr.
13 Bernhard's as its last-identified witness (*id.*), the Trust deprived Malek and the other parties the 15
14 days necessary to properly notice his deposition under Nevada Rule of Civil Procedure 30(b)(1). In
15 sum, the Trust deprived Malek of an opportunity to meaningfully scrutinize Mr. Bernhard's testimony.

16 Even if the Court finds Mr. Bernhard's declaration is acceptable procedurally, it suffers from
17 substantive defects that render it inadmissible. Mr. Bernhard's testimony about the Trust's reliance on
18 his advice is entirely based on his opinion, and without facts upon which his opinion is based. (Trust
19 MSJ Exh. 2 ¶ 4) Nevada law excludes opinion testimony except when "rationally based on the
20 perception of the witness." NRS 50.265(1). Nevada's rule mirrors Federal Rule of Evidence 701, and
21 "federal law is instructive" in its interpretation. *Rossana v. State*, 113 Nev. 375, 380, 934 P.2d 1045.
22 1048 (1997).

23 While the Court may allow lay opinion testimony based on the witness' observations, the
24 witness must provide a foundation for those opinions and an opportunity for cross-examination. *See*
25 *Barnett v. Pa. Consulting Group, Inc.*, 35 F. Supp. 3d 11, 21 (D.D.C. 2014). Malek did not have an
26 opportunity to cross-examine Bernhard about the matters set forth in his declaration, or to establish
27 how he formed his opinion that the Trust relied on his advice. Additionally, testimony opining about
28 defendant's ultimate motivations is not helpful under FRE 701, and its corollary in NRS 50.265, and

1 thus inadmissible. *Barnett*, 35 F. Supp. 3d at 21 (excluding witness testimony opining about a
2 defendant's motivation), *citing U.S. v. Rea*, 958 F.2d 1206, 1216 (2d Cir. 1992). Mr. Bernhard's
3 opinion as to the Trust's motives in this case is unilluminating. (Trust MSJ Exh. 2) Additionally, the
4 facts necessary for the Court to ascertain the Trust's actual malice in filing a *lis pendens* on Malek's
5 property are already on the record in the form of Barbara Rosenberg's testimony. The Court should
6 deem Mr. Bernhard's opinion testimony inadmissible and disregard it.

7 **2. The Trust's Responses to Malek's Interrogatories Are Unverified and**
8 **Inadmissible.**

9 Barbara Rosenberg failed to properly verify the Trust's interrogatories used in Exhibit 1-B to
10 its motion for summary judgment, and those responses are therefore inadmissible. Nev. R. Civ. P.
11 33(b)(1) (requiring interrogatories to be answered under oath). The Trust elected to verify its
12 interrogatory responses under NRS 53.045. In doing so, it ignored NRS 53.045's requirement for
13 declarations to bear the date of their execution. (Trust MSJ Exh 1-B at 7) Barbara Rosenberg's
14 undated signature renders her verification defective under NRS 53.045, leaving the interrogatory
15 responses unverified.

16 Without proper verification, the Court cannot credit the Trust's interrogatory responses as
17 admissible evidence. Other courts have held that unverified interrogatories are inadmissible. *Agha v.*
18 *Secretary of Army*, Case No. C-85-20693(SW), 1992 U.S. Dist. LEXIS 18936 at *18 (N.D. Cal. Oct.
19 26, 1992) (finding unauthenticated interrogatory responses inadmissible); *see Mary Kay, Inc. v. Weber*,
20 601 F. Supp. 2d 839, 850 (N.D. Tex. 2009). Similarly, as the Trust failed to comply with the
21 requirements of Nevada Rule of Civil Procedure 33 and produced unverified interrogatory responses,
22 the Court should disregard its putative evidence.

23 ..
24 ..
25 ..
26 ..
27 ..
28 ..

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that one this 5th day of May, 2015, pursuant to NRCP 5(b), I served via the Eighth
3 Judicial District Court electronic service system and to be placed in the United States Mail, with first
4 class postage prepaid thereon, and addressed the foregoing **OPPOSITION TO PLAINTIFF /**
5 **COUNTERCLAIM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** and all
6 attachments to the following parties:

7
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Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA)
ROSENBERG LIVING TRUST,)

Plaintiff,)

vs.)

Case No. A689113
DEPT. NO. I

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

Defendants.)
_____)

DEPOSITION OF MICHAEL TASSI

LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015

Reported by: Johanna Vorce, CCR No. 913

JOB NO.: 235400

1 A. Yes.

2 Q. Do you know if the City of Henderson's website has
3 changed at all regarding zoning maps in the last two years?

4 A. Are you talking about process or actual website
5 itself?

6 Q. Process of accessing zoning maps through the
7 website.

8 A. I don't know for sure.

9 Q. Okay.

10 A. I don't believe so, but I don't know for sure.

11 Q. You're not aware of any changes that have
12 occurred?

13 A. I am not aware, no.

14 Q. Have you personally been on the Henderson's city
15 website and accessed zoning maps online?

16 A. Yes.

17 Q. And you did that also in 2013; is that correct?

18 A. Yes.

19 Q. If you were to get on the internet right now, how
20 long would you say it would take you to access a zoning map
21 of a particular property in the City of Henderson?

22 A. Maybe five minutes.

23 Q. Would you say that's short end or the long end of
24 that time?

25 A. I would say that's probably the long -- the long

1 end.

2 Q. You could do it quicker than five minutes; is that
3 correct?

4 A. I could do it quicker, yes.

5 Q. And if you access the zoning maps on the website,
6 is it initially like a map of the entire zoning for the
7 entire City of Henderson?

8 A. When you go on our interactive website, yes,
9 that's -- that's the first screen you see is the entire City
10 of Henderson. You have to zoom into the parcel that you're
11 looking for.

12 Q. But you can do that with the online function of
13 the website, zoom in and look at a particular property --

14 A. Yes, you can.

15 Q. -- is that correct?

16 A. That's correct.

17 Q. We have talked a little bit about the particular
18 zoning change at issue here, which we identified through
19 Exhibit B as the zoning change ZCA-06-660018-A15, pertaining
20 to property adjacent to the Ninth Hole Golf Course at
21 MacDonald Highlands, correct?

22 A. Correct.

23 Q. As it pertains to that property specifically, is
24 it your understanding that that final zoning ordinance
25 change was ultimately recorded with the recorder's office?

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.

1 Q. Where did that one to two weeks come from?

2 A. In talking with our GIS Department, in their
3 experience, it takes -- it's usually faster. But two weeks
4 is kind of the outside. So I guess that would be the answer
5 to your question. Two weeks is typically the longest.

6 Q. So even though you have not found anything that
7 shows exactly when this particular zoning change was updated
8 on the maps, in speaking with your GIS experts, they have
9 indicated that the outside frame as to when this is usually
10 updated on the website is two weeks; is that correct?

11 A. That's correct, yes.

12 Q. So if the physical maps were updated on
13 January 24th, 2013, two weeks following would have been
14 sometime in mid February 2013, correct?

15 A. That's correct.

16 Q. So based upon your discussion with your GIS
17 experts and your knowledge as the planning manager, these
18 maps were more than likely available online in March 2013,
19 correct?

20 A. Correct.

21 (Defendants' Exhibit E was marked
22 for identification.)

23 BY MR. GUNNERSON:

24 Q. I'm handing you what I've marked as Exhibit E.
25 What it is is it's a handful of screen shots from the

1 Q. So it's instantaneous?

2 A. It is.

3 Q. Thank you.

4 Now, you had also discussed the hearing process
5 regarding planning meetings and city council meetings
6 regarding zoning changes.

7 Are you aware of instances where people have tried
8 to communicate directly with the planning department about
9 zoning changes?

10 A. Yes.

11 Q. Were there any such communications in the case of
12 the rezoning for APN:178-28-520-001?

13 A. I did look at the staff report in the -- in the
14 back of documentation for that specifically to see who
15 received notices. And then the process is when we send out
16 our public hearing notices, we send them out on yellow
17 cards. And on that yellow card, it goes to whoever is the
18 owner of that property. And they can write -- there's check
19 boxes, I support I oppose. We had two of those yellow cards
20 submitted back to us and both of those were in support.

21 Q. Do you recall receiving any communication opposing
22 the change to the zoning for this lot?

23 A. No.

24 Q. Do you recall at any time between January 1st and
25 say July 1st, 2013, whether you or anyone at the planning

1 department had any communication with Barbara Rosenberg?

2 A. Not that I'm aware of. I -- I did not.

3 Q. Do you recall if you or anyone at the planning
4 department for the same time period, between January 1st,
5 and July 1st, 2013, received any communication from David
6 Rosenberg?

7 A. Not that I recall, no.

8 Q. And basically the same question. Do you know if
9 you or anyone at the planning department had any
10 communication from Fredric Rosenberg from January 1st to
11 July 1st, 2013?

12 A. No.

13 MR. DEVOY: I have nothing further.

14 FURTHER EXAMINATION

15 BY MR. GUNNERSON:

16 Q. I have one followup question.

17 Again, Spencer Gunnerson.

18 When the map is available -- you've talked about
19 it being available up front at the front desk.

20 Just to confirm, I don't know if we got this in
21 the record yet.

22 Once it's at the front desk, it's available to
23 anyone who walks in and wants to view it, correct?

24 A. That's correct.

25 MR. GUNNERSON: I have nothing further.

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CLARK COUNTY, NEVADA

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ROSENBERG LIVING TRUST,)
)
Plaintiff,)

vs.)

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

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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

1 Q. What did you speak with your son about
2 regarding --

3 A. Just the general mechanics of a
4 deposition.

5 Q. Did you speak about any of the
6 substantive material issues in the litigation?

7 A. No.

8 MS. CLINE: Can you just give her more
9 information on what you mean by substantive
10 material issues?

11 MR. GUNNERSON: That's fine.

12 BY MR. GUNNERSON:

13 Q. Have you spoken to anyone else besides
14 your husband or your son?

15 A. Aside from my lawyers?

16 Q. Of course. Not including your
17 lawyers.

18 A. Not that I can think of.

19 Q. What do you do for a living?

20 A. I am a realtor.

21 Q. How long have you been a realtor?

22 A. About 25 years.

23 Q. And is that a realtor in California?

24 A. Yes.

25 Q. Do you have a real estate license in

1 BY MR. GUNNERSON:

2 Q. Do you own any other homes besides
3 your home at Via la Cuesta and the subject
4 property?

5 A. Yes.

6 Q. Where else do you own a home?

7 A. We own Lairmont.

8 Q. You are talking about 590 Lairmont in
9 MacDonald Highlands?

10 A. Yes.

11 Q. For the purposes of this deposition,
12 if I just call that the subject property, would
13 that be sufficient to understand what we are
14 talking about?

15 A. Yes.

16 Q. Other than the subject property and
17 your property at Via la Cuesta, where else do
18 you own a home?

19 A. We own a home in Los Alamitos,
20 California, we own two condos in Manhattan
21 Beach, and a house in Hermosa Beach.

22 MS. CLINE: Just to clarify, you are
23 asking whether or not the Rosenbergs themselves
24 or the Rosenberg Trust?

25 MR. GUNNERSON: That's a great point.

1 BY MR. GUNNERSON:

2 Q. Because the Plaintiff in this case is
3 the trust and yet often times the trust don't do
4 things, normally people who are parties to the
5 trust are the ones that do things. I will be
6 better clarifying it.

7 At this point, let me differentiate
8 between the two. The homes and properties you
9 just told me about, are those homes owned by the
10 Rosenbergs themselves or by the trust?

11 A. Some are owned by the trust and some
12 are just by the Rosenbergs, and I really don't
13 know which right now.

14 Q. That's fair.

15 Of the other properties you informed
16 me of the Los Alamitos, the Manhattan Beach, and
17 the Hermosa Beach properties, are any of those
18 on golf courses?

19 A. No.

20 Q. When did you first begin looking for
21 property in Nevada?

22 A. We first started thinking about it in
23 2009.

24 Q. What was the reason for starting to
25 think about property purchases in Nevada?

1 Q. Were you the sole drafter of the
2 letter?

3 A. I was the main drafter of the letter.

4 Q. The second paragraph says, "Based on
5 the current conditions of the home, the view is
6 not facing the Las Vegas Strip." What were you
7 meaning by that?

8 A. There is a head-on Las Vegas Strip
9 view where you look out your window and bam,
10 there is the view. This is not a bam,
11 straight-out Las Vegas Strip view. This is a
12 beautiful view of the strip, but it is not in
13 your face.

14 Q. When you say the view is not facing
15 the Las Vegas Strip, it doesn't mean there is
16 not a view of the Strip, only that it doesn't
17 directly face the Strip; is that correct?

18 A. Exactly.

19 Q. You also state in that same sentence,
20 if you go on, "The home next door is halfway
21 built (bank owned)," and then it says, "The
22 piece of land next door will be starting
23 construction soon." Do you see that?

24 A. Yes.

25 Q. That piece of land next door, are you

1 referring to the Malek property at --

2 A. Yes.

3 Q. Let me finish.

4 Were you referring to the Malek
5 property at 594 Lairmont Place?

6 A. Yes.

7 Q. How did you know the construction
8 would be starting soon?

9 A. Well, he had bought the lot. I
10 assumed that he was going to build on it.

11 Q. You hadn't spoken to him or anybody
12 else about construction timing for the Malek
13 property?

14 A. No.

15 Q. You didn't know if he was going to be
16 flipping the property or sitting on it for a
17 long time without building, you didn't know what
18 he was going to do with it, correct, at the time
19 you drafted the letter?

20 A. Correct.

21 Q. You hadn't spoken to the HOA or the
22 developer about Malek's plans to develop the
23 property, correct?

24 A. Correct.

25 Q. At this time?

1 grouping on which it was provided.

2 BY MR. GUNNERSON:

3 Q. Did you get a chance to look at those?

4 A. Yes.

5 Q. Are all of these emails true and
6 correct copies of emails in which you were
7 either the sender of the email or the receiver
8 of the email?

9 A. It appears so.

10 Q. If we could go on to the first page --
11 it appears if you go three pages down to what is
12 on the bottom that says PLTF 3304, it looks like
13 if you glance at these, this appears to be where
14 you are trying to find the right contact,
15 correct?

16 A. Yes.

17 Q. And then in fact, while you are in
18 that process, the email you received at the
19 bottom of that page from Elana Escobar states,
20 "Good morning, Lisa -- actually, this isn't an
21 email to you. It is to you but it is addressed
22 to Lisa and you are copied on it. "Good
23 morning, Lisa. This is a Bank of America
24 property. It is not listed at this time."

25 Is that what it states?

1 A. Yes.

2 Q. On February 21, 2013, it was not
3 listed, right?

4 A. Right.

5 Q. At the top of that page, it states
6 Kelli Barrington is going to be the contact on
7 the file, correct?

8 A. Yes.

9 Q. If you go to the next page, it
10 identifies PLTF 3294 -- actually, that appears
11 to be similar emails to what we just looked at.
12 So let's go to the first page, PLTF 3311. If
13 you look at the email sent by Kelli Barrington,
14 it states, "At this time, the seller is not
15 ready to negotiate offers." Do you see that?

16 A. Yes.

17 Q. And that they anticipated completion
18 of their due diligence and marketing
19 preparations to be completed within the next few
20 weeks at the latest, correct?

21 A. Yes.

22 Q. And she states she will contact you
23 when they are ready to begin negotiations,
24 correct?

25 A. Yes.

1 BY MR. GUNNERSON:

2 Q. I have handed you what has been marked
3 as Exhibit G. Do you see that?

4 A. Yes, I do.

5 Q. Do you know what that is?

6 A. Yes.

7 Q. Is this a true and correct copy of an
8 email from Kelli to you and then from you to
9 Kelli regarding the 590 Lairmont Place property?

10 A. Yes.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And it appears in the first email
14 that -- it appears in the email above from you
15 to Kelli, it appears you are reaching out to
16 find out when they are going to start
17 negotiations; is that correct?

18 A. Yes.

19 Q. That was on Tuesday, March 5th,
20 correct?

21 A. Yes.

22 Q. And then on Exhibit H, is this also a
23 true and correct copy of an email from you to
24 Kelli Barrington?

25 A. Yes.

1 Q. This is the next day on March 6th,
2 correct?

3 A. Yes.

4 Q. It states here you have been
5 attempting to contact her, correct?

6 A. Yes.

7 Q. You state in your email, "I left three
8 messages at your office to call me as to the
9 progress of Lairmont." Do you recall that?

10 A. Yes.

11 Q. Do you recall leaving those messages?

12 A. Yes.

13 Q. How often were you leaving messages
14 with her regarding this property?

15 A. I was not getting responses and I am
16 very serious about the property.

17 Q. And in fact, you stated at the end of
18 your email, "We would like to take the next step
19 to acquire the property," correct?

20 A. Yes.

21 Q. If you go to Exhibit I, is this also a
22 true and correct copy of an email from Kelli
23 Barrington to you from March 7, 2013?

24 A. Yes.

25 Q. And in her email to you, it states,

1 "When we talked previously -- this is on the
2 second line -- I indicated that this process
3 could take several weeks," and then is this her
4 way of telling you don't worry, we are still
5 working on it, it is just taking time?

6 A. I don't know what she intended by
7 saying that.

8 Q. How did you take that? What did you
9 take she was telling you with that?

10 A. I took it as to understand that she
11 understood that I had sincere interest in the
12 property and she would get back to me as soon as
13 I would be able to pursue acquiring the
14 property.

15 Q. And then a couple lines down, it says,
16 "Due to the restrictions in this neighborhood,
17 you will need to work with a realtor." Do you
18 see that?

19 A. Yes.

20 Q. Was this the first time you recall
21 being informed that you are going to need to
22 work with a realtor or had you known that prior
23 to this email, if you recall? If you don't
24 recall, that's fine.

25 A. I don't recall -- actually, in the

1 parcels, which is what I was calling the bare
2 lot, which as you can see from Paragraph 17 is
3 the .34 acre portion that was a part of Golf
4 Course 9 which was purchased by Malek. Are we
5 on the same page?

6 A. Yes.

7 Q. On Number 18, it says, "Situated on
8 the golf parcel were certain easements." Do you
9 see that?

10 A. Yes.

11 Q. What easements are you claiming were
12 on the golf parcel?

13 A. I don't know. I am not an attorney.

14 Q. So you don't know what this is
15 referring to when it says there were easements
16 on the golf parcel?

17 A. No.

18 Q. You are a real estate agent, correct?

19 A. Yes, but I am not an attorney. This
20 is a legal document.

21 Q. That is okay. You are a real estate
22 agent, correct?

23 A. Yes.

24 Q. And as a real estate agent, you looked
25 at many title reports?

1 A. Yes.

2 Q. When you look at title reports, do you
3 look at easements on the title reports?

4 A. Yes.

5 Q. You understand what an easement is?

6 A. I know what an easement is.

7 Q. Without looking at this then, just me
8 asking you, are you claiming there are certain
9 easements on the bare lot or what is referenced
10 in your complaint as the golf parcel?

11 A. I don't know what is meant here
12 because I am not a lawyer. I know what an
13 easement is. I know what it does, but I don't
14 know what it is claiming here.

15 Q. Let's get away from the complaint real
16 quick. I just want to know you personally, do
17 you have any -- let me phrase this correctly.

18 Are you aware personally of any
19 easements on the bare lot?

20 A. I would assume there is an easement
21 because it is part of the golf course and can't
22 be used to build.

23 Q. You assume there are certain easements
24 on there. Do you think there is a restriction
25 for building an easement on that property?

1 A. It has to do with in terms of Bank of
2 America, it has to do not with his purchasing it
3 but their failure to tell us about his
4 purchasing it.

5 Q. Fair enough. Thank you.

6 Is there anything else other than
7 that?

8 A. There might be. I don't know.

9 Q. You are unaware of anything else,
10 because this is your chance to tell me if there
11 is. Are you aware of anything else?

12 A. No, not right this minute.

13 Q. Hopefully, it is before we end the
14 deposition because we need to proceed
15 accordingly.

16 Let's go to the sixth claim for relief
17 which is real estate broker's violations of NRS
18 645. Again, this is an attempt to clarify
19 because what is stated here is that it is on the
20 newer version which I think is fairly identical
21 to the older one. It states that in Number 104,
22 do you see that?

23 A. Yes.

24 Q. Defendants MacDonald Highlands Realty
25 and Michael Doiron violated the duties and

1 obligations as defined in NRS 645.252 and
2 additional provisions of NRS 645.

3 I don't know if you know this or not,
4 but I have to ask. Do you know what additional
5 provisions of NRS 645 were violated by the
6 realty company and Michael Doiron?

7 A. No, but my attorneys do.

8 Q. Your attorneys know but you do not?

9 A. No.

10 Q. So I will have to ask them.

11 A. Good idea.

12 Q. You are unaware of any other
13 provisions sitting here today, correct?

14 A. Any other provisions?

15 Q. Let me ask you this: Back to what we
16 were talking about in 104, you said your
17 attorneys would know, and I want to make sure I
18 have your knowledge. You are not aware of any
19 additional provisions, are you?

20 A. I don't know what NRS 645 is. I don't
21 know what 645.252 is. I am not a lawyer.

22 Q. That is fair enough.

23 So the answer would be you do not know
24 what other provisions are violated?

25 A. That's correct.

1 A. I am not a golfer. I don't know.

2 Q. In fact, if you were to view it today,
3 it appears to be raw desert land; is that
4 correct?

5 A. It looks -- yeah, I guess.

6 Q. You say you are not a golfer. Do you
7 know if that land is inbounds or out of bounds
8 for the 9th hole?

9 A. I don't know.

10 Q. So if that bare lot was out of bounds
11 for the hole, then wouldn't you agree that
12 selling that property to Malek would not be a
13 sale of the 9th hole because it is out of bounds
14 of the 9th hole?

15 A. I don't know what he is going to do
16 there, so I don't know how it is going to affect
17 the 9th hole. I don't know what they would say
18 how they would have to reconfigure it based on
19 what he was doing, so I don't know. You are
20 asking me will it purely stay the way it is. I
21 have no idea.

22 Q. That is not what I am asking.

23 What I am asking is does the sale of
24 that desert land which may be outside the
25 out-of-bounds markers for the hole, will that

1 lis pendens on the same property, 594 Lairmont?

2 A. I don't know about that.

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

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

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

13 A. Yes.

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

16 A. Yes.

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

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

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

25 MS. CLINE: Objection. Calls for

1 speculation, form.

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

4 THE WITNESS: I am not a lawyer.

5 BY MR. DEVOI:

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

9 A. I would not be unhappy, no.

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

12 A. Yes.

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

20 A. After I sold a house?

21 Q. Yes.

22 A. No.

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

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Plaintiff,)

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

**CERTIFIED
TRANSCRIPT**

DEPOSITION OF SHAHIN SHANE MALEK

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

On Tuesday, January 27, 2015
At 1:02 p.m.

Reported by: Leah D. Armendariz, CCR No. 921

1 MR. DEVOY: I want to object about
2 misstating former testimony about not finding
3 anything he liked.

4 You still have to answer the question.

5 THE WITNESS: Okay.

6 BY MS. HANKS:

7 Q. It's okay. I'll go ahead and repeat. I'm
8 just kind of summarizing what you said just to make
9 sure I understood.

10 My understanding is you had -- you and
11 your wife had looked for homes in the community,
12 couldn't really find anything that you cared for or
13 liked so you thought about building your own home?

14 **A. We decided if we build, we could probably**
15 **incorporate all the things that we needed into the**
16 **home.**

17 Q. Sure. And at some point, you were talking
18 to an agent at Blue Heron who was explaining she had
19 a client that had bought a parcel or a lot in
20 MacDonald Highlands and was looking to sell it?

21 **A. Yes.**

22 Q. And thought that you might be interested
23 in it?

24 **A. Yes.**

25 Q. And it's your understanding that's the

1 594 Lairmont that you eventually purchased?

2 **A. Yes.**

3 Q. Now, you indicate she also mentioned
4 something about he was going to buy another parcel
5 to extend it?

6 MR. DEVOY: Objection. Vague.

7 You still have to answer.

8 THE WITNESS: Yes.

9 BY MS. HANKS:

10 Q. And what was your understanding of what
11 other parcel?

12 **A. Well, there was a vacant piece of golf**
13 **course in front of the building -- in front of the**
14 **other lot. Not the building, I apologize. In front**
15 **of the other lot, that was separated from trees from**
16 **the actual golf course. It was just vacant land**
17 **that was just sitting there.**

18 Q. Okay. And the conversation you had with
19 her, it was her understanding based on her
20 communications with her client that he was thinking
21 about purchasing that?

22 **A. Yeah, I think that was her plan -- that**
23 **was their plan.**

24 Q. Okay. But at the time, you were talking
25 to him, he had not owned it, correct?

1 **year -- January, February the following year.**

2 Q. January, February 2013?

3 **A. Yes.**

4 Q. And what -- when you say the area had to
5 be rezoned, what was your understanding of what the
6 area was zoned for at the time before you purchased
7 it?

8 MR. DEVOY: Objection. Vague as to what
9 the area is.

10 You can answer if you understand.

11 THE WITNESS: I think I understand.

12 You're talking about the golf parcel?

13 BY MS. HANKS:

14 Q. Golf parcel.

15 **A. It was called a golf parcel, so I'm**
16 **assuming it was as part -- you know, as part of the**
17 **golf course.**

18 Q. And when they said they rezoned it, it was
19 your understanding they were rezoning it to what?

20 **A. To be residential.**

21 Q. Did anyone explain to you -- I know you
22 understood there was going to be a hearing of some
23 sort. Did anyone explain to you that notice would
24 be sent to other lot owners within the community
25 about the rezoning?

1 **DECL**

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14 SHAHIN SHANE MALEK

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

11 THE FREDERIC AND BARBARA)
12 ROSENBERG LIVING TRUST,)

13 Plaintiff,)

14 vs.)

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

28 Defendants.)

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

**DECLARATION OF JAY DEVOY IN
SUPPORT OF DEFENDANT SHAHIN
SHANE MALEK'S OPPOSITION TO
PLAINTIFF / COUNTERCLAIM
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 19, 2015
Hearing Time: 9:00 am

25 I, James ("Jay") DeVoy, am over 18 years of age, and competent to testify about the matters set forth
26 in this declaration if called to do so at trial.

1 1. I am an attorney licensed in the State of Nevada, am of counsel to The Firm P.C., and
2 represent Defendant and Counterclaimant Shahin Shane Malek in the above-captioned action, and
3 have personal knowledge of the matters set forth herein on that basis.

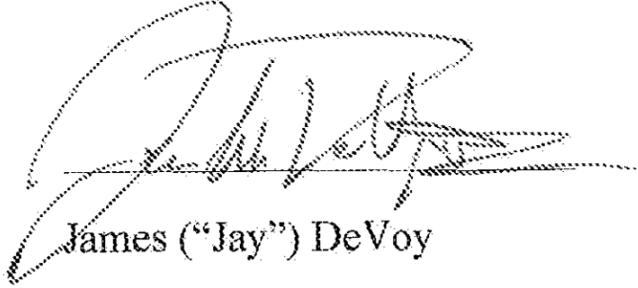
4 2. Attached as Exhibit 1 is a true and correct copy of Shane Malek's fourth supplemental
5 initial disclosures, transmitted to counsel for all parties in this case on March 16, 2015.

6 3. Attached as Exhibit 2 is a true and correct copy of The Fredric and Barbara Rosenberg
7 Living Trust's ninth supplemental initial disclosures, transmitted to counsel for all parties in this
8 action on March 10, 2015.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11
12 Executed on May 5, 2015 in Las Vegas, Nevada.

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James ("Jay") DeVoy