

EXHIBIT B

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 **1. 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 28 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: BH FR

Property Address: 590 Lairmont Place

SELLER(S) INITIALS: ML

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1 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

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

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

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

2 3. SALE OF OTHER PROPERTY:

This Agreement

~~RE~~ is not OR.

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

Sold Property

☐ is currently listed

☐ is not-OR- ☐ is

presently in escrow with

Escrow Number: _____ **Proposed Closing Date:** _____

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

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

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

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

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS:

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS:

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1 5. ESCROW:

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

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

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

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

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

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

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

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

36 A. TITLE AND ESCROW FEES:

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

44 B. PRORATIONS:

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

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

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR FR

Property Address: 690 Lairmont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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

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

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 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.

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

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: NR

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

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

12
13 **G. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home
14 Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with
15 ☐ Seller -OR- ☒ Buyer will pay for the Home Protection
16 Plan at a price not to exceed \$ 790.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make
17 any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for
18 ordering the Home Protection Plan.

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

25
26 **9. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"),
27 Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale
28 package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's
29 receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the
30 date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of
31 Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement
32 pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his
33 authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation,
34 Buyer shall promptly receive a refund of the 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 ☐ Pest Notice Form (not required by Nevada law)
45 ☐ Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer
46 ☐ Open Range Disclosure (NRS 113.065)
47 ☒ Seller Real Property Disclosure Form (NRS 113.130)
48 ☐ Other (list) _____

49
50
51 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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11. ADDITIONAL DISCLOSURES:

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

B. In addition, for NEW CONSTRUCTION, to the extent applicable, Seller will provide: Public Offering Statement (NRS 116.4108); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridor (NRS 113.070); Water/Sewage (NRS 113.060); Impact Fees (NRS 278B.320); Surrounding Zoning Disclosure (NRS 113.070); FTC Insulation Disclosure (16 CFR 460.16); and Other: _____

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

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

12. BUYER'S DUE DILIGENCE:

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

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

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Lalmont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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

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

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

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

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

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

44
45 18. DEFAULT:

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

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

54
55
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: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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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: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: FR

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

36 24. SIGNATURES, DELIVERY, AND NOTICES:

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

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

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

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

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

51 Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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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, 2013 Signed: Stephen McGill Buyer's Agent: Stephen McGill

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

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 580 Lalmont Place

SELLER(S) INITIALS: MR

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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: Freddie 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: Slobhan McGill
 Company Name: Realty ONE Group Agent's Public ID: 214400
 Phone: 702-898-7575 Office Address: 2831 St. Rose Parkway # 100
 Email: slobhanmcgill@gmail.com City, State, Zip: Henderson, NV 89052
 Fax: 702-837-7210

Seller's Response

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

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

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

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

☐ is not -OR-

☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Seller's Signature: [Signature] Seller's Printed Name: Mark Luntel Date: 3/13 Time: 3:33 ☐ AM ☐ PM

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

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

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

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

 is a licensed real estate agent in the State(s) of , and has the following interest,

direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest

In Seller (if Seller is an entity): (specify relationship)

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

Buyer's Name: Barbara and Freddie Rosenberg BUYER(S) INITIALS: [Initials]

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

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ADDENDUM NO. 1 TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Barbara and Fredric Rosenberg
as Buyer(s) and Bank of America
as Seller(s), dated March 10, 2013
covering the real property at 590 Laimont Place Henderson, NV 89012
, the ☒ Buyer ☐ Seller hereby proposes that the Purchase
Agreement be amended as follows:

Amended purchase price to be \$2,302,000.00.
All other terms to remain the same.

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

Barbara Rosenberg 3.19.13
☒ Buyer ☐ Seller Date

FL 10:45
☒ Buyer ☐ Seller Time

Acceptance:
hm 3-21-13
☐ Buyer ☒ Seller Date

☐ Buyer ☐ Seller Time

Prepared by: Stobhan McGill 702-349-5252
Agent's Name Phone

ADDENDUM NO. 1
TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Barbara Rosenberg, Fredric Rosenberg
as Buyer(s) and Bank America NA
as Seller(s), dated March 13, 2013

covering the real property at _____, the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:

1) Buyer acknowledges and agrees to enter into a side agreement with the Master Developer for an extension of the construction clock to complete requirements of the exterior of the property.

☐ ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached _____ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

☒ Buyer ☐ Seller

3.14.13
Date

☒ Buyer ☐ Seller

11 am
Time

Acceptance:

☐ Buyer ☒ Seller

3-21-13
Date

☐ Buyer ☐ Seller

Time

Prepared by:

Agent's Printed Name

Phone

Addendum to Purchase Agreement 9/12

MacDonald Highland Realty 552 S Stephanie St. Henderson, NV 89012
Michael Dalton

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Phone: (702) 614-9100

Fax: (702) 614-9200

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EXHIBIT C

REO # _____

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 BIA ("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) BRSELLER (Initials) FR

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 CANCELLATION 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 CLOSES 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) BM 7A

SELLER (Initials) [Signature]

(C) ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO ENCROACHMENTS, EASEMENTS, BOUNDARIES, ENCROACHMENTS 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

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

Reference to the "Seller" in this Section 1 of this Addendum shall include the Seller and the designated Parties (as defined in Section 25 of this Addendum and all references in this Addendum to the designated Parties or "DESIGNATED PARTIES" shall have the meaning set forth in Section 25).

Buyer initials AK 2A

2. **Effective Date:** The date of Seller's execution of this Addendum shall be the "Effective Date" of the Agreement, notwithstanding any prior understanding or agreement with respect to the intended terms and conditions herein. The Agreement shall be null and void if the Agreement signed by the Buyer is not actually received by the Seller before the Seller executes a competing offer, or gives verbal or written notice of revocation to the Buyer, the Buyer's agent or attorney, or the listing agent. The Agreement must be approved by the Seller's management, and it must be signed by all parties in order to be binding.

3. **Purchased Price:**

Purchased Price: \$2,160,000.00
Down Payment: \$325,000.00
Loan Amount(mo): \$ N/A

4. **Payment Method/Deposit:**

If applicable, escrow will be opened by both parties immediately following the Effective Date with an escrow/closing agent acceptable to the Seller. The Buyer's earnest 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:** The Agreement (check one): () is (X) 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):

N/A Conventional
N/A FHA
N/A VA
N/A Other (specify): _____

(a) If the Agreement is contingent on financing, the Buyer shall supply for a loan in the amount of \$ N/A with a term of N/A years, at prevailing rates, terms and conditions. The Buyer shall complete, and submit to a mortgage lender an application for a mortgage loan containing the terms and conditions of the loan, and within three (3) business days of the Effective Date, and shall use diligent effort to obtain a mortgage loan satisfactory within fifteen (15) calendar days from the said date. If, despite the Buyer's diligent efforts, the Buyer cannot obtain a mortgage loan consummated by the specified date, then either the Buyer or the Seller may terminate the Agreement by giving written notice to the other Party. Two Buyer's notice upon termination shall be a proper application, proof of the application date, and a copy of the denial letter from the mortgage lender. In the event of a proper termination of the Agreement under this paragraph, the earnest money deposit shall be returned to the Buyer and the parties shall have no further obligation to each other under the Agreement. The Buyer agrees to

BUYER (initials) AK 2A

SELLER (initials) AK

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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 just 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 its 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 offers shall not be subject to any contingency, unless specifically described in Section 10 of this Addendum.

(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

Fumigation/Chemical only: \$ 0

Termite Repairs (etc): \$ 0

Pest Report Fee (etc): \$ 0

Other: \$ 0

TOTAL: \$ 0

BUYER (Initials) [Signature]

SELLER (Initials) [Signature]

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

7. Closing of the Purchase Closing Date

(a) It is agreed that time is of the essence with respect to all dates specified in the Agreement and any addenda, riders, or amendments thereto, meaning that all deadlines are intended to be strict and absolute. The Agreement shall terminate automatically, and without notice, if it is not consummated by the Closing Date, or any extension thereof.

(b) The closing shall take place on or before April 30, 2013, or within five (5) calendar days of final loan approval by the lender, 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 office 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 this Section 7 of this Addendum or in any extension, the Agreement is automatically terminated and the Seller shall retain any earnest money deposit as liquidated damages.

8. Extension of Closing Date. For Delay Payment: 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 a per diem of not less than (1/10th) of one percent (1%) of the purchase price, but not less than \$50.00 per day, towards Seller's carrying 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 interest per diem payment as liquidated damages. This provision is not applicable if Buyer obtains FHA/VA financing for the purchase, or for a loan created by Seller.

Buyer initials BM JH

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

10. Additional Terms or Conditions:

11. Assignment:

BUYER (Name) BM JH

SELLER (Name) _____

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days of the Effective Date. The Seller agrees to make 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 rejection in the covenants, conditions and restrictions, and/or bylaws.

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

BUYER (Name) BM JH

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12. Inspections:

- (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 reliance, 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 indemnify 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 government building or zoning inspectors 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 winterized the Property and the Buyer desires to have the Property inspected, the listing agent will have the Property dewinterized prior to inspection and rewinterized after inspection. The Buyer agrees to pay this expense in advance to the listing agent. The amount paid under this provision shall be nonrefundable.

Within five (5) calendar days of receipt of any inspection report prepared by or for the Buyer, but not later than ten (15) 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 no cost, upon 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 situations that are applicable, a structural, electrical, mechanical or termite 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, FORFEITURE, TAX SALE, OR SIMILAR PROCESS, AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT

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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 VICES 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) 

existence of the old is around the Property; and (c) Buyer has not, in any way, relied upon any representations or warranties of Seller, or Seller's employees, officers, directors, representatives, brokers, or agents concerning the past or present existence of the old or any environmental hazards in or around the Property.

In the event the Property is affected by an environmental hazard either Party may terminate the Agreement. In the event the Seller decides to sell the Property to the Buyer and the Buyer agrees to purchase the Property (as evidenced by Buyer and Seller proceeding to close) despite the presence of an environmental hazard, the Buyer releases the Seller and the Indemnified Parties from any Claims arising out of or relating in any way to the environmental hazard or violations of the Property, and Buyer agrees to also execute as public record general release in writing, in a form acceptable to Seller, related to the environmental hazard if Seller so requests. In the event the Buyer elects not to exercise the additional release, Seller may, at the Seller's sole discretion, terminate the Agreement upon notice given to Buyer.

In the event the Seller has received official notice that the Property is in violation of building codes or similar laws or regulations the Seller may terminate the Agreement or delay the date of closing or the Buyer may terminate the Agreement. In the event the Agreement is terminated by either Buyer or Seller pursuant to this Section 3, any earnest money deposits will be returned to the Buyer. If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court or similar enforcement body, and neither the Buyer nor the Seller rescinds the Agreement, the Buyer agrees (a) to accept the Property subject to the violations, and (b) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceedings. Buyer agrees to execute the closing any and all documents necessary or requested by any agency with jurisdiction over the Property and to resolve the deficiencies as soon as possible after the closing.

The closing parties shall execute acknowledgment by the Buyer that Buyer had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Buyer at the time of closing. The Buyer agrees that Seller and the Indemnified Parties shall have no liability for any Claims that the Buyer or the Buyer's successors or assigns may incur as a result of contamination or other defects that may now or hereafter exist with respect to the Property.

The Seller may be exempt from filing a disclosure statement regarding the condition of the Property because the Property was acquired through foreclosure, death-in-life of foreclosure, foreclosure, tax sale, court-ordered partition or similar process. In the event an exemption allowed by law, Buyer waives any right to receive a disclosure statement from Seller, and Buyer agrees to execute a separate waiver, in a form acceptable to Seller, if the law requires the waiver to be in a separate document.

Buyer initials

[Handwritten signature]

14. **Repairs:** All responsibilities for good existing conditions and all repairs shall be completed by a vendor approved by the Seller, and shall be subject to the Seller's satisfaction only. If the Seller has agreed to pay for completion of wood infesting conditions, the Seller shall retain only active infestation. Neither the Buyer, nor the representative, shall enter upon the Property to make any repairs unless treatment prior to closing without the prior written consent of the Seller. To the extent that the Buyer, or its representative, makes repairs and/or treatments to the Property before closing the Buyer hereby agrees to release and indemnify the Seller and the Indemnified Parties from and against any and all Claims relating in any way to the repairs and/or treatments, and Buyer further agrees, at Seller's request, to execute a separate release and indemnification in a form acceptable to the Seller prior to the completion of any such repairs or treatments. The Buyer acknowledges that all repairs and treatments provided for the benefit of the Seller and not for the benefit of the Buyer unless and until the sale of the Property closes in accordance with the Agreement, and if Buyer chooses Buyer shall acknowledge that the Buyer has inspected all areas given the opportunity to inspect all repairs and treatments. Any repairs or treatments made, or caused to be made, by the Seller shall be completed prior to the closing. Under no circumstances shall the Seller be required to make any repairs or treatments after the Closing Date. The Buyer acknowledges that the Seller is not responsible for the condition of the Property and with all repairs and treatments to the Property. Further, if Buyer chooses, Buyer waives all Claims arising out of settling in any way to the condition of, or treatments or repairs to, the Property. Any

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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 opener, 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 thereto, 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 actual 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 leased by, or has

BUYER (Initials)

SELLER (Initials)

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 improvements 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 this 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 uninsurable, 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) 

SELLER (Initials) 

Revised 3/06

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

23. Representations and Warranties

In addition to Buyer's representations and warranties made elsewhere herein, such as those found in Section 13 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 the contents thereof, except as expressly set forth in Section 13 of this Addendum;
- (c) The Buyer is not relying on any representation or warranty from the Seller, or Seller's agents or brokers regarding the nature, quality, or workmanship of any repairs made by the Seller;
- (d) The Buyer will not occupy, or cause 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 cause 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 its parent company, subsidiaries, or affiliated companies. 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, appraiser, inspector, trustee, property inspection or preservation company, title company, representative, or vendor of Bank of America Home Loans, or its parent company, subsidiaries, or affiliated companies.

Buyer Initials 

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 confirmed 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 broker, or any other party, release the servicing of or repurchase such loan or the Property;
- (d) full payment of any property, fire or hazard insurance claim is not confirmed 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) 

- 11 -

SELLER (Initials) 

Revised 3/06

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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, servants, 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, judgments, 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 assessment, 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 RL

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) RL

SELLER (Initials) ML

- 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 hereunder, 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, 23, 25, 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 inuring to 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 the 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)

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SELLER (Initials)

PROCEDURES, 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, Court 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 attorneys' 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 BOLD OR CAPITALIZED LIKE THE 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 the date it is executed by Seller as set forth below.

BUYER(S):

Signature:

Date:

Print Name:

Address:

Telephone:

Fax:

Signature:

Date:

Print Name:

Address:

Telephone:

Fax:

BUYER'S AGENT:

Buyer's Agent Name:

BUYER (initials)

SELLER (initials)

Revised 3/06

SELLER:

BAC Home Loan Servicing, LP, a subsidiary of Bank of America, N.A. as Agent in Fact For:

By:

Fax:

Date:

SELLER'S AGENT:

Seller's Agent Name:

-15-

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

BUYER'S ATTORNEY:

Name: _____
Address: _____
Telephone: _____
Fax: _____

CLOSER:

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.: _____

Address: _____
Telephone: _____
Fax: _____

SELLER'S ATTORNEY:

Name: _____
Address: _____
Telephone: _____
Fax: _____

TITLE COMPANY:

Company Name: _____
Contact Person: _____
Telephone: _____
Fax: _____

BUYER (Initials) HL

SELLER (Initials) HL

EXHIBIT D

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

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

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Case No.: A689113
Dept. No.: I

11 Plaintiff,

OFFER OF JUDGMENT

12 vs.

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

21 Defendants.

22
23 TO: Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST;

24 TO: Howard C. Kim, Esq., KIM & ASSOCIATES, its attorneys.

25 Pursuant to N.R.S. 17.115 and Rule 68 of the Nevada Rules of Civil Procedure, Defendant
26 MICHAEL DOIRON, by and through her attorneys of record, KEMP, JONES, & COULTHARD,
27 LLP, hereby offers to have judgment entered against it in this action, in the total amount of FIVE
28 THOUSAND DOLLARS (\$5,000.00), inclusive of all attorneys fees and costs.

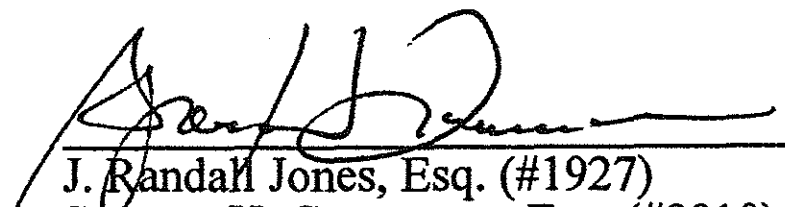
No partial acceptance of this Offer of Judgment may be made, and any attempt to accept only

1 No partial acceptance of this Offer of Judgment may be made, and any attempt to accept only
2 part of this Offer will be construed as a rejection of the entire Offer.

3 This Offer of Judgment is made for the purposes specified in N.R.S 17.115 and Rule 68, and
4 is not to be construed as an admission of anything whatsoever. This Offer of Judgment shall be
5 deemed withdrawn for the purposes of N.R.C.P. 68 and NRS 17.115 if not accepted by the
6 Defendant within ten (10) days from the date of service hereof.

7 DATED this 8th day of April, 2014.

8
9 Respectfully submitted by:

10
11 

12 J. Randall Jones, Esq. (#1927)
13 Spencer H. Gunnerson, Esq. (#8810)
14 KEMP, JONES & COULTHARD, LLP
15 3800 Howard Hughes Parkway
16 Seventeenth Floor
17 Las Vegas, Nevada 89169
18 *Attorneys for Defendants MacDonald Highlands*
19 *Realty, LLC, and Michael Doiron*

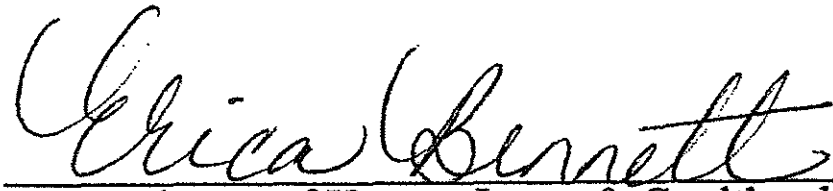
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2014, the foregoing **OFFER OF JUDGMENT** was served on the following persons by mailing a copy thereof, to:

Howard C. Kim, Esq.
Kim & Associates
1055 Whitney Ranch Drive, #110
Henderson, NV 89014


An employee of Kemp, Jones & Coulthard

Cu

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

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

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Case No.: A689113
Dept. No.: I

11 Plaintiff,

12 vs.

OFFER OF JUDGMENT

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

21 Defendants.

22
23 TO: Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST;

24 TO: Howard C. Kim, Esq., KIM & ASSOCIATES, its attorneys.

25 Pursuant to N.R.S. 17.115 and Rule 68 of the Nevada Rules of Civil Procedure, Defendants
26 MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company, and
27 MICHAEL DOIRON, by and through their attorneys of record, KEMP, JONES & COULTHARD,
28 LLP, hereby offer to have judgment entered against them in this action, in the total amount of

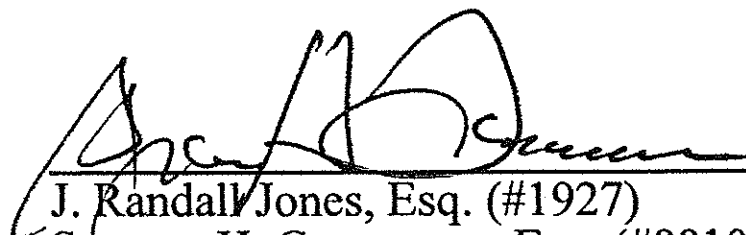
1 TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), exclusive of all attorneys fees, costs and
2 interest.

3 No partial acceptance of this Offer of Judgment may be made, and any attempt to accept only
4 part of this Offer will be construed as a rejection of the entire Offer.

5 This Offer of Judgment is made for the purposes specified in N.R.S 17.115 and Rule 68, and
6 is not to be construed as an admission of anything whatsoever. This Offer of Judgment shall be
7 deemed withdrawn for the purposes of N.R.C.P. 68 and NRS 17.115 if not accepted by the
8 Defendant within ten (10) days from the date of service hereof.

9 DATED this 29th day of January, 2015.

10 Respectfully submitted by:

11 
12 _____

13 J. Randall Jones, Esq. (#1927)
14 Spencer H. Gunnerson, Esq. (#8810)
15 KEMP, JONES & COULTHARD, LLP
16 3800 Howard Hughes Parkway
17 Seventeenth Floor
18 Las Vegas, Nevada 89169
19 Attorneys for Defendants MacDonald Highlands
20 Realty, LLC and Michael Doiron
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing **OFFER OF JUDGMENT** is hereby acknowledged
this 29th day of January, 2015.

HOWARD KIM & ASSOCIATES



Howard C. Kim, Esq.
Diana S. Cline, Esq.
Jacqueline A. Gilbert, Esq.
1055 Whitney Ranch Drive, Ste. 110
Henderson, Nevada 89014
Attorneys for Plaintiff

5800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

EXHIBIT E

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/15/15	DTB		0.50	\$ 175.00
01999	2	01/28/15	DTB		5.30	\$ 1,855.00
01999	2	01/29/15	DTB		1.10	\$ 385.00
01999	2	01/30/15	DTB		1.40	\$ 490.00
01999	2	02/02/15	DTB		0.90	\$ 315.00
01999	2	02/04/15	DTB		1.00	\$ 350.00
01999	2	02/09/15	DTB		0.30	\$ 105.00
01999	2	02/10/15	DTB		2.10	\$ 735.00
01999	2	02/11/15	DTB		3.10	\$ 1,085.00
01999	2	02/12/15	DTB		0.40	\$ 140.00
01999	2	03/10/15	DTB		1.30	\$ 455.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	03/12/15	DTB		1.10	\$ 385.00
01999	2	03/31/15	DTB		3.50	\$ 1,225.00
01999	2	04/01/15	DTB		3.40	\$ 1,190.00
01999	2	04/08/15	DTB		0.30	\$ 105.00
					25.70	\$ 8,995.00
01999	2	12/17/14	HNA		0.50	\$ 87.50
01999	2	12/18/14	HNA		1.10	\$ 192.50
01999	2	12/19/14	HNA		0.40	\$ 70.00
01999	2	01/13/15	HNA		1.30	\$ 227.50
01999	2	01/23/15	HNA		1.20	\$ 210.00
01999	2	01/28/15	HNA		1.30	\$ 227.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	02/02/15	HNA		2.10	\$ 367.50
01999	2	04/16/15	HNA		1.00	\$ 175.00
					8.90	\$ 1,557.50
01999	2	10/21/13	IPM		0.30	\$ 60.00
01999	2	01/28/14	IPM		4.10	\$ 922.50
01999	2	02/28/14	IPM		0.80	\$ 180.00
01999	2	06/20/14	IPM		4.00	\$ 900.00
01999	2	06/26/14	IPM		2.20	\$ 495.00
01999	2	06/27/14	IPM		1.80	\$ 405.00
01999	2	07/02/14	IPM		3.50	\$ 787.50
01999	2	07/08/14	IPM		5.40	\$ 1,215.00


MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	07/09/14	IPM		6.70	\$ 1,507.50
01999	2	07/11/14	IPM		3.20	\$ 720.00
01999	2	07/12/14	IPM		2.00	\$ 450.00
01999	2	07/14/14	IPM		1.80	\$ 405.00
01999	2	07/16/14	IPM		2.80	\$ 630.00
01999	2	07/17/14	IPM		4.80	\$ 1,080.00
01999	2	07/18/14	IPM		0.70	\$ 157.50
01999	2	07/21/14	IPM		3.70	\$ 832.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	07/22/14	IPM		3.20	\$ 720.00
01999	2	07/23/14	IPM		7.50	\$ 1,687.50
01999	2	07/28/14	IPM		2.20	\$ 495.00
01999	2	07/31/14	IPM		2.50	\$ 562.50
01999	2	08/01/14	IPM		0.60	\$ 135.00
01999	2	08/04/14	IPM		0.60	\$ 135.00
01999	2	08/05/14	IPM		0.80	\$ 180.00
01999	2	08/06/14	IPM		2.60	\$ 585.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	08/07/14	IPM		0.50	\$ 112.50
01999	2	08/11/14	IPM		0.30	\$ 67.50
01999	2	08/15/14	IPM		1.50	\$ 337.50
01999	2	08/19/14	IPM		4.00	\$ 900.00
01999	2	08/25/14	IPM		0.10	\$ 22.50
01999	2	08/27/14	IPM		0.20	\$ 45.00
01999	2	08/29/14	IPM		1.70	\$ 382.50
01999	2	09/02/14	IPM		2.00	\$ 450.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/04/14	IPM		2.40	\$ 540.00
01999	2	09/05/14	IPM		3.90	\$ 877.50
01999	2	09/08/14	IPM		3.40	\$ 765.00
01999	2	09/09/14	IPM		1.40	\$ 315.00
01999	2	09/10/14	IPM		1.70	\$ 382.50
01999	2	09/11/14	IPM		2.10	\$ 472.50
01999	2	09/15/14	IPM		2.00	\$ 450.00
01999	2	09/18/14	IPM		2.20	\$ 495.00
01999	2	09/20/14	IPM		3.50	\$ 787.50
01999	2	09/22/14	IPM		0.50	\$ 112.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/25/14	IPM		0.50	\$ 112.50
01999	2	10/01/14	IPM		1.10	\$ 247.50
01999	2	10/02/14	IPM		2.90	\$ 652.50
01999	2	10/07/14	IPM		0.60	\$ 135.00
01999	2	10/10/14	IPM		1.50	\$ 337.50
01999	2	10/14/14	IPM		0.90	\$ 202.50
01999	2	10/15/14	IPM		1.40	\$ 315.00
01999	2	10/17/14	IPM		0.40	\$ 90.00
01999	2	10/28/14	IPM		0.70	\$ 157.50
01999	2	10/29/14	IPM		2.10	\$ 472.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	11/05/14	IPM		1.00	\$ 225.00
01999	2	11/06/14	IPM		0.20	\$ 45.00
01999	2	11/07/14	IPM		1.30	\$ 292.50
01999	2	11/10/14	IPM		2.20	\$ 495.00
01999	2	11/11/14	IPM		0.10	\$ 22.50
01999	2	11/12/14	IPM		1.70	\$ 382.50
01999	2	11/25/14	IPM		0.10	\$ 22.50
01999	2	12/01/14	IPM		4.10	\$ 922.50
01999	2	12/02/14	IPM		0.50	\$ 112.50
01999	2					

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/03/14	IPM		4.20	\$ 945.00
01999	2	12/04/14	IPM		6.50	\$ 1,462.50
01999	2	12/05/14	IPM		6.50	\$ 1,462.50
01999	2	12/08/14	IPM		6.80	\$ 1,530.00
01999	2	12/08/14	IPM		4.50	\$ 1,012.50
01999	2	12/09/14	IPM		3.40	\$ 765.00
01999	2	12/10/14	IPM		1.70	\$ 382.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/11/14	IPM		0.50	\$ 112.50
01999	2	12/15/14	IPM		0.40	\$ 90.00
01999	2	12/16/14	IPM		0.30	\$ 67.50
01999	2	12/17/14	IPM		0.60	\$ 135.00
01999	2	12/18/14	IPM		0.20	\$ 45.00
01999	2	12/19/14	IPM		0.40	\$ 90.00
01999	2	12/22/14	IPM		0.40	\$ 90.00
01999	2	12/23/14	IPM		0.40	\$ 90.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/24/14	IPM		0.70	\$ 157.50
01999	2	12/29/14	IPM		0.40	\$ 90.00
01999	2	12/31/14	IPM		0.40	\$ 90.00
01999	2	01/02/15	IPM		0.10	\$ 25.00
01999	2	01/05/15	IPM		0.40	\$ 100.00
01999	2	01/06/15	IPM		0.20	\$ 50.00
01999	2	01/07/15	IPM		0.70	\$ 175.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/08/15	IPM		1.00	\$ 250.00
01999	2	01/09/15	IPM		0.60	\$ 150.00
01999	2	01/11/15	IPM		2.30	\$ 575.00
01999	2	01/12/15	IPM		1.40	\$ 350.00
01999	2	01/13/15	IPM		2.60	\$ 650.00
01999	2	01/15/15	IPM		1.50	\$ 375.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/16/15	IPM			
					0.80	\$ 200.00
01999	2	01/18/15	IPM			
					0.50	\$ 125.00
01999	2	01/19/15	IPM			
					1.60	\$ 400.00
01999	2	01/20/15	IPM			
					7.10	\$ 1,775.00
01999	2	01/21/15	IPM			
					0.40	\$ 100.00
01999	2	01/22/15	IPM		0.20	\$ 50.00
01999	2	01/23/15	IPM			
					0.30	\$ 75.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/26/15	IPM		1.00	\$ 250.00
01999	2	01/27/15	IPM		3.60	\$ 900.00
01999	2	01/28/15	IPM		0.20	\$ 50.00
01999	2	01/29/15	IPM		1.00	\$ 250.00
01999	2	02/02/15	IPM		0.30	\$ 75.00
01999	2	02/03/15	IPM		0.30	\$ 75.00
01999	2	02/04/15	IPM		0.50	\$ 125.00
01999	2	02/17/15	IPM		0.20	\$ 50.00
01999	2	02/18/15	IPM		0.10	\$ 25.00
01999	2	03/05/15	IPM		0.50	\$ 125.00
01999	2	03/10/15	IPM		0.60	\$ 150.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	03/11/15	IPM		0.90	\$ 225.00
01999	2	03/13/15	IPM		0.50	\$ 125.00
01999	2	03/16/15	IPM		0.20	\$ 50.00
01999	2	03/17/15	IPM		2.10	\$ 525.00
01999	2	03/18/15	IPM		3.10	\$ 775.00
01999	2	03/19/15	IPM		0.20	\$ 50.00
01999	2	03/24/15	IPM		0.40	\$ 100.00
01999	2	03/26/15	IPM		0.50	\$ 125.00
01999	2	04/14/15	IPM		2.00	\$ 500.00
01999	2	04/16/15	IPM		0.30	\$ 75.00
01999	2	05/08/15	IPM		0.30	\$ 75.00
01999	2	05/12/15	IPM		0.30	\$ 75.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	05/13/15	IPM		0.70	\$ 175.00
01999	2	05/21/15	IPM		0.10	\$ 25.00
01999	2	06/04/15	IPM		0.60	\$ 150.00
01999	2	06/10/15	IPM		0.20	\$ 50.00
01999	2	06/22/15	IPM		1.00	\$ 250.00
01999	2	07/15/15	IPM		0.20	\$ 50.00
01999	2	07/23/15	IPM		0.20	\$ 50.00
01999	2	08/14/15	IPM		0.40	\$ 100.00
01999	2	08/19/15	IPM		0.20	\$ 50.00
					207.20	\$ 47,722.50
01999	2	07/23/14	JMG		1.00	\$ 175.00
01999	2	09/08/14	JMG		0.50	\$ 87.50
01999	2	10/30/14	JMG		2.00	\$ 350.00
01999	2	12/19/14	JMG		1.00	\$ 175.00
					4.50	\$ 787.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/26/13	JRJ		0.90	\$ 585.00
01999	2	09/30/13	JRJ		0.30	\$ 195.00
01999	2	10/08/13	JRJ		0.50	\$ 325.00
01999	2	10/09/13	JRJ		0.30	\$ 195.00
01999	2	10/14/13	JRJ		1.30	\$ 845.00
01999	2	10/16/13	JRJ		0.90	\$ 585.00
01999	2	10/21/13	JRJ		0.40	\$ 260.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	10/22/13	JRJ		0.90	\$ 585.00
01999	2	10/24/13	JRJ		0.30	\$ 195.00
01999	2	12/09/13	JRJ		0.30	\$ 195.00
01999	2	12/18/13	JRJ		0.30	\$ 195.00
01999	2	06/16/14	JRJ		0.20	\$ 130.00
01999	2	08/04/14	JRJ		0.30	\$ 195.00
01999	2	11/05/14	JRJ		0.20	\$ 130.00
01999	2	12/01/14	JRJ		0.20	\$ 130.00
01999	2	12/03/14	JRJ		0.40	\$ 260.00
01999	2	12/10/14	JRJ		0.50	\$ 325.00
01999	2	03/10/15	JRJ		0.30	\$ 195.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	03/19/15	JRJ			
					0.20	\$ 130.00
01999	2	05/14/15	JRJ		0.30	\$ 195.00
01999	2	06/10/15	JRJ		1.00	\$ 650.00
					10.00	\$ 6,500.00
01999	2	09/25/13	KAS			
					0.90	\$ 135.00
					0.90	\$ 135.00
01999	2	10/16/13	MMJ		0.30	\$ 150.00
01999	2	11/06/13	MMJ			
					1.20	\$ 600.00
					1.50	\$ 750.00
01999	2	02/27/14	MRH			
					1.90	\$ 237.50
					1.90	\$ 237.50
01999	2	03/26/15	MSC			
					4.10	\$ 1,435.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	03/27/15	MSC		5.00	\$ 1,750.00
01999	2	03/30/15	MSC		5.10	\$ 1,785.00
01999	2	03/31/15	MSC		6.00	\$ 2,100.00
01999	2	04/01/15	MSC		5.80	\$ 2,030.00
01999	2	04/02/15	MSC		7.20	\$ 2,520.00
01999	2	04/03/15	MSC		5.50	\$ 1,925.00
01999	2	04/06/15	MSC		6.50	\$ 2,275.00
01999	2	04/07/15	MSC		6.80	\$ 2,380.00
01999	2	04/08/15	MSC		5.30	\$ 1,855.00
01999	2	04/13/15	MSC		0.30	\$ 105.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	04/15/15	MSC		4.90	\$ 1,715.00
01999	2	04/16/15	MSC		1.00	\$ 350.00
01999	2	04/22/15	MSC		0.30	\$ 105.00
01999	2	05/05/15	MSC		2.80	\$ 980.00
01999	2	05/06/15	MSC		3.50	\$ 1,225.00
01999	2	05/07/15	MSC		6.50	\$ 2,275.00
01999	2	05/08/15	MSC		0.30	\$ 105.00
01999	2	05/11/15	MSC		2.50	\$ 875.00
01999	2	05/12/15	MSC		0.70	\$ 245.00
01999	2	05/13/15	MSC		0.10	\$ 35.00
01999	2	05/14/15	MSC		2.50	\$ 875.00
01999	2	05/15/15	MSC		1.20	\$ 420.00
01999	2	05/18/15	MSC		0.20	\$ 70.00
01999	2	05/19/15	MSC		0.30	\$ 105.00
01999	2	06/04/15	MSC		0.80	\$ 280.00
01999	2	06/05/15	MSC		6.50	\$ 2,275.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	06/08/15	MSC		4.50	\$ 1,575.00
01999	2	06/09/15	MSC		2.60	\$ 910.00
01999	2	06/10/15	MSC		0.30	\$ 105.00
01999	2	06/12/15	MSC		0.90	\$ 315.00
01999	2	06/15/15	MSC		2.00	\$ 700.00
01999	2	06/16/15	MSC		3.50	\$ 1,225.00
01999	2	06/17/15	MSC		3.80	\$ 1,330.00
01999	2	06/18/15	MSC		0.50	\$ 175.00
01999	2	06/19/15	MSC		0.60	\$ 210.00
01999	2	07/02/15	MSC		0.60	\$ 210.00
01999	2	07/21/15	MSC		2.50	\$ 875.00
01999	2	07/22/15	MSC		3.00	\$ 1,050.00
01999	2	07/23/15	MSC		1.20	\$ 420.00
01999	2	07/28/15	MSC		1.20	\$ 420.00
01999	2	07/29/15	MSC		2.10	\$ 735.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	07/30/15	MSC		0.30	\$ 105.00
01999	2	08/04/15	MSC		0.30	\$ 105.00
01999	2	08/14/15	MSC		0.60	\$ 210.00
01999	2	08/17/15	MSC		7.00	\$ 2,450.00
01999	2	08/18/15	MSC		3.90	\$ 1,365.00
01999	2	08/19/15	MSC		7.60	\$ 2,660.00
01999	2	08/20/15	MSC		4.30	\$ 1,505.00
01999	2	08/21/15	MSC		0.60	\$ 210.00
01999	2	08/26/15	MSC		0.70	\$ 245.00
01999	2	08/27/15	MSC		0.30	\$ 105.00
					146.60	\$ 51,310.00
01999	2	03/28/14	NRR		1.30	\$ 390.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/22/14	NRR		0.20	\$ 60.00
01999	2	01/05/15	NRR		0.20	\$ 65.00
01999	2	01/12/15	NRR		0.20	\$ 65.00
01999	2	01/15/15	NRR		0.20	\$ 65.00
01999	2	01/29/15	NRR		0.60	\$ 195.00
01999	2	01/30/15	NRR		2.30	\$ 747.50
01999	2	02/04/15	NRR		0.30	\$ 97.50
01999	2	02/27/15	NRR		0.30	\$ 97.50
01999	2	03/12/15	NRR		0.60	\$ 195.00
					6.20	\$ 1,977.50

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/30/13	SHG		2.50	\$ 1,000.00
01999	2	10/02/13	SHG		0.50	\$ 200.00
01999	2	10/07/13	SHG			
					2.50	\$ 1,000.00
01999	2	10/08/13	SHG		1.80	\$ 720.00
01999	2	10/10/13	SHG		0.10	\$ 40.00
01999	2	10/11/13	SHG			
					1.50	\$ 600.00
01999	2	10/14/13	SHG			
					3.20	\$ 1,280.00
01999	2	10/15/13	SHG			
					3.20	\$ 1,280.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	10/16/13	SHG		3.60	\$ 1,440.00
01999	2	10/17/13	SHG		0.80	\$ 320.00
01999	2	10/18/13	SHG		2.50	\$ 1,000.00
01999	2	10/21/13	SHG		4.80	\$ 1,920.00
01999	2	10/22/13	SHG		10.70	\$ 4,280.00


MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	10/23/13	SHG			
					6.50	\$ 2,600.00
01999	2	10/24/13	SHG			
					5.10	\$ 2,040.00
01999	2	10/25/13	SHG			
					1.50	\$ 600.00
01999	2	10/28/13	SHG		0.80	\$ 320.00
01999	2	10/29/13	SHG		1.40	\$ 560.00
01999	2	10/30/13	SHG		0.50	\$ 200.00
01999	2	10/31/13	SHG		0.80	\$ 320.00
01999	2	11/04/13	SHG			
					8.60	\$ 3,440.00
01999	2	11/05/13	SHG			
					7.50	\$ 3,000.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	11/06/13	SHG		11.10	\$ 4,440.00
01999	2	11/08/13	SHG		0.20	\$ 80.00
01999	2	11/18/13	SHG		0.80	\$ 320.00
01999	2	11/19/13	SHG		0.50	\$ 200.00
01999	2	11/20/13	SHG		0.50	\$ 200.00
01999	2	11/21/13	SHG		1.30	\$ 520.00
01999	2	11/25/13	SHG		0.50	\$ 200.00
01999	2	12/04/13	SHG		0.70	\$ 280.00
01999	2	12/05/13	SHG		1.30	\$ 520.00
01999	2	12/06/13	SHG		2.30	\$ 920.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/09/13	SHG			
					7.40	\$ 2,960.00
01999	2	12/10/13	SHG		4.70	\$ 1,880.00
01999	2	12/11/13	SHG		2.30	\$ 920.00
01999	2	12/12/13	SHG		8.30	\$ 3,320.00
01999	2	12/17/13	SHG		0.20	\$ 80.00
01999	2	12/18/13	SHG		2.10	\$ 840.00
01999	2	12/19/13	SHG		6.40	\$ 2,560.00
01999	2	12/20/13	SHG		0.90	\$ 360.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/23/13	SHG		0.30	\$ 120.00
01999	2	12/30/13	SHG		1.30	\$ 520.00
01999	2	01/14/14	SHG		0.70	\$ 280.00
01999	2	01/15/14	SHG		0.30	\$ 120.00
01999	2	01/20/14	SHG		1.50	\$ 600.00
01999	2	01/24/14	SHG		0.30	\$ 120.00
01999	2	01/27/14	SHG		1.30	\$ 520.00
01999	2	01/28/14	SHG		1.40	\$ 560.00
01999	2	01/31/14	SHG		0.20	\$ 80.00
01999	2	02/13/14	SHG		1.80	\$ 720.00
01999	2	02/19/14	SHG		0.80	\$ 320.00
01999	2	02/21/14	SHG		0.50	\$ 200.00
01999	2	02/26/14	SHG		0.40	\$ 160.00


MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	02/27/14	SHG		2.30	\$ 920.00
01999	2	02/28/14	SHG		0.40	\$ 160.00
01999	2	03/03/14	SHG		1.10	\$ 440.00
01999	2	03/05/14	SHG		0.80	\$ 320.00
01999	2	03/06/14	SHG		0.10	\$ 40.00
01999	2	03/10/14	SHG		0.40	\$ 160.00
01999	2	03/12/14	SHG		0.50	\$ 200.00
01999	2	03/14/14	SHG		1.20	\$ 480.00
01999	2	03/17/14	SHG		0.30	\$ 120.00
01999	2	03/19/14	SHG		0.40	\$ 160.00
01999	2	03/28/14	SHG		0.90	\$ 360.00
01999	2	04/07/14	SHG		0.80	\$ 320.00


MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	04/08/14	SHG		0.30	\$ 120.00
01999	2	04/14/14	SHG		0.30	\$ 120.00
01999	2	04/16/14	SHG		0.10	\$ 40.00
01999	2	04/28/14	SHG		0.70	\$ 280.00
01999	2	05/13/14	SHG		0.80	\$ 320.00
01999	2	05/15/14	SHG		0.30	\$ 120.00
01999	2	05/23/14	SHG		0.70	\$ 280.00
01999	2	06/12/14	SHG		9.40	\$ 2,160.00
01999	2	06/13/14	SHG		0.70	\$ 280.00
01999	2	06/16/14	SHG		2.20	\$ 880.00
01999	2	06/17/14	SHG		0.90	\$ 360.00
01999	2	06/18/14	SHG		0.60	\$ 240.00
01999	2	06/19/14	SHG		0.50	\$ 200.00
01999	2	06/20/14	SHG		1.30	\$ 520.00
01999	2	06/24/14	SHG		0.40	\$ 160.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	06/26/14	SHG		0.50	\$ 200.00
01999	2	06/27/14	SHG		0.20	\$ 80.00
01999	2	07/02/14	SHG		2.10	\$ 840.00
01999	2	07/07/14	SHG		0.50	\$ 200.00
01999	2	07/08/14	SHG		0.70	\$ 280.00
01999	2	07/09/14	SHG		0.80	\$ 320.00
01999	2	07/15/14	SHG		0.30	\$ 120.00
01999	2	07/17/14	SHG		1.30	\$ 520.00
01999	2	07/18/14	SHG		1.30	\$ 520.00
01999	2	07/21/14	SHG		1.10	\$ 440.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	07/22/14	SHG		2.20	\$ 880.00
01999	2	07/23/14	SHG		3.00	\$ 1,200.00
01999	2	07/25/14	SHG		0.20	\$ 80.00
01999	2	07/28/14	SHG		0.70	\$ 280.00
01999	2	07/30/14	SHG		0.80	\$ 320.00
01999	2	08/01/14	SHG		0.20	\$ 80.00
01999	2	08/04/14	SHG		1.10	\$ 440.00
01999	2	08/05/14	SHG		0.50	\$ 200.00
01999	2	08/07/14	SHG		1.40	\$ 560.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	08/08/14	SHG		0.40	\$ 160.00
01999	2	08/11/14	SHG		0.20	\$ 80.00
01999	2	08/15/14	SHG		1.30	\$ 520.00
01999	2	08/19/14	SHG		0.90	\$ 360.00
01999	2	08/25/14	SHG		0.30	\$ 120.00
01999	2	08/26/14	SHG		1.10	\$ 440.00
01999	2	08/27/14	SHG		3.10	\$ 1,240.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/03/14	SHG		0.60	\$ 240.00
01999	2	09/04/14	SHG		0.30	\$ 120.00
01999	2	09/05/14	SHG		1.10	\$ 440.00
01999	2	09/08/14	SHG		1.70	\$ 680.00
01999	2	09/09/14	SHG		0.50	\$ 200.00
01999	2	09/10/14	SHG		0.80	\$ 320.00
01999	2	09/11/14	SHG		0.30	\$ 120.00
01999	2	09/12/14	SHG		1.00	\$ 400.00
01999	2	09/15/14	SHG		0.10	\$ 40.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	09/22/14	SHG			
					0.40	\$ 160.00
01999	2	10/02/14	SHG		0.50	\$ 200.00
01999	2	10/06/14	SHG			
					1.00	\$ 400.00
01999	2	10/07/14	SHG			
					0.70	\$ 280.00
01999	2	10/10/14	SHG			
					1.40	\$ 560.00
01999	2	10/15/14	SHG			
					0.90	\$ 360.00
01999	2	10/17/14	SHG			
					0.60	\$ 240.00
01999	2	10/21/14	SHG		0.50	\$ 200.00
01999	2	10/28/14	SHG		0.60	\$ 240.00
01999	2	10/31/14	SHG		0.30	\$ 120.00
01999	2	11/04/14	SHG			
					0.40	\$ 160.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	11/05/14	SHG		1.90	\$ 760.00
01999	2	11/06/14	SHG		1.40	\$ 560.00
01999	2	11/07/14	SHG		0.30	\$ 120.00
01999	2	11/11/14	SHG		0.10	\$ 40.00
01999	2	11/12/14	SHG		0.50	\$ 200.00
01999	2	11/13/14	SHG		2.10	\$ 840.00
01999	2	11/14/14	SHG		0.90	\$ 360.00
01999	2	11/20/14	SHG		1.30	\$ 520.00
01999	2	11/21/14	SHG		0.20	\$ 80.00
01999	2	11/24/14	SHG		0.40	\$ 160.00
01999	2	11/25/14	SHG		0.60	\$ 240.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/01/14	SHG			
					3.40	\$ 1,360.00
01999	2	12/02/14	SHG			
					0.60	\$ 240.00
01999	2	12/03/14	SHG			
					2.90	\$ 1,160.00
01999	2	12/04/14	SHG			
					1.20	\$ 480.00
01999	2	12/05/14	SHG			
					2.70	\$ 1,080.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/08/14	SHG		10.90	\$ 4,360.00
01999	2	12/09/14	SHG		2.80	\$ 1,120.00
01999	2	12/10/14	SHG		2.30	\$ 920.00
01999	2	12/11/14	SHG		0.30	\$ 120.00
01999	2	12/12/14	SHG		1.20	\$ 480.00
01999	2	12/16/14	SHG		0.40	\$ 160.00
01999	2	12/17/14	SHG		0.30	\$ 120.00
01999	2	12/18/14	SHG		0.80	\$ 320.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/22/14	SHG		1.40	\$ 560.00
01999	2	12/23/14	SHG		0.70	\$ 280.00
01999	2	12/24/14	SHG		0.70	\$ 280.00
01999	2	12/29/14	SHG		0.20	\$ 80.00
01999	2	12/30/14	SHG		0.50	\$ 200.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	12/31/14	SHG		1.40	\$ 560.00
01999	2	01/02/15	SHG		0.80	\$ 320.00
01999	2	01/05/15	SHG		0.50	\$ 200.00
01999	2	01/06/15	SHG		0.30	\$ 120.00
01999	2	01/08/15	SHG		1.30	\$ 520.00
01999	2	01/09/15	SHG		2.10	\$ 840.00
01999	2	01/09/15	SHG			

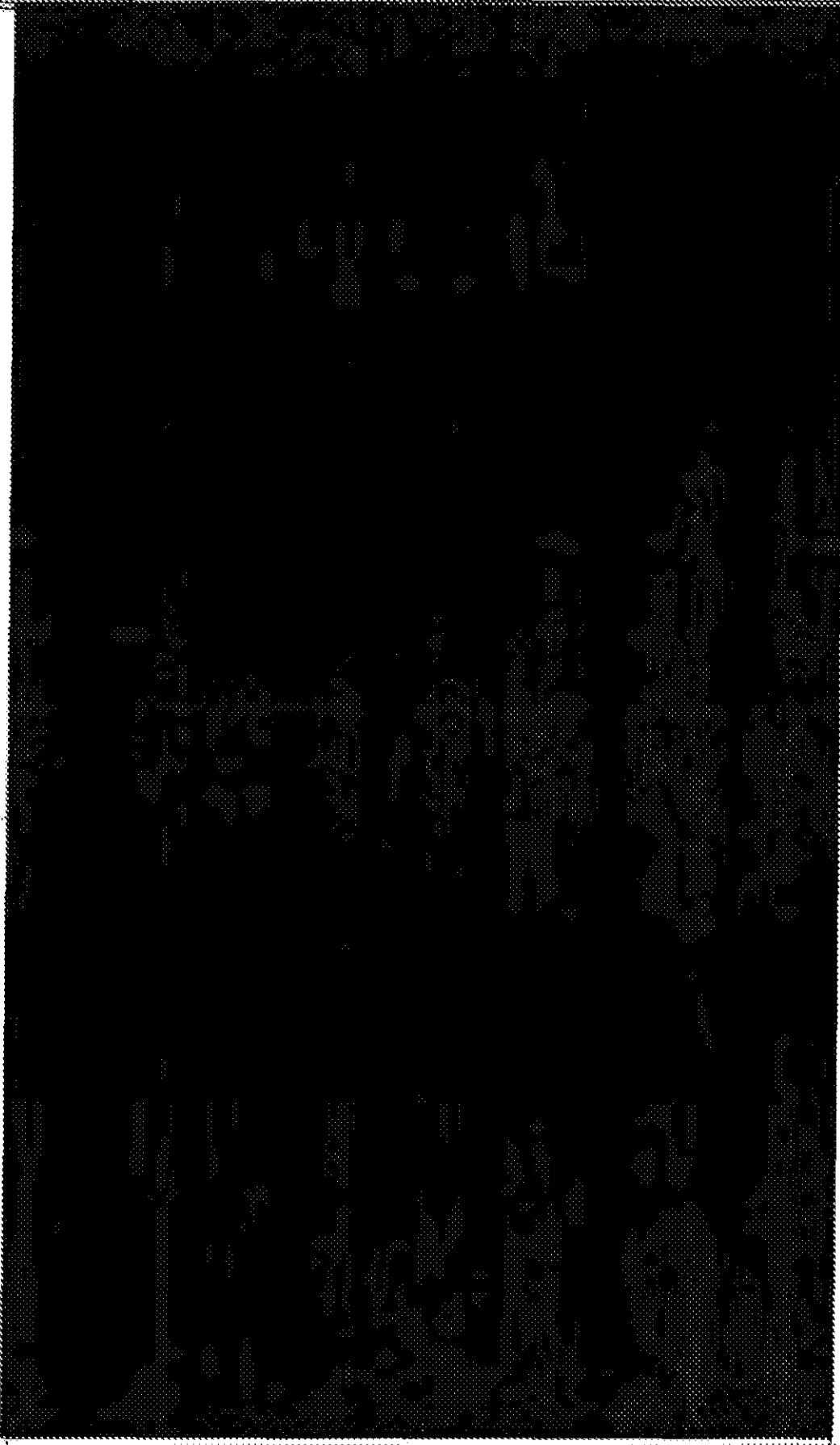
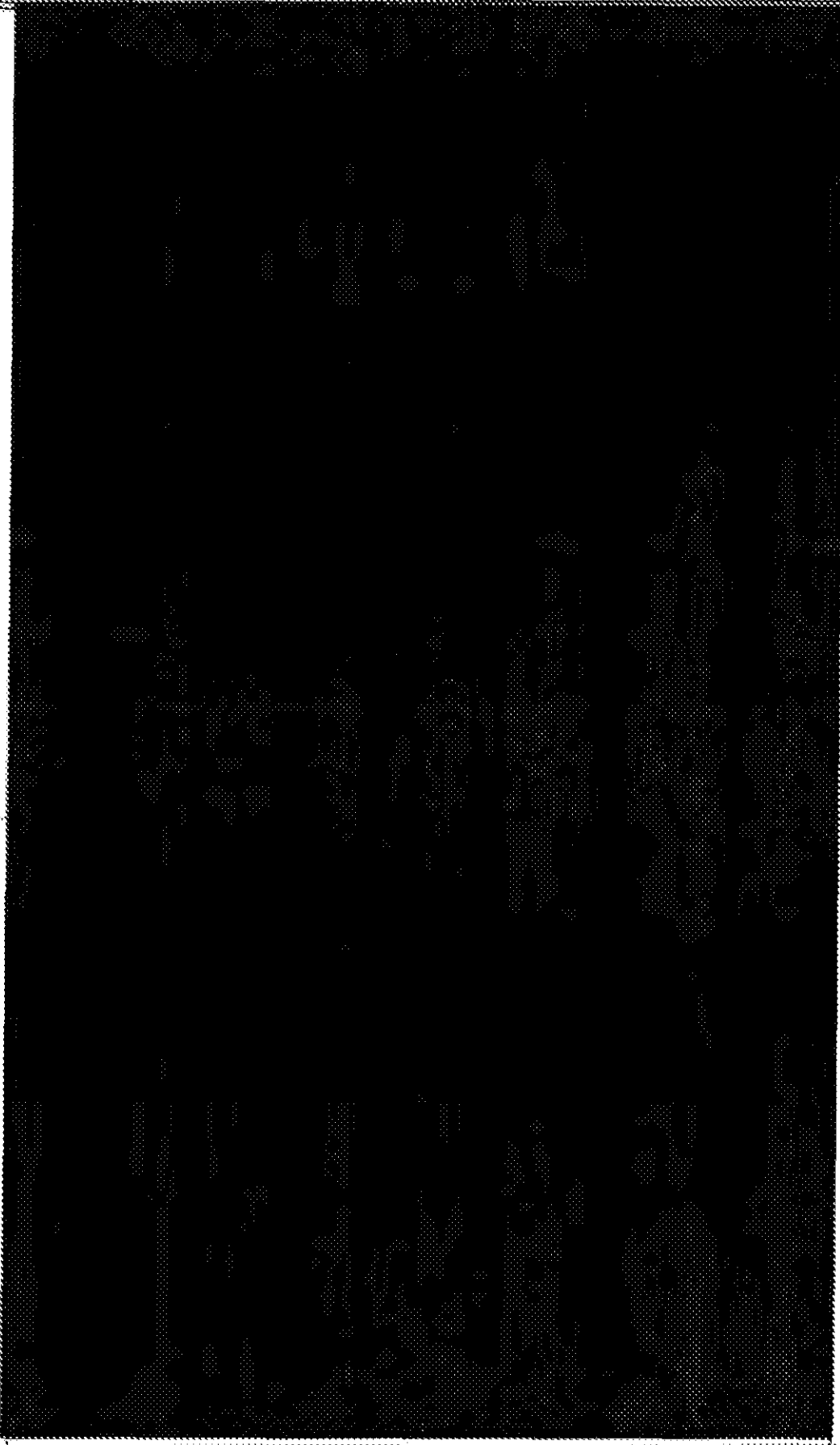
MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/12/15	SHG		1.30	\$ 520.00
01999	2	01/13/15	SHG		1.60	\$ 640.00
01999	2	01/14/15	SHG		1.50	\$ 600.00
01999	2	01/15/15	SHG		2.90	\$ 1,160.00
01999	2	01/16/15	SHG		6.50	\$ 2,600.00
01999	2	01/17/15	SHG		0.10	\$ 40.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/19/15	SHG		1.20	\$ 480.00
01999	2	01/20/15	SHG		0.80	\$ 320.00
01999	2	01/21/15	SHG		5.80	\$ 2,320.00
01999	2	01/22/15	SHG		1.30	\$ 520.00
01999	2	01/23/15	SHG		0.30	\$ 120.00
01999	2	01/26/15	SHG		0.30	\$ 120.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/27/15	SHG			
					3.30	\$ 1,320.00
01999	2	01/28/15	SHG			
					2.90	\$ 1,160.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	01/29/15	SHG			
					2.10	\$ 840.00
01999	2	01/30/15	SHG			
					1.80	\$ 720.00
01999	2	02/02/15	SHG			
					7.30	\$ 2,920.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	02/03/15	SHG		7.10	\$ 2,840.00
01999	2	02/04/15	SHG		3.70	\$ 1,480.00
01999	2	02/05/15	SHG		3.30	\$ 1,320.00
01999	2	02/09/15	SHG		0.40	\$ 160.00
01999	2	02/10/15	SHG		0.40	\$ 160.00
01999	2	02/11/15	SHG		1.30	\$ 520.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

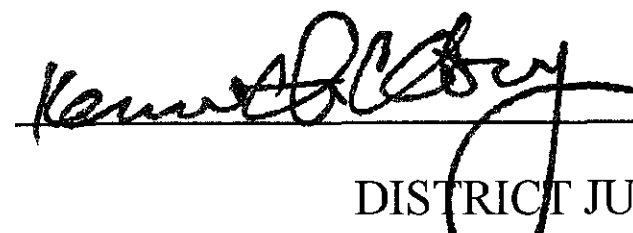
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01999	2	02/12/15	SHG		0.50	\$ 200.00
01999	2	02/16/15	SHG		5.40	\$ 2,160.00
01999	2	02/17/15	SHG		8.20	\$ 3,280.00
01999	2	02/18/15	SHG		0.60	\$ 240.00
01999	2	02/19/15	SHG		0.50	\$ 200.00
01999	2	02/23/15	SHG		0.30	\$ 120.00
01999	2	02/27/15	SHG		0.50	\$ 200.00
01999	2	03/02/15	SHG		0.30	\$ 120.00
01999	2	03/03/15	SHG		3.60	\$ 1,440.00
01999	2	03/04/15	SHG		0.70	\$ 280.00
01999	2	03/05/15	SHG		0.20	\$ 80.00

MacDonald Highland Realty
Fredric and Barbara Rosenberg
01999 00002
Fees

Client	Mtr	Date	Tmkpr	Description	Hours	Amount
01999	2	03/06/15	SHG		2.00	\$ 800.00
01999	2	03/09/15	SHG		0.80	\$ 320.00
01999	2	03/10/15	SHG		0.20	\$ 80.00
01999	2	03/11/15	SHG			
					1.20	\$ 480.00
01999	2	03/12/15	SHG		5.20	\$ 2,080.00
01999	2	03/12/15	SHG		0.80	\$ 320.00
01999	2	03/13/15	SHG		3.10	\$ 1,240.00
01999	2	03/16/15	SHG		7.80	\$ 3,120.00

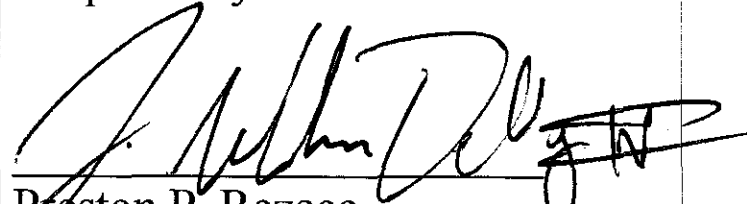
1
2 **IT IS SO ORDERED**

3
4 Dated: Aug 11, 2015

5
6 
DISTRICT JUDGE
7

8 Respectfully Submitted:

Approved in content and form by:

9 
10 Preston P. Rezaee
Nevada Bar No. 10729
11 Jay DeVoy, of counsel
Nevada Bar No. 11950
12 Sarah Chavez, of counsel
Nevada Bar No. 11935
13 THE FIRM, P.C.
200 E. Charleston Blvd.
14 Las Vegas, NV 89104
15 Telephone: (702) 222-3476
Facsimile: (702) 252-3476
16 Attorneys for Defendant/Counterclaimant,
17 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
*Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust*

18 Approved in content and form by:

Approved in content and form by:

19
20 J. Randall Jones
Nevada Bar No. 1927
21 Spencer H. Gunnerson
Nevada Bar No. 8810
22 Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
23 Las Vegas, NV 89169
24 Attorneys for Defendants
MacDonald Highlands Realty, LLC,
25 Michael Doiron, and
26 FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

27 **CERTIFICATE OF SERVICE**

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

3
4 **IT IS SO ORDERED**


5
6 Dated: _____, 2015

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8 _____
9 DISTRICT JUDGE

10 Respectfully Submitted:

Not approved as to form and content by:

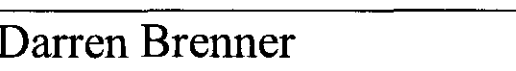
11
12 _____
13 Preston P. Rezaee
14 Nevada Bar No. 10729
15 Jay DeVoy, of counsel
16 Nevada Bar No. 11950
17 Sarah Chavez, of counsel
18 Nevada Bar No. 11935
19 THE FIRM, P.C.
20 200 E. Charleston Blvd.
21 Las Vegas, NV 89104
22 Telephone: (702) 222-3476
23 Facsimile: (702) 252-3476
24 *Attorneys for Defendant/Counterclaimant,*
25 *Shahin Shane Malek*

_____ 
Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

26 Approved in content and form by:

Approved in content and form by:

27
28 _____
J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
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MacDonald Highlands Realty, LLC,
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_____ 
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1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1
2 **IT IS SO ORDERED**

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4 Dated: _____, 2015

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DISTRICT JUDGE

Respectfully Submitted:

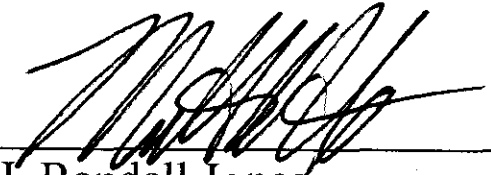
Approved in content and form by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

19  #9524
20 J. Randall Jones
21 Nevada Bar No. 1927
22 Spencer H. Gunnerson
23 Nevada Bar No. 8810
24 Kemp, Jones & Coulthard
25 3800 Howard Hughes Parkway, 17th Floor
26 Las Vegas, NV 89169
27 *Attorneys for Defendants*
28 *MacDonald Highlands Realty, LLC,*
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

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DISTRICT JUDGE

Respectfully Submitted:

Approved in content and form by:

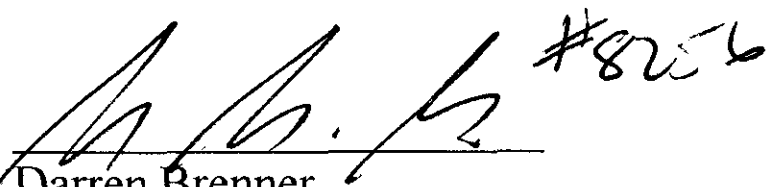
Preston P. Rezaee
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Nevada Bar No. 11950
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Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
*Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek*

Karen Hanks
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Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
*Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust*

Approved in content and form by:

Approved in content and form by:

J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
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FHP Ventures
(formerly The Foothills Partners).*


Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
*Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.*

CERTIFICATE OF SERVICE

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

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

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

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

14 *Attorneys for Plaintiff*

15 Darren Brenner
16 Email: Darren.brenner@akerman.com

17 Deb Julien
18 Email: Debbie.julien@akerman.com

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

22 Erica Bennett
23 Email: E.bennett@kempjones.com

24 J. Randall Jones
25 Email: Jrj@kempjones.com

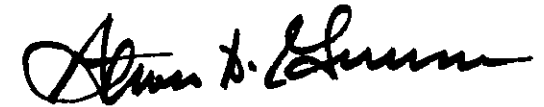
26 Janet Griffin
27 Email: janetjamesmichael@gmail.com

28 Email: jlg@kempjones.com
Spencer Gunnerson
Email: S.gunnerson@kempjones.com

Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

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

TAB 44



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

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

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

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

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

10 I.

11 FINDINGS OF FACT

12 1. On February 20, 2013, Barbara Rosenberg sent a letter of intent to Defendant
13 Bank of America’s asset manager in Connecticut, Elena Escobar, regarding the purchase of 590
14 Lairmont Place in Henderson, Nevada (the “subject property”). See Exhibit A to the MSJ, at
15 41:14-43:1 and Letter of Intent and associated documents, attached to the MSJ as Exhibit B.
16 Barbara Rosenberg confirmed in her deposition that Exhibit B is a copy of the letter of intent
17 she sent. Exhibit A to the MSJ at 43:21-44:4.

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

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

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

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

1 4. Ms. Rosenberg continued to inquire regarding the subject property into March of
2 2013. See E-mail from Barbara Rosenberg dated March 6, 2013, attached to the MSJ as Exhibit
3 D, and e-mail from Kelli Barrington dated March 7, 2013, attached to the MSJ as Exhibit E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 15. The Real Estate Purchase Addendum executed by the Rosenbergs on March 15,
2 2013, provides both a broad waiver of the Rosenbergs' claims against the seller and its agents,
3 as well as a limitation of the Rosenbergs' remedies in any such claim:

4 **NOTWITHSTANDING ANY PROVISION TO THE**
5 **CONTRARY IN THE AGREEMENT, SELLER'S**
6 **LIABILITY AND BUYER'S SOLE AND EXCLUSIVE**
7 **REMEDY IN ALL CIRCUMSTANCES AND FOR ALL**
8 **CLAIMS (AS THE TERM IS DEFINED IN SECTION 26 OF**
9 **THIS ADDENDUM ...) ARISING OUT OF OR RELATING**
10 **IN ANY WAY TO THE AGREEMENT OR THE SALE OF**
11 **THE PROPERTY TO BUYER INCLUDING, BUT NOT**
12 **LIMITED TO ... THE CONDITION OF THE PROPERTY,**
13 **... THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR**
14 **LOCATION OF THE PROPERTY ... SHALL BE LIMITED**
15 **TO NO MORE THAN**

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

18 **AND**

19 **(B) THE LESSER OF BUYER'S ACTUAL DAMAGES OR**
20 **\$5,000.00 IF THE SALE TO BUYER CLOSES.**

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

22 16. The Addendum further provided:

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

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

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

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

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

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

11 This information is current and plotted as of **February**
12 **2010.**

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

16 See id. (emphasis original).

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

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

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

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

6 II.

7 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

17 6. In Nevada, a waiver is “the intentional relinquishment of a known right.”
18 Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 152 P.3d 737,
19 740 (Nev. 2007); accord, Wood v. Milyard, 132 S. Ct. 1826, 1832 (U.S. 2012) (recognizing that
20 “A waived claim or defense is one that a party has knowingly and intelligently relinquished”).
21 See also State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004)
22 (recognizing that a waiver is valid where made with knowledge of all material facts). When a
23 right is waived, the “right is gone forever and cannot be recalled.” Bernhardt v. Harrington, 775
24 N.W.2d 682, 686 (N.D. 2009).

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

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

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

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

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

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

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

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

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


III.

JUDGMENT

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


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

DATED this 30th day of July 2015.
11th


DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

Approved as to form:
HOWARD KIM & ASSOCIATES


J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership

Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.

Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.

Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

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

III.

JUDGMENT

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

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

DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

Approved as to form and content:
HOWARD KIM & ASSOCIATES

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership

Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

Approved as to form and content:
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THE FIRM, P.C.

Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.

Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

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

III.

JUDGMENT

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

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

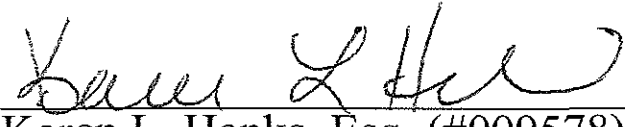
DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

Not approved as to form and content:
HOWARD KIM & ASSOCIATES

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership


Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
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Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.

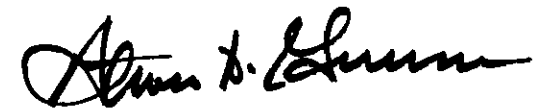
Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

TAB 45

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JA_2489



CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)
r.jones@kempjones.com
2 SPENCER H. GUNNERSON, ESQ. (#8810)
s.gunnerson@kempjones.com
3 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*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11
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

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

24
25 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and

26 Judgment Regarding Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and

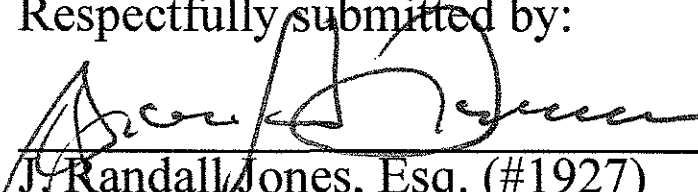
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1 FHP Ventures' Motion for Summary Judgment was entered on August 13, 2015, a copy of
2 which is attached.

3
4 DATED this 13th day of August, 2015.

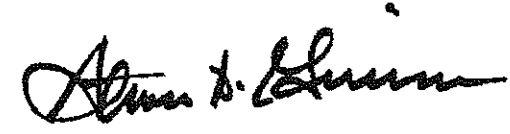
5 Respectfully submitted by:

6 
7 J. Randall Jones, Esq. (#1927)
8 Spencer H. Gunnerson, Esq. (#8810)
9 Matthew S. Carter, Esq. (#9524)
10 KEMP, JONES & COULTHARD, LLP
11 3800 Howard Hughes Parkway, 17th Floor
12 Las Vegas, Nevada 89169
13 *Attorneys for Defendants*
14 *MacDonald Highlands Realty, LLC,*
15 *Michael Doiron and FHP Ventures,*
16 *A Nevada Limited Partnership*

17
18
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 13th day of August, 2015, pursuant to NRCP 5(b), I e-
21 filed and e-served via the Eighth Judicial District Court electronic service system the
22 foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**
23 **REGARDING DEFENDANTS MACDONALD HIGHLANDS REALTY, LLC,**
24 **MICHAEL DOIRON, AND FHP VENTURES' MOTION FOR SUMMARY**
25 **JUDGMENT** to all parties on the e-service list.
26
27
28

23 
24 An employee of Kemp, Jones & Coulthard


CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

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

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

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

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

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

10 I.

11 FINDINGS OF FACT

12 1. On February 20, 2013, Barbara Rosenberg sent a letter of intent to Defendant
13 Bank of America’s asset manager in Connecticut, Elena Escobar, regarding the purchase of 590
14 Lairmont Place in Henderson, Nevada (the “subject property”). See Exhibit A to the MSJ, at
15 41:14-43:1 and Letter of Intent and associated documents, attached to the MSJ as Exhibit B.
16 Barbara Rosenberg confirmed in her deposition that Exhibit B is a copy of the letter of intent
17 she sent. Exhibit A to the MSJ at 43:21-44:4.

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

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

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

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

1 4. Ms. Rosenberg continued to inquire regarding the subject property into March of
2 2013. See E-mail from Barbara Rosenberg dated March 6, 2013, attached to the MSJ as Exhibit
3 D, and e-mail from Kelli Barrington dated March 7, 2013, attached to the MSJ as Exhibit E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 15. The Real Estate Purchase Addendum executed by the Rosenbergs on March 15,
2 2013, provides both a broad waiver of the Rosenbergs' claims against the seller and its agents,
3 as well as a limitation of the Rosenbergs' remedies in any such claim:

4 **NOTWITHSTANDING ANY PROVISION TO THE**
5 **CONTRARY IN THE AGREEMENT, SELLER'S**
6 **LIABILITY AND BUYER'S SOLE AND EXCLUSIVE**
7 **REMEDY IN ALL CIRCUMSTANCES AND FOR ALL**
8 **CLAIMS (AS THE TERM IS DEFINED IN SECTION 26 OF**
9 **THIS ADDENDUM . . .) ARISING OUT OF OR RELATING**
10 **IN ANY WAY TO THE AGREEMENT OR THE SALE OF**
11 **THE PROPERTY TO BUYER INCLUDING, BUT NOT**
12 **LIMITED TO . . . THE CONDITION OF THE PROPERTY,**
13 **. . . THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR**
14 **LOCATION OF THE PROPERTY . . . SHALL BE LIMITED**
15 **TO NO MORE THAN**

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

18 **AND**

19 **(B) THE LESSER OF BUYER'S ACTUAL DAMAGES OR**
20 **\$5,000.00 IF THE SALE TO BUYER CLOSSES.**

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

22 16. The Addendum further provided:

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

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

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

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

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

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

11 This information is current and plotted as of **February**
12 **2010.**

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

16 See id. (emphasis original).

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

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

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

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

6 II.

7 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

17 6. In Nevada, a waiver is “the intentional relinquishment of a known right.”
18 Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 152 P.3d 737,
19 740 (Nev. 2007); accord, Wood v. Milyard, 132 S. Ct. 1826, 1832 (U.S. 2012) (recognizing that
20 “A waived claim or defense is one that a party has knowingly and intelligently relinquished”).
21 See also State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004)
22 (recognizing that a waiver is valid where made with knowledge of all material facts). When a
23 right is waived, the “right is gone forever and cannot be recalled.” Bernhardt v. Harrington, 775
N.W.2d 682, 686 (N.D. 2009).

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

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

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

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

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

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

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

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

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

III.

JUDGMENT

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

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


DATED this 30th day of July, 2015.

11th


DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

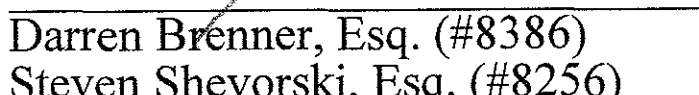
Approved as to form:
HOWARD KIM & ASSOCIATES

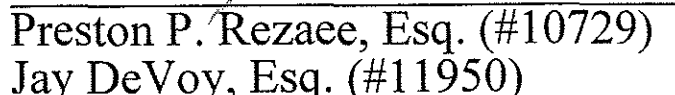

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership*

Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
*Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living
Trust*

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.


Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.


Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

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

III.

JUDGMENT

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

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

DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP


Approved as to form and content:
HOWARD KIM & ASSOCIATES

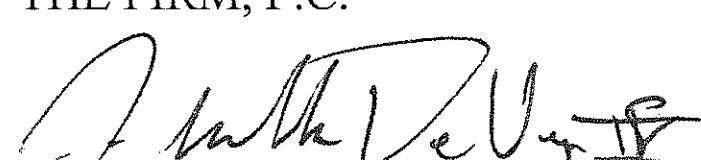
J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
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Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.

 #8256
Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.


Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahen Shane Malek

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
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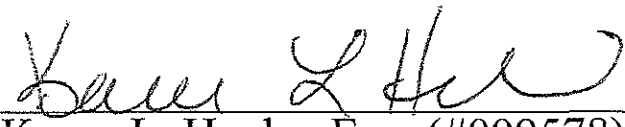
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Not approved as to form and content:
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Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership*


Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
*Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living
Trust*

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.

Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.

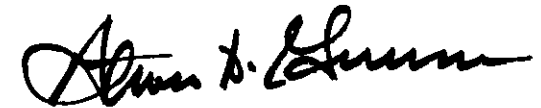
Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

TAB 46

TAB 46

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CLERK OF THE COURT

1 **NEO**

2 Preston P. Rezaee, Esq.

3 Nevada Bar No. 10729

4 Jay DeVoy, Esq., of counsel

5 Nevada Bar No. 11950

6 THE FIRM, P.C.

7 200 E. Charleston Blvd.

8 Las Vegas, NV 89104

9 Telephone: (702) 222-3476

10 Facsimile: (702) 252-3476

11 *Attorneys for Defendant/Counterclaimant*

12 *SHAHIN SHANE MALEK*

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 THE FREDERIC AND BARBARA

16 ROSENBERG LIVING TRUST,

17 Plaintiff,

18 vs.

19 BANK OF AMERICA, N.A.; BAC HOME

20 LOANS SERVICING, LP, a foreign limited

21 partnership; MACDONALD HIGHLANDS

22 REALTY, LLC, a Nevada limited liability

23 company; MICHAEL DOIRON, an individual;

24 SHAHIN SHANE MALEK, an individual;

25 PAUL BYKOWSKI, an individual; THE

26 FOOTHILLS AT MACDONALD RANCH

27 MASTER ASSOCIATION, a Nevada limited

28 liability company; THE FOOTHILLS

29 PARTNERS, a Nevada limited partnership;

30 DOES I through X, inclusive; and ROE

31 BUSINESS ENTITY I through XX, inclusive,

32 Defendants.

33 SHAHIN SHANE MALEK,

34 Counterclaimant,

35 vs.

36 THE FREDERIC AND BARBARA

37 ROSENBERG LIVING TRUST,

) CASE NO.: A-13-689113-C

) DEPT NO.: I

) **NOTICE OF ENTRY OF ORDER**

1)
2 Counterdefendant.)
3)

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

8 DATED this 20th day of August, 2015.

9 /s/ Jay DeVoy, Esq.

10 Preston P. Rezaee

11 Nevada Bar No. 10729

12 Jay DeVoy, of counsel

13 Nevada Bar No. 11950

14 THE FIRM, P.C.

15 200 E. Charleston Blvd.

16 Las Vegas, NV 89104

17 Telephone: (702) 222-3476

18 Facsimile: (702) 252-3476

19 *Attorneys for Defendant/Counterclaimant,*

20 *Shahin Shane Malek*
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

6
7 Karen Hanks
8 Melissa Barishman
9 Howard Kim & Associates
10 1055 Whitney Ranch Drive, Suite 110
11 Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim Defendant,
The Fredric and Barbara Living Trust

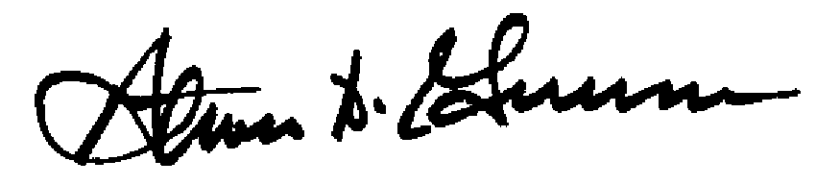
12 J. Randall Jones
13 Spencer H. Gunnerson
14 Kemp, Jones & Coulthard
15 3800 Howard Hughes Parkway, 17th Floor
16 Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

18 Darren Brenner
19 Steven Shevorski
20 William Habdas
21 Akerman LLP
22 1160 Town Center Drive, Suite 330
23 Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans Servicing, LP

24
25 /s/ Jacqueline Martinez
26 An employee of The Firm, P.C.
27
28

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

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CLERK OF THE COURT

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

10 THE FREDERIC AND BARBARA
11 ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

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

21 Defendants.
22
23

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

**[PROPOSED] ORDER, FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND JUDGMENT ON DEFENDANT /
COUNTERCLAIMANT SHAHIN SHANE
MALEK'S MOTION FOR SUMMARY
JUDGMENT**

24 Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion
25 for Summary Judgment on the claims asserted against him by Plaintiff/Counterclaim Defendant The
26 Frederic and Barbara Rosenberg Living Trust ("Plaintiff" or the "Trust"), and on Malek's
27 Counterclaim for slander of title against the Trust. The Court heard argument on this motion on June
28 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse

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

9 I. Introduction

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

18 This order considers Malek’s Motion for Summary Judgment on the Trust’s claims against
19 him: easement, implied restrictive covenant, injunction, and declaratory relief. Malek has also moved
20 for summary judgment on his counterclaim for slander of title against the Trust. In support of his
21 motion, Malek submitted numerous exhibits, including public records, the Trust’s discovery responses,
22 and documents authenticated during depositions, as well as excerpts from numerous depositions taken
23 in this case. The Trust opposed Malek’s Motion for Summary Judgment, and referenced its Cross-
24 Motion for Summary Judgment on Malek’s slander of title counterclaim² in opposing that branch of
25 Malek’s motion. Malek timely replied in support of his motion.

26
27 ¹ At this status check, Karen Hanks, Esq., appeared on behalf of the Plaintiff/Counterclaim Defendant. Jay DeVoy, Esq.
28 appeared on behalf of Defendant/Counterclaimant Malek. Spencer Gunnerson, Esq., appeared on behalf of Defendants
MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners.
Ariel Stern, Esq. appeared on behalf of Bank of America.

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

II. Legal Standard

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

III. Findings of Fact

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

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

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

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

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

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

1 5. Before merging the Golf Parcel with 594 Lairmont, MacDonald Highlands needed to
2 re-zone it from its Public / Semi-Public designation to residential use. Bykowski Dep. Vol. I at 38:12-
3 20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9; see Bykowski Dep. Vol. II at 183:25-
4 185:7.

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

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

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

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

23 10. At the time B2 Development mailed its notices for the community meeting in October
24 2012, Defendant Bank of America owned 590 Lairmont. Woodbridge Dep. at 15:1-20; Rosenberg
25 Dep. at 43:31-44:25; *see* Mot. Exh. 8. B2 Development mailed its notice to a valid address for Bank
26 of America, which never objected to the Golf Parcel's re-zoning. Woodbridge Dep. at 15:1-20; Mot.

27
28 ³ As noted above, this practice is not limited to MacDonald Highlands, but is common within other Golf Communities within the Las Vegas valley.

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

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

7 12. MacDonald Highlands' applications for the Golf Parcel's re-zoning were properly heard
8 by the City of Henderson; the City adopted a resolution re-zoning the Golf Parcel to residential use on
9 December 8, 2012, and the City recorded its resolution on January 7, 2013. Bykowski Dep. Vol. II at
10 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:17; Mot. Exhs. 4, 5.

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

15 14. Less than a month later in mid-February of 2013, the Golf Parcel's residential zoning
16 could be seen in an online zoning map publicly available from the City of Henderson's website. *Id.* at
17 30:6-20; Mot. Exh. 7.

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

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

24 17. Beginning in February of 2013, Barbara Rosenberg, an experienced residential real
25 estate broker and a trustee of the Trust, and David Rosenberg,⁴ an attorney in Las Vegas and a
26 beneficiary of the Trust, began contacting Bank of America in an attempt to purchase 590 Lairmont
27

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

1 before the property was publicly listed for sale. Rosenberg Dep. at 43:20-46:3, 55:1-57:14; Mot. Exhs.
2 8, 9.

3 18. Barbara Rosenberg not only had more than 25 years of experience as a residential real
4 estate broker, but estimates she has sold more than 500 homes in her career. Rosenberg Dep. at 12:19-
5 13:15, 88:8-25. Individually and through the Trust, Barbara Rosenberg and her husband have made
6 numerous real estate purchases in the past, including an 8,000 square foot primary residence, two other
7 houses in California, and two condos in Manhattan Beach, California—in addition to 590 Lairmont. *Id.*
8 at 13:16-16:13.

9 19. When 590 Lairmont was listed for sale, Barbara Rosenberg offered to purchase it for
10 \$1,750,000—above the listing price of \$1,600,000—in an all-cash transaction. She then increased her
11 offer and submitted the winning bid to purchase the home for \$2,302,000, all cash. Rosenberg Dep. at
12 43:20-46:3, 50:3-51:25, 85:1-86:5; Mot. Exhs. 8, 9, 14.

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

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

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

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

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

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

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

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

21 28. During the course of the litigation, the Trust's discovery responses indicated its only
22 concern was the loss of view, light, and privacy that might accompany Malek's construction on 594
23 Lairmont (including the Golf Parcel). Barbara Rosenberg's deposition testimony and the Trust's
24 responses to interrogatories propounded by Defendants Bank of America, MacDonald Highlands
25 Realty LLC, and Michael Doiron repeatedly identified potential loss of view, light, and privacy⁵ as the
26
27

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **IV. Conclusions of Law**

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

20 **A. The Trust's Claims of Easement and Implied Restrictive Covenant Are Premised** 21 **on Grounds Not Recognized Under Nevada Law, and Nevada Law Does Not Even** 22 **Recognize the Latter Claim.**

23 1. Nevada law has squarely and repeatedly repudiated the notion that easements or
24 restrictive covenants may arise by implication to protect views, privacy, or access to light. *Probasco v.*
25 *City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969); *Boyd v. McDonald*, 81 Nev. 642, 650-51,
26 408 P.2d 717, 722 (1965).

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

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

8 3. The Trust has not produced any evidence showing the existence of an easement
9 requiring the Golf Parcel to remain part of the golf course indefinitely. While the Trust adopted this
10 argument in opposing Malek’s Motion for Summary Judgment, that is, as far as the Court can tell, the
11 first time such a theory arose. Counsel’s arguments do not replace facts in the analysis of a summary
12 judgment motion. *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 706, 220 P.3d 684, 691, 695
13 (2009).

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

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

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

3 6. Related to its claim for easement, the Court concludes that the Trust's claim for implied
4 restrictive covenant also fails. Nevada has not previously recognized a cause of action for implied
5 restrictive covenant, and this Court declines to do so. Consistent with the precedent of Nevada's
6 Supreme Court, this Court will not recognize a novel cause of action. *Brown v. Eddie World LLC*, 131
7 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440
8 (2001); *Greco v. United States*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-48 (1995); *see Nat'l R.R.*
9 *Passenger Corp v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457-58 (1974) (promoting the
10 doctrine of *expressio unius est exclusion alterius*, which prohibits theories of liability that are not
11 expressly authorized). This Court's decision to not recognize this cause of action is steeped in the lack
12 of a cohesive national standard, the subjective nature of the claim's object, and the difficulty of
13 proving the claim. *Badillo*, 117 Nev. at 42-44, 16 P.3d at 440-41.

14 7. Among the states that do recognize this claim, the standards for offensively imposing an
15 implied restrictive covenant differ widely. *See Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990);
16 *Knotts Landing Corp. v. Lathem*, 315 Ga. 321, 323, 348 S.E. 651, 653 (1986); *Arthur v. Lake Tansi*
17 *Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *see also Peck v. Lanier Golf Club, Inc.*, 315 Ga. App.
18 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012). Moreover, Trust seeks to use this claim to
19 enforce its subjective desire to preserve its view, light, and privacy, further militating against the Court
20 recognizing this cause of action. *Greco*, 111 Nev. at 409, 893 P.2d at 348.

21 8. To the extent the Trust's claim for implied restrictive covenant is duplicative of, or
22 otherwise subsidiary within, the Trust's claim for easement, it fails for the reasons stated above.
23 *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722. The Trust has
24 not advanced any evidence that its claim for an implied restrictive covenant seeks to preserve or
25 protect anything other than its view, light, or privacy. Any of these three concerns are insufficient
26 bases for the Court to imply an easement or restrictive covenant exists over the Golf Parcel. As the
27 Trust has not produced any evidence showing an alternate, cognizable basis for the Court to impose an
28

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

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

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

9 10. Similarly, this Court adopts the position of the United States District Court for the
10 District of Nevada and several other courts, and concludes that injunctive relief is merely a remedy,
11 rather than an independent claim. *In re Walmart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d
12 1091, 1130 (D. Nev. 2007); *see Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999); *Art*
13 *Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640, 646-47 (Cal. Ct. App. 1992).

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

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

21 12. For the same reasons discussed in the Court's Order entered July 23, 2015, denying the
22 Trust's Cross-Motion for Summary Judgment on Malek's counterclaim, and incorporated by reference
23 herein, the Court also denies Malek's Motion for Summary Judgment on the same claim. To prevail,
24 Malek must show that the Trust made a false statement about his title or possession of the Golf Parcel
25 with actual malice—a knowingly false statement, or one made with reckless disregard for the
26 truth—that caused him damage. *Executive Mgmt., Ltd. v. Ticor Title Co.*, 114 Nev. 823, 963 P.2d 465,
27 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

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

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

4 **V. Conclusion**

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

9 **VI. Judgment**

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

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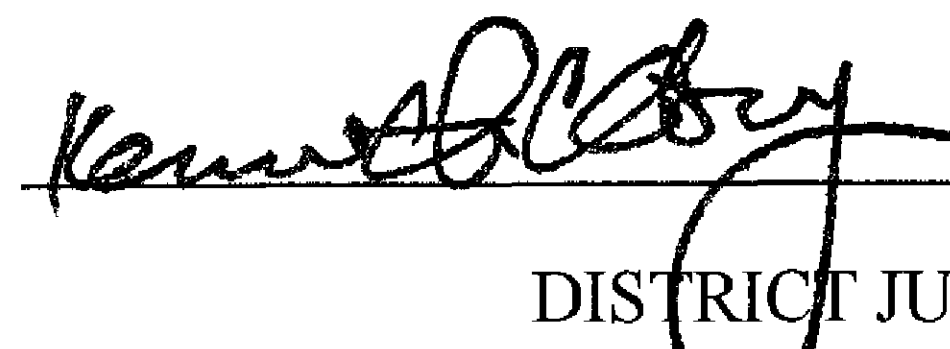
25 ..

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

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

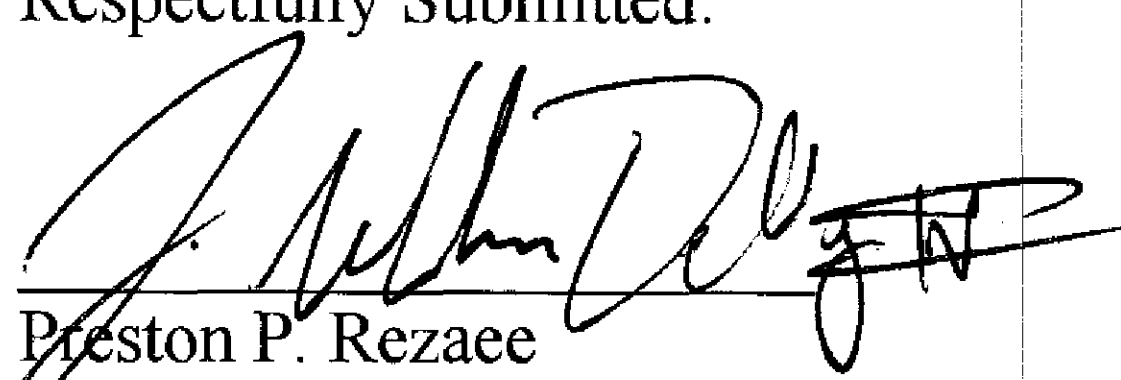
1
2 **IT IS SO ORDERED**

3
4 Dated: Aug 11, 2015

5
6 
7 DISTRICT JUDGE

8 Respectfully Submitted:

Approved in content and form by:

9 
10 Preston P. Rezaee
11 Nevada Bar No. 10729
12 Jay DeVoy, of counsel
13 Nevada Bar No. 11950
14 Sarah Chavez, of counsel
15 Nevada Bar No. 11935
16 THE FIRM, P.C.
17 200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

18 Approved in content and form by:

Approved in content and form by:

19
20 J. Randall Jones
21 Nevada Bar No. 1927
22 Spencer H. Gunnerson
23 Nevada Bar No. 8810
Kemp, Jones & Coulthard
24 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
25 *Attorneys for Defendants*
MacDonald Highlands Realty, LLC,
Michael Doiron, and
26 *FHP Ventures*
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

27 **CERTIFICATE OF SERVICE**

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

3
4 **IT IS SO ORDERED**

5
6 Dated: _____, 2015

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DISTRICT JUDGE

Respectfully Submitted:

Not approved as to form and content by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
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Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
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1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
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Bank of America N.A. and BAC Home Loans
Servicing, LP.

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

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6 _____
7
8 DISTRICT JUDGE

9 Respectfully Submitted:

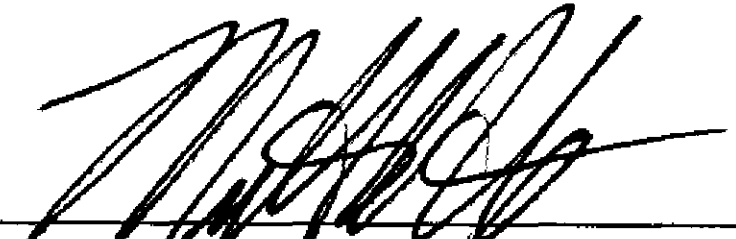
Approved in content and form by:

10 _____
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12 Nevada Bar No. 10729
13 Jay DeVoy, of counsel
14 Nevada Bar No. 11950
15 Sarah Chavez, of counsel
16 Nevada Bar No. 11935
17 THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

18 Approved in content and form by:

Approved in content and form by:

19  #9524
20 J. Randall Jones
21 Nevada Bar No. 1927
22 Spencer H. Gunnerson
23 Nevada Bar No. 8810
24 Kemp, Jones & Coulthard
25 3800 Howard Hughes Parkway, 17th Floor
26 Las Vegas, NV 89169
27 *Attorneys for Defendants*
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

28 **CERTIFICATE OF SERVICE**

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

5
6 _____
7
8 DISTRICT JUDGE

9
10 Respectfully Submitted:

Approved in content and form by:

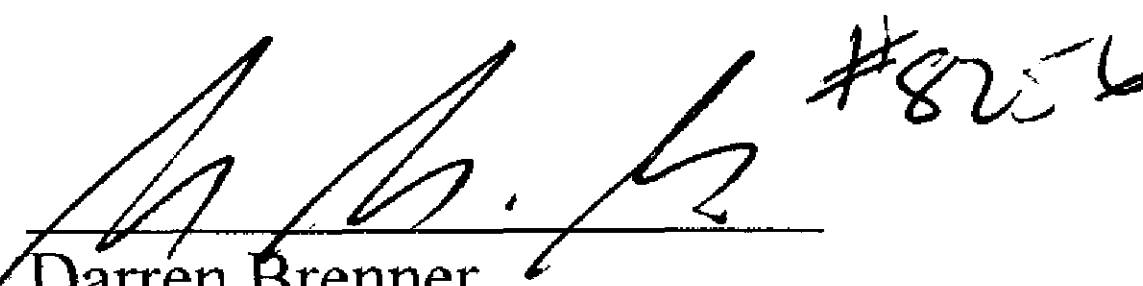
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15 Nevada Bar No. 11950
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17 Nevada Bar No. 11935
18 THE FIRM, P.C.
19 200 E. Charleston Blvd.
20 Las Vegas, NV 89104
21 Telephone: (702) 222-3476
22 Facsimile: (702) 252-3476
23 *Attorneys for Defendant/Counterclaimant,*
24 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

25 Approved in content and form by:

Approved in content and form by:

26 _____
27 J. Randall Jones
28 Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

 #8256
Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

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

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

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

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

14 *Attorneys for Plaintiff*

15 Darren Brenner
16 Email: Darren.brenner@akerman.com

17 Deb Julien
18 Email: Debbie.julien@akerman.com

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

22 Erica Bennett
23 Email: E.bennett@kempjones.com

24 J. Randall Jones
25 Email: Jrj@kempjones.com

26 Janet Griffin
27 Email: janetjamesmichael@gmail.com

28 Email: jlg@kempjones.com
Spencer Gunnerson
Email: S.gunnerson@kempjones.com

Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

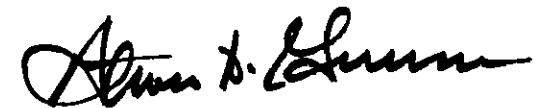
/s/ Jacqueline Martinez
Employee of The Firm, P.C.

TAB 47

TAB 47

TAB 47

JA_2526



CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)
r.jones@kempjones.com
2 SPENCER H. GUNNERSON, ESQ. (#8810)
s.gunnerson@kempjones.com
3 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*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA
12 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 Nevada limited partnership; DOES I
21 through X, inclusive; ROE
CORPORATIONS I through X, inclusive,

22 Defendants.

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

**MOTION FOR ATTORNEY'S FEES
AND COSTS**

24 Defendants, MACDONALD HIGHLAND REALTY, LLC ("MacDonald"),
25 MICHAEL DOIRON ("Doiron"), and FHP VENTURES ("FHP") by and through their
26 counsel, Kemp, Jones & Coulthard, LLP, (collectively, "Moving Defendants") hereby move
27 this Court for attorney's fees and costs in the respective amounts of \$284,972.50 and
28

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

1 \$29,835.18.^{1 2}

2 This Motion is made and based upon the attached Memorandum of Points and
3 Authorities, all exhibits attached hereto, including the Affidavit of Matthew S. Carter, Esq.,
4 in support of this Motion, and any oral argument the Court may entertain at the hearing of
5 this matter.

6 DATED this 2 day of September, 2015.

7 Respectfully submitted by:

8 KEMP, JONES & COULTHARD, LLP

9 

10 J. RANDALL JONES, ESQ. (1927)
11 SPENCER H. GUNNERSON ESQ. (8810)
12 MATTHEW S. CARTER ESQ. (9524)
13 3800 Howard Hughes Parkway
14 Seventeenth Floor
15 Las Vegas, Nevada 89169
16 *Attorneys for Defendants*
17 *MacDonald Highlands Realty, LLC,*
18 *Michael Doiron, and FHP Ventures,*
19 *A Nevada Limited Partnership*

20
21
22
23 ¹ Defendants filed a separate Memorandum of Costs and are also seeking the costs incurred
24 in this matter as set forth in that Memorandum. The costs sought in this motion are pursuant
25 to contractual terms which provide for the reimbursement of all costs, not merely those
permitted by Nevada statute, which were outlined specifically in the Verified Memorandum
of Costs filed on August 18, 2015.

26 ² A breakdown of all fees requested is contained in the redacted statement attached hereto as
27 Exhibit E. (That document has been redacted to preserve attorney-client privilege and work
28 product, both of which are expressly being claimed and preserved here.) A breakdown of the
costs is contained in the statement and invoice collectively attached hereto as Exhibit F.

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

NOTICE OF MOTION

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

TO: Howard Kim & Associates, its counsel.

You, and each of you, will please take notice that Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures, A Nevada Limited Partnership will bring the above-entitled **MOTION FOR ATTORNEY'S FEES** on for hearing on the 12 day of Oct., 2015, in Department I of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada or soon thereafter as counsel may be heard. *In Chambers.*

DATED this 2 day of September, 2015.

Respectfully submitted by:

KEMP, JONES & COULTHARD, LLP



J. RANDALL JONES, ESQ. (1927)
SPENCER H. GUNNERSON ESQ. (8810)
MATTHEW S. CARTER ESQ. (9524)
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
*Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and FHP Ventures,
A Nevada Limited Partnership*

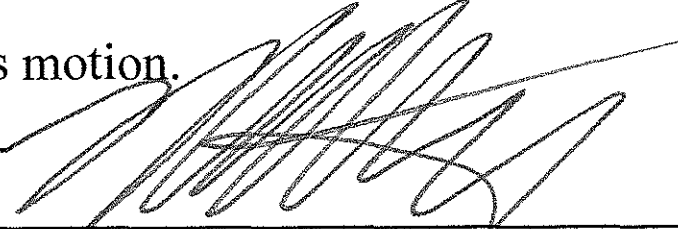
KEMP JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

AFFIDAVIT OF MATTHEW S. CARTER, ESQ. IN SUPPORT OF MOTION FOR ATTORNEYS FEES AND COSTS


STATE OF NEVADA)
COUNTY OF CLARK) ss.

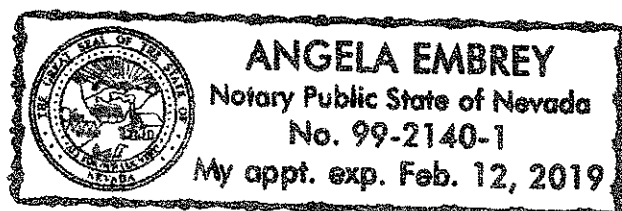
Matthew S. Carter, Esq., being first duly sworn, deposes and says:

He is counsel for Defendants MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures in the above-entitled action. He has read the foregoing Motion for Attorneys Fees and Costs and Exhibits E and F thereto and knows the contents thereof. The information contained in the motion and exhibits thereto is true the best of his knowledge, information and belief. The fees and costs were actually and necessarily incurred and were reasonable in light of the work performed by this firm on this case in connection with the Brunzell factors as discussed in this motion.


Matthew S. Carter, Esq.

Subscribed and Sworn to before me
this 21st day of September, 2015.


Notary Public in and for said
County and State



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The claims against Moving Defendants were disposed of when this Court granted their motion for summary judgment on August 13, 2015. See Findings of Fact, Conclusions of Law, and Judgment (the “Judgment”), attached hereto as Exhibit A. Because the Judgment resolved all claims involving the Moving Defendants, this Court ordered that Plaintiff would take nothing by way of its Amended Complaint against them. See id. at 10.

The Purchase Agreement and Addendum on which the motion for summary judgment was based in part contained provisions that stated, in the event an action was brought relating to or arising out of those documents, the prevailing party in that action would be entitled to attorney fees. See Residential Purchase Agreement, attached hereto as Exhibit B, at ¶ 26, and Real Estate Purchase Addendum, attached hereto as Exhibit C, at ¶ 47. What’s more, Moving Defendants MacDonald and Doiron each served an offer of judgment upon Plaintiff on April 8, 2014, for \$5,000 each, another offer was made by them collectively on January 29, 2015 for \$25,000. See Offers of Judgment, attached collectively hereto as Exhibit D. Whether the Court wishes to base its decision on the contractual provisions or the offers of judgment, Moving Defendants are entitled to at least the majority of their attorney fees and costs incurred in the successful defense of this action. Accordingly, Moving Defendants now respectfully request that this Court enforce the contractual provisions and offers of judgment to amend the judgment in favor of Moving Defendants to include an award of the full amount of attorney fees and costs.

II.

ARGUMENT

A. Moving Defendants are entitled to fees and costs as a matter of contract.

“When the language of a contract” is clear, “courts must enforce the contract according to its terms.” Bell v. Leven, 90 P.3d 1286, 1288 (Nev. 2004). The Nevada Supreme Court has long acknowledged that district courts must interpret and apply

1 unambiguous contract terms as written for they lack the power to rewrite or reform the
2 language of a contract:

3 The court is not at liberty, either to disregard words used by the
4 parties, descriptive of the subject matter or of any material
5 incident, or to insert words which the parties have not made use
6 of. It cannot reject what the parties inserted, unless it is repugnant
7 to some other part of the instrument. The court can properly
8 interpret a contract only as the parties make it, and cannot
9 substitute words for those used by them.

10 Reno Club v. Young Inv. Co., 182 P.2d 1011, 1017 (Nev. 1947) (quoting 12 AM.JUR. § 228,
11 at 749); see also Senteney v. Fire Ins. Exchange, 707 P.2d 1149, 1150 (Nev. 1985). And
12 both the Nevada Legislature and the Nevada Supreme Court have specifically recognized that
13 contracting parties may properly agree to pay the attorney fees of the prevailing party in a
14 civil action arising out of their contract. See NRS 18.010(1); Semenza v. Caughlin Crafted
15 Homes, 901 P.2d 684, 689 (Nev. 1995). If the language providing for fees and costs is “clear
16 and unambiguous. . . the contract will be enforced as written.” See Davis v. Beling, 278 P.3d
17 501, 515 (Nev. 2012). These time-tested principles require this Court to enforce the attorney
18 fees and costs provisions in Plaintiff’s contracts and order Plaintiff to reimburse the Moving
19 Defendants for these litigation expenditures.

20 1. *The Residential Purchase Agreement*

21 On March 13, 2013, Barbara and Frederic Rosenberg entered into a Purchase
22 Agreement for the subject property.³ Paragraph 26 of that agreement provided in part as
23 follows:

24 Should any party hereto retain counsel for the purpose of
25 initiating litigation to enforce or prevent the breach of any
26 provision hereof, or for any other judicial remedy, then the
27 prevailing party shall be entitled to be reimbursed by the losing
28 party for all costs and expenses incurred thereby, including, but
not limited to, reasonable attorneys fees and costs incurred by
such prevailing party.

³ Plaintiff was later substituted into the Purchase Agreement via another addendum. See
Motion for Summary Judgment, on file herein, at 10:19-21.

1 Exhibit B at ¶ 26. Here, Plaintiff retained counsel and filed, among other things, an Amended
2 Complaint on January 12, 2015. See Amended Complaint, on file herein. That Amended
3 Complaint, which was based in large part on the terms of the Purchase Agreement itself,
4 sought judicial remedies against all of the Moving Defendants. See id. at its Third, Fourth,
5 Fifth, Sixth, Seventh, Eighth, and Eleventh Claims for Relief. There is no dispute that the
6 Moving Defendants prevailed on all claims asserted against them. See Exhibit A.
7 Accordingly, under the express terms of the Purchase Agreement relied upon by Plaintiff in
8 the Amended Complaint, Moving Defendants are entitled to all of their attorney fees and
9 costs as a matter of law.

10 2. *The Real Estate Purchase Addendum*

11 On March 15, 2013, Barbara and Frederic Rosenberg executed the Real Estate
12 Purchase Addendum. Michael Doiron, the broker for MacDonald Highlands Realty, is also
13 listed on the signature page of that document as the seller's broker. Paragraph 47 of that
14 addendum provides as follows:

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

19 Like the Purchase Agreement language, this provision of the Addendum contains mandatory
20 "shall" language that obligates Plaintiff to pay Moving Defendants their "reasonable
21 attorneys' fees, costs, and expenses incurred" in this case. Plaintiff asserted a total of seven
22 claims for relief at various Moving Defendants and lost them all. Accordingly, Moving
23 Defendants are the prevailing parties with respect to this contractual language, and they shall
24 be paid all their reasonable costs and attorney fees by Plaintiff.

25 **B. The offers of judgment also obligate Plaintiff to pay at least the fees and costs**
26 **incurred by Moving Defendants since April 8, 2014 and/or on January 29, 2015.**

27 As indicated by Exhibit D, Moving Defendants MacDonald Highlands Realty, LLC,
28 and Michael Doiron made offers of judgment for \$5,000 each to Plaintiff on April 8, 2014.

MacDonald and Doiron also made a joint offer of judgment, exclusive of fees, costs, and interest, on January 29, 2015. See id. Because Plaintiff did not accept those offers within 10 days, they were deemed rejected as a matter of law. NEV. R. CIV. P. 68(e). Because the Moving Defendants have since prevailed on all claims, Plaintiff has failed to obtain a judgment more favorable than those offers and is accordingly subject to the following penalties:

[T]he offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer.

NEV. R. CIV. P. 68(f)(2). Therefore, even if there did not already exist two separate provisions for attorney fees, there are two separate offers of judgment that require the payment by Plaintiff of the portion Moving Defendants' attorney fees since April 8, 2014 (\$221,377.50), as well as their corresponding costs since that date (\$26,593.73). The third offer of judgment requiring the payment of all fees and costs since January 29, 2015, in the amount of \$120,315.00 and \$12,671.48, respectively.

C. The attorney fees requested by Moving Defendants are reasonable as a matter of Nevada law.

Both the contractual provisions cited supra and Nevada law regarding offers of judgment state that the attorney fees awarded by this Court should be "reasonable." In determining the reasonableness of attorney fees requested and rewarded, Nevada courts have traditionally considered four factors: "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; [and] (4) the result: whether the attorney was successful and what benefits were derived." Brunzell v. Golden Gate Nat'l Bank, 455 P.2d 31, 33 (Nev. 1969).

1 Here, the Brunzell factors all weigh in favor of awarding the full \$284,972.50 in
2 attorney fees requested by the Moving Defendants. First, the quality of Moving Defendants'
3 attorneys cannot be disputed. Kemp, Jones & Coulthard LLP is recognized as one of the
4 preeminent litigation law firms in the state of Nevada, known for taking cases to trial and
5 appeal, even going so far as the United States Supreme Court. Its managing partner, J.
6 Randall Jones, is the primary partner handling this representation. In 1998, the organization
7 now known as the Nevada Justice Association named Mr. Jones the trial lawyer of the year.
8 Later, in 2012, his partner, Will Kemp, was also named a trial lawyer of the year. The Kemp
9 Jones firm has also recently produced state and federal judges and is well-known even
10 outside Nevada for its work in complex, multi-district litigation in a variety of matters,
11 including tobacco and prescription drug litigation. The other Kemp Jones partner in this
12 representation, Spencer Gunnerson, has been litigating real estate matters such as the one
13 before this Court for over a decade. It would be difficult, if not impossible, for the Moving
14 Defendants to have found a law firm of the quality and breadth of skill offered by Kemp,
15 Jones & Coulthard.

16 The second Brunzell factor, the difficulty of this matter, also weighs in favor of a full
17 attorney fee award. While this real estate matter is not the most complex case ever to grace
18 the Eighth Judicial District Court, and it was also only modestly expensive by litigation
19 standards (which often see attorney fee bills in seven figures), this case presented serious
20 questions requiring extensive written discovery and depositions. Expert witnesses were
21 retained and deposed at significant cost to the parties. Moving Defendants' motion for
22 summary judgment was a heavily briefed, hard-fought matter that required the efforts of
23 multiple attorneys. Accordingly, the complexity of the issues and the amount of fees claimed
24 are proportionate and fair.

25 The third factor, the amount of work performed by Moving Defendants' attorneys in
26 this matter, is bound up with the second. This case involved the retention of three expert
27 witnesses, ten depositions, and twenty-eight separate document disclosures by the various
28 parties. Many of these items were directly relevant in the filing of Moving Defendants'

1 motion for summary judgment. This case was also set for trial shortly after the hearing of the
2 motion for summary judgment, which means that Moving Defendants' counsel was required
3 to be preparing for a jury trial the whole time. Because preparing for a jury trial while
4 managing the other aspects of this case was neither easy nor inexpensive, the relatively
5 modest fees and costs requested herein are more than reasonable as a matter of Nevada law.
6 Considering that the case actually ended as a result of a favorable ruling on Moving
7 Defendants' motion for summary judgment (itself no easy task), the amount of work
8 performed on this file was considerable.

9 The final Brunzell factor, the result, is the easiest for the Court to evaluate. Moving
10 Defendants disposed of all claims against them via a motion for summary judgment.
11 Achieving complete victory on every single claim without having to go to trial is perhaps the
12 best result a client can hope for, short of not being sued at all. All four factors from the
13 Brunzell case, therefore, militate in favor of a full reward of Moving Defendants attorney
14 fees and costs.

15 **D. Moving Defendants are also entitled to an award of post-judgment interest.**

16 NRS 17.130(2) provides that interest on a judgment will continue to accrue until it has
17 been satisfied. According to the Nevada Supreme Court, losing parties are obligated to pay
18 post-judgment interest on a judgment. See Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev.
19 318, 890 P.2d 785 (1995). Therefore, the award of post-judgment interest should be applied
20 to the total amount of the fees and costs awarded.

21 Pursuant to NRS 17.130, then, Moving Defendants respectfully request that an
22 Amended Judgment for costs and fees be entered which specifically states that "such
23 Amended Judgment shall continue to accrue post-judgment interest, calculated at the prime
24 rate plus two percent (2%), until such time as the debt is completely satisfied."

25 ///

26 ///

27 ///

28

III.


CONCLUSION

Plaintiff's representatives contractually agreed to reimburse the parties they sued for their attorneys fees and costs incurred in successfully defending against Plaintiff's claims in this litigation. This Court is legally obligated to enforce Plaintiff's promise. Accordingly, this Court should award Moving Defendants \$284,972.50 in attorneys fees and \$29,835.18 in litigation costs and amend the judgment accordingly. In the alternative, should the Court find that Moving Defendants are only entitled to fees and costs as a result of the April 8, 2014 offers of judgment, then Moving Defendants ask to be awarded \$221,377.50 in fees and \$26,593.73 in costs. And should the Court find that fees and costs should only be awarded since the January 29, 2015, offer of judgment, the Moving Defendants ask for \$120,315.00 in fees and \$12,671.48 in costs. The Court should also provide that the Amended Judgment shall continue to accrue post-judgment interest until the judgment is completely satisfied.

DATED this 2 day of September, 2015.

Respectfully submitted by:

KEMP, JONES & COULTHARD, LLP


J. RANDALL JONES, ESQ. (1927)
SPENCER H. GUNNERSON ESQ. (8810)
MATTHEW S. CARTER ESQ. (9524)
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and FHP Ventures,
A Nevada Limited Partnership

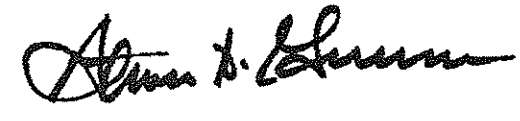
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **MOTION FOR ATTORNEY'S FEES AND COSTS** to all parties on the e-service list.


An employee of Kemp, Jones & Coulthard

EXHIBIT A



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

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

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

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

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

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

10 I.

11 FINDINGS OF FACT

12 1. On February 20, 2013, Barbara Rosenberg sent a letter of intent to Defendant
13 Bank of America’s asset manager in Connecticut, Elena Escobar, regarding the purchase of 590
14 Lairmont Place in Henderson, Nevada (the “subject property”). See Exhibit A to the MSJ, at
15 41:14-43:1 and Letter of Intent and associated documents, attached to the MSJ as Exhibit B.
16 Barbara Rosenberg confirmed in her deposition that Exhibit B is a copy of the letter of intent
17 she sent. Exhibit A to the MSJ at 43:21-44:4.

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

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

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

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

1 4. Ms. Rosenberg continued to inquire regarding the subject property into March of
2 2013. See E-mail from Barbara Rosenberg dated March 6, 2013, attached to the MSJ as Exhibit
3 D, and e-mail from Kelli Barrington dated March 7, 2013, attached to the MSJ as Exhibit E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 15. The Real Estate Purchase Addendum executed by the Rosenbergs on March 15,
2 2013, provides both a broad waiver of the Rosenbergs' claims against the seller and its agents,
3 as well as a limitation of the Rosenbergs' remedies in any such claim:

4 **NOTWITHSTANDING ANY PROVISION TO THE**
5 **CONTRARY IN THE AGREEMENT, SELLER'S**
6 **LIABILITY AND BUYER'S SOLE AND EXCLUSIVE**
7 **REMEDY IN ALL CIRCUMSTANCES AND FOR ALL**
8 **CLAIMS (AS THE TERM IS DEFINED IN SECTION 26 OF**
9 **THIS ADDENDUM ...) ARISING OUT OF OR RELATING**
10 **IN ANY WAY TO THE AGREEMENT OR THE SALE OF**
11 **THE PROPERTY TO BUYER INCLUDING, BUT NOT**
12 **LIMITED TO ... THE CONDITION OF THE PROPERTY,**
13 **... THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR**
14 **LOCATION OF THE PROPERTY ... SHALL BE LIMITED**
15 **TO NO MORE THAN**

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

18 **AND**

19 **(B) THE LESSER OF BUYER'S ACTUAL DAMAGES OR**
20 **\$5,000.00 IF THE SALE TO BUYER CLOSSES.**

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

22 16. The Addendum further provided:

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

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

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

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

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

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

11 This information is current and plotted as of February
12 2010.

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

17 See id. (emphasis original).

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

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

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

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

6 **II.**

7 **CONCLUSIONS OF LAW**

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

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

24 2. “Nondisclosure by the seller of adverse information concerning real property
25 generally will not provide the basis for an action by the buyer to rescind or for damages when
26 property is sold ‘as is.’” Mackintosh v. Jack Matthews & Co., 855 P.2d 549, 552 (Nev. 1993).
27 Here, findings of fact 2, 6, 12, 13, and 14 all indicate that the sale of the subject property to
28

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

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

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

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

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

17 6. In Nevada, a waiver is “the intentional relinquishment of a known right.”
18 Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 152 P.3d 737,
19 740 (Nev. 2007); accord, Wood v. Milyard, 132 S. Ct. 1826, 1832 (U.S. 2012) (recognizing that
20 “A waived claim or defense is one that a party has knowingly and intelligently relinquished”).
21 See also State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004)
22 (recognizing that a waiver is valid where made with knowledge of all material facts). When a
23 right is waived, the “right is gone forever and cannot be recalled.” Bernhardt v. Harrington, 775
24 N.W.2d 682, 686 (N.D. 2009).

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

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

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

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

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

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

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

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

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


III.

JUDGMENT

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

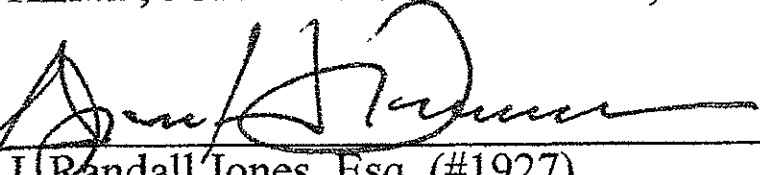
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by way of its January 12, 2015 Amended Complaint against Moving Defendants.

DATED this 30th day of Aug 2015.
11th


DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

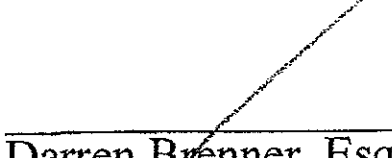
Approved as to form:
HOWARD KIM & ASSOCIATES

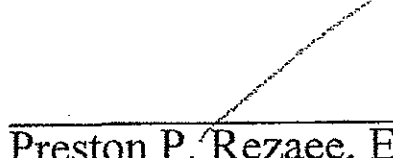

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership

Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.


Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.


Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

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

DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

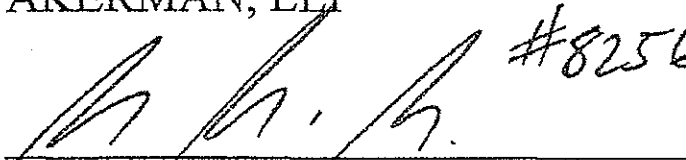
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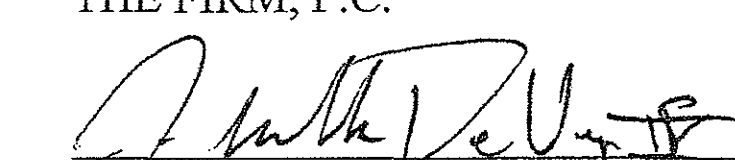
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A Nevada Limited Partnership

Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

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THE FIRM, P.C.

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1160 Town Center Drive, #330
Las Vegas, Nevada 89144
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Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

KEMP, JONES & COULTHARD, LLP
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III.

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

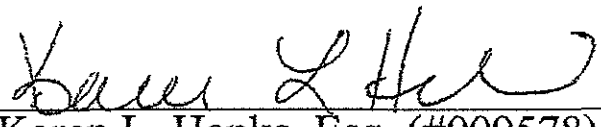
DATED this ____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:
KEMP, JONES & COULTHARD, LLP

Not approved as to form and content:
HOWARD KIM & ASSOCIATES

J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
Matthew S. Carter, Esq. (#9524)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron and FHP Ventures,
A Nevada Limited Partnership


Karen L. Hanks, Esq. (#009578)
Melissa Barishman, Esq. (#12935)
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Attorneys for Plaintiff
The Frederic and Barbara Rosenberg Living Trust

Approved as to form and content:
AKERMAN, LLP

Approved as to form and content:
THE FIRM, P.C.

Darren Brenner, Esq. (#8386)
Steven Shevorski, Esq. (#8256)
1160 Town Center Drive, #330
Las Vegas, Nevada 89144
Attorneys for Bank of America, N.A.

Preston P. Rezaee, Esq. (#10729)
Jay DeVoy, Esq. (#11950)
200 E. Charleston Blvd
Las Vegas, Nevada 89104
Attorneys for Shahan Shane Malek

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 01:03 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 12

Respectfully submitted by:

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

KAREN HANKS, ESQ.
Nevada Bar No. 9578

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

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	13	1/12/15	Amended Complaint	JA_0089
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
8/9/ 10/1 1	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
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8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
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1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
1	9	1/28/14	MacDonald Highland Realty's Answer to Plaintiff's Complaint	JA_0060
1	18	2/2/15	MacDonald Highland's and Michael Dorion's Answer to Amended Complaint	JA_0126
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
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8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
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7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
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13	62	5/23/16	Notice of Appeal	JA_2854
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
13	57	1/20/16	Notice of Entry of Order	JA_2817
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
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13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
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14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
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1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
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13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13/1 4	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
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14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
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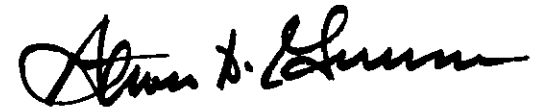
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14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048

TAB 38



CLERK OF THE COURT

RPLY

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Case No. A-13-689113-C

Dept. No. I

Plaintiff,

vs.

**REPLY TO BANK OF AMERICA, N.A.'S
OPPOSITION TO MOTION TO AMEND
COMPLAINT TO CONFORM TO
EVIDENCE**

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

Defendants.

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST (the "Rosenberg Trust"), files its Reply to Bank of America's Opposition to Motion to Amend Complaint.

1 This Reply 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 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **A. This Court Should Grant Leave to Amend.**

6
7 By way of its Motion, Plaintiff was anticipating the issues that would be tried in this matter based
8 on the discovery that was conducted. Rather than wait until the parties were in trial, Plaintiff filed the
9 instant motion requesting relief under NRCP 15(b). However, should this court find that sub-section (b)
10 of NRCP 15 is not procedurally ripe, this Court can still grant leave under NRCP 15(a). Pursuant to
11 NRCP 15(a), a party may amend the party's pleading "with leave of the court or by written consent of
12 the adverse party, and leave shall be freely given." "[I]n the absence of any apparent or declared reason-
13 such as undue delay, bad faith or dilatory motive on the part of the movant-the leave sought should be
14 freely given." Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973)
15 citing Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) and Adamson v. Bowker, 85
16 Nev. 115, 121, 450 P.2d 796, 800-801 (1969).) Under Nevada Rule of Civil Procedure 15(d), "upon
17 motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party
18 to serve a supplemental pleading setting forth transactions or occurrences or events which have happened
19 since the date of the pleadings sought to be supplemented." "NRCP 15(d) is intended to promote as
20 complete an adjudication as possible by allowing the addition of claims that arise after the initial
21 pleadings have been filed. William Inglis & Sons Baking Co. v. ITT Continental Baking Co., 668 F.2d
22 1014, 1057 (9th Cir.), cert. denied, 103 S.Ct. 57 (1982).

23 In the present case, Plaintiff learned on January 27, 2015 from Mr. Malek that FHP Ventures had
24 verbally approved his construction plans, but that he was still waiting for written approval. See excerpts
25 from Mr. Malek's deposition, 74:11-25 through 75:2, attached hereto as Exhibit 1. Thereafter, FHP
26 Ventures filed a Motion to Dismiss, and at the hearing of that Motion the Court intimated that the
27 appropriate claims may not have been brought against FHP Ventures. As such, Plaintiff filed the instant
28 motion to amend. As argued in various briefs already filed before this Court, Plaintiff intends to argue,

1 at trial, that FHP Ventures breached the duties owed under the Design Guidelines, and has approved
2 Malek's construction plans in direct contravention of the Design Guidelines. All Plaintiff seeks to do
3 by way of the proposed amendment is assert the appropriate claims. In other words, the facts and
4 arguments underlying Plaintiff's claims against FHP Ventures has not changed; the proposed amended
5 complaint merely re-states these allegations under money damage claims as opposed to equitable claims.
6 As such, leave should be freely given.

7 **B. NRS 38.310.(2) Does not Apply to the Claims Proposed by Plaintiff.**

8 None of the claims Plaintiff seeks to add against FHP Ventures invoke NRS 38.310. First, NRS
9 38.300(3), defines "civil action" as "an action for money damages or equitable relief. The term **does not**
10 **include an action in equity for injunctive relief...**" (emphasis added). This action seeks injunctive
11 relief, therefore NRS 38.310 does not apply. Second, NRS 38.310 provides that no civil action, based
12 upon "[t]he interpretation, application or enforcement of any covenants, conditions or restrictions
13 applicable to residential property or any bylaws, rules or regulations adopted by an association," may be
14 brought prior to the claim being submitted to mediation. Here, Plaintiff seeks the interpretation and
15 enforcement of the Design Guidelines. The Design Guidelines are a separate document/contract from
16 the MacDonald Highlands CC&Rs that are enforced not by the HOA Board, but by FHP Ventures.¹
17 Nevertheless, to the extent the Design Guidelines are considered part of the CC&Rs, this only means the
18 claims against FHP Ventures must be dismissed, and first mediated. It does not mean that the claims
19 against the other parties must be dismissed. Particularly because none of Plaintiff's claims against Bank
20 of America have anything to do with the MacDonald Highlands CC&Rs or Design Guidelines.

21 In fact, even the claim against FHP Ventures is an alternative claim that only comes into play if
22 a jury determines that an implied restrictive covenant does not exist over the Golf Course. In other words,
23 if a jury determines that an implied restrictive covenant exists, then FHP Ventures' approval of Malek's
24 construction plans are moot; Malek will not be able to build on the golf portion. Simply put, there is no
25 possible way for Plaintiff to mediate this claim until such time as the issue of the implied restrictive
26 covenant is determined. But none of this has anything to do with Plaintiff's claims against Bank of
27


28 ¹ The fact that FHP Ventures did not raise NRS 38.310 speaks volumes. This must be because even FHP Ventures recognizes that the Design Guidelines are separate and distinct from the CC&Rs, and are enforced by FHP Ventures, not the HOA Board.

1 America. As such, at best, this Court can only dismiss the claims against FHP Ventures, so these claims
2 can be mediated. But under no circumstances is there any basis to dismiss the entire lawsuit merely
3 because a different party might have a claim that deals with the application of a document/contract,
4 separate and apart from the CC&Rs.

5 Nevertheless, if all of the claims against all the parties are viewed as a whole, and are able to
6 piggy back off of a claim potentially invoking NRS 38.310, then the fact that this lawsuit also claims
7 injunctive relief, exempts this entire lawsuit from the application of NRS 38.310. But Bank of America
8 cannot have it both ways. Because this lawsuit is both exempt from, and does not invoke NRS 38.310,
9 Bank of America's Opposition is without merit. Therefore, Plaintiff requests this Court grant it leave to
10 amend its complaint.

11 DATED this 28th day of June, 2015.

12
13 Respectfully submitted by:
14 HOWARD KIM & ASSOCIATES

15 
16 KAREN L. HANKS, ESQ.
17 Nevada Bar No. 009578
18 MELISSA BARISHMAN, ESQ.
19 Nevada Bar No. 12935
20 1055 Whitney Ranch Drive, Suite 110
21 Henderson, Nevada 89014
22 Telephone: (702) 485-3300
23 Facsimile: (702) 485-3301
24 Attorneys for Plaintiff,
25 The Fredric and Barbara Rosenberg Living Trust
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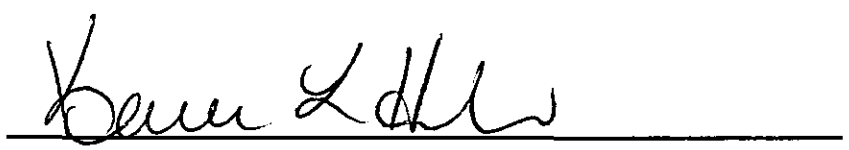
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **REPLY TO BANK OF AMERICA, N.A.'S OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE** to the following parties:

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

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

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


An Employee of Howard Kim & Associates

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EXHIBIT 1

In Re:

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

Shahin Shane Malek

January 27, 2015

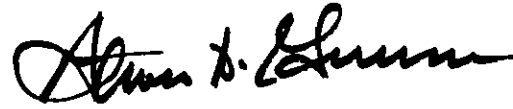
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Page 73	<p>1 started off saying it's your understanding and</p> <p>2 you're asking if he's agreeing with you.</p> <p>3 BY MS. HANKS:</p> <p>4 Q. Do you know if you have to have a</p> <p>5 predesign conference with the design review</p> <p>6 committee to approve your architectural plans?</p> <p>7 A. Again, I don't know what you mean by</p> <p>8 predesign conference.</p> <p>9 Q. What's your understanding of what you're</p> <p>10 obligated to do in terms of your plans before you</p> <p>11 start building in MacDonald Highlands?</p> <p>12 A. Well, DRC has to approve your plans.</p> <p>13 Q. Have you had a conference -- in other</p> <p>14 words, have you sat down with anyone with the design</p> <p>15 review committee since you purchased your lots?</p> <p>16 A. I sat down with them a couple times.</p> <p>17 Mostly my architect has sat down, but I sat down</p> <p>18 several times, yes.</p> <p>19 Q. Who was present at the meetings when you</p> <p>20 were also present?</p> <p>21 MR. DEVOY: Objection. Foundation.</p> <p>22 THE WITNESS: Its Paul Bykowski and my</p> <p>23 architect was present.</p> <p>24 BY MS. HANKS:</p> <p>25 Q. You said you had several meetings. Why</p>	Page 75	<p>1 will receive the written approval?</p> <p>2 A. I don't know.</p> <p>3 (Plaintiff's Exhibit 6 was</p> <p>4 marked for identification.)</p> <p>5 BY MS. HANKS:</p> <p>6 Q. The court reporter handed you what has</p> <p>7 been marked as Exhibit 6, and I'll give you the</p> <p>8 Bates stamp documents. These are documents</p> <p>9 Malek0358 through 376.</p> <p>10 And I understand you're not an architect,</p> <p>11 but these are documents that were disclosed</p> <p>12 recently, January 20th, 2015, by your attorneys as</p> <p>13 part of what we call a 16.1 disclosure, supplement</p> <p>14 to that. Is that -- these designs that were</p> <p>15 attached to that disclosure, is that the final</p> <p>16 design?</p> <p>17 A. To the best of my knowledge, when I -- the</p> <p>18 design we submitted to you are the final designs.</p> <p>19 That being said, based on that assumption, these are</p> <p>20 the final designs, yes.</p> <p>21 Q. These are the designs you are anticipating</p> <p>22 the written approval from the Design Review</p> <p>23 Committee?</p> <p>24 A. Yes.</p> <p>25 Q. When you say you've gotten verbal</p>
Page 74	<p>1 were there several meetings?</p> <p>2 MR. DEVOY: Objection. Calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: Again, you're talking about</p> <p>5 a -- I mean, just -- I don't know why there were</p> <p>6 several meetings. We've talked -- we've changed the</p> <p>7 design of the house a few times.</p> <p>8 BY MS. HANKS:</p> <p>9 Q. Have you finalized a design at this point?</p> <p>10 A. Yes.</p> <p>11 Q. Has the final design been approved by the</p> <p>12 design review committee?</p> <p>13 A. Yes.</p> <p>14 Q. When was that approval received?</p> <p>15 MR. DEVOY: Objection. Foundation.</p> <p>16 THE WITNESS: We have submitted the</p> <p>17 paperwork and the deposit. So we had a verbal</p> <p>18 approval I think a few weeks back, and we're waiting</p> <p>19 for the actual literal approval.</p> <p>20 BY MS. HANKS:</p> <p>21 Q. And you say verbal approval a few weeks</p> <p>22 back, you're saying a few weeks back from today?</p> <p>23 A. I think so. Maybe a month, month and a</p> <p>24 half. Yeah, a month and a half.</p> <p>25 Q. Do you have an anticipated date when you</p>	Page 76	<p>1 approval, who gave the verbal approval?</p> <p>2 A. Paul Bykowski.</p> <p>3 Q. Did he personally speak with you?</p> <p>4 A. I've spoken with him on several occasions.</p> <p>5 I think the approval was given to my architect and</p> <p>6 to me, yes.</p> <p>7 Q. Did you submitted any plans prior to this</p> <p>8 final plan that we have here that were ever</p> <p>9 disapproved in any respect by the DRC, the Design</p> <p>10 Review Committee?</p> <p>11 MR. DEVOY: Objection. Foundation.</p> <p>12 THE WITNESS: Yes, there were a few</p> <p>13 versions of it that were disapproved.</p> <p>14 BY MS. HANKS:</p> <p>15 Q. Can you walk me through what the</p> <p>16 disapprovals were? You say there was a few, so can</p> <p>17 you walk me through each of the approvals?</p> <p>18 A. I don't remember all of them, but wall</p> <p>19 heights, plans, distance with the neighboring</p> <p>20 property of the driveway, for example. Different</p> <p>21 things like that that we have to change.</p> <p>22 Q. Once you receive the written approval from</p> <p>23 the Design Review Committee, is there a certain</p> <p>24 timeline in which you have to start and complete</p> <p>25 building the residence?</p>

TAB 39



CLERK OF THE COURT

RPLY

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-689113-C

Dept. No. I

**REPLY TO OPPOSITION TO MOTION TO
AMEND COMPLAINT TO CONFORM TO
EVIDENCE**

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through
its counsel of record, HOWARD KIM & ASSOCIATES, hereby replies to the Opposition to Motion to
Amend Complaint to Conform to Evidence filed by Defendants MacDonald Highlands Realty,
Michael Dorion and FHP Ventures ("FHP").

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

4
5 DATED this 23rd day of June, 2015.

6
7 Respectfully submitted by:

8 HOWARD KIM & ASSOCIATES

9 

10 KAREN L. HANKS, ESQ.

11 Nevada Bar No. 009578

12 MELISSA BARISHMAN, ESQ.

13 Nevada Bar No. 12935

14 1055 Whitney Ranch Drive, Suite 110

15 Henderson, Nevada 89014

16 Telephone: (702) 485-3300

17 Facsimile: (702) 485-3301

18 *Attorneys for Plaintiff,*

19 *The Fredric and Barbara Rosenberg Living Trust*

20
21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22
23 **I. LEGAL ARGUMENT**

24
25 **A. This Court Should Grant Plaintiff's Leave to Amend.**

26 By way of its Motion, Plaintiff was anticipating the issues that would be tried in this matter
27 based on the discovery that was conducted. Rather than wait until the parties were in trial, Plaintiff
28 filed the instant motion requesting relief under NRCP 15(b). However, should this court find that sub-
section (b) of NRCP 15 is not procedurally ripe, this Court can still grant leave under NRCP 15(a).
Pursuant to NRCP 15(a), a party may amend the party's pleading "with leave of the court or by written
consent of the adverse party, and leave shall be freely given." "[I]n the absence of any apparent or
declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant-the leave
sought should be freely given." Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105-06, 507 P.2d

1 138, 139 (1973) citing Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) and
2 Adamson v. Bowker, 85 Nev. 115, 121, 450 P.2d 796, 800-801 (1969)). Under Nevada Rule of Civil
3 Procedure 15(d), “upon motion of a party the court may, upon reasonable notice and upon such terms
4 as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences
5 or events which have happened since the date of the pleadings sought to be supplemented.” “NRC
6 15(d) is intended to promote as complete an adjudication as possible by allowing the addition of claims
7 that arise after the initial pleadings have been filed. William Inglis & Sons Baking Co. v. ITT
8 Continental Baking Co., 668 F.2d 1014, 1057 (9th Cir.), cert. denied, 103 S.Ct. 57 (1982).
9

10 In the present case, Plaintiff learned on January 27, 2015 from Mr. Malek that FHP Ventures
11 had verbally approved his construction plans, but that he was still waiting for written approval. See
12 excerpts from Mr. Malek’s deposition, 74:11-25 through 75:2, attached hereto as Exhibit 1. Thereafter,
13 FHP Ventures filed a Motion to Dismiss, and at the hearing of that Motion the Court intimated that the
14 appropriate claims may not have been brought against FHP Ventures. As such, Plaintiff filed the
15 instant motion to amend. As argued in various briefs already filed before this Court, Plaintiff intends
16 to argue, at trial, that FHP Ventures breached the duties owed under the Design Guidelines, and has
17 approved Malek’s construction plans in direct contravention of the Design Guidelines. All Plaintiff
18 seeks to do by way of the proposed amendment is assert the appropriate claims. In other words, the
19 facts and arguments underlying Plaintiff’s claims against FHP Ventures has not changed; the proposed
20 amended complaint merely re-states these allegations under money damage claims as opposed to
21 equitable claims. As such, leave should be freely given.
22

23 **B. Plaintiff’s Proposed Amendments Are Not Futile, And Therefore Leave Should be**
24 **Granted.**

25 “In Nevada, pleadings are governed by NRC 8, which requires only general factual
26 allegations, not itemized descriptions of evidence.” Nutton v. Sunset Station, Inc., 131 Nev. Adv. Op.
27 34 at 8 (Ct. App. 2015) (citing NRC 8 (complainant need only provide “a short and plain statement of
28 the claim showing that the pleader is entitled to relief”). “Furthermore, Nevada is a ‘notice pleading’

1 state, which means that the ultimate facts alleged within the pleadings need not be recited with
2 particularity . . . much less supported by citations to evidence and testimony within the pleading.” *Id*
3 (citing *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (“[A] complaint need only set
4 forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending
5 party has adequate notice of the nature of the claim and the relief sought). Therefore, the “liberality
6 embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments that
7 appear arguable or even borderline, because denial of a proposed pleading amendment amounts to
8 denial of the opportunity to explore any potential merit it might have had.” *Id.* at 9. Here, Plaintiff’s
9 proposed amendments are sufficiently plead, and as such, Plaintiff’s motion to amend must be granted.

10 **1. Plaintiff Sufficiently Plead a Prima Facie Claim for Breach of Contract.**

11 To plead a prima facie claim for breach of contract, the following elements must be met: (1)
12 existence of a contract; (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s
13 breach; and (4) damages to plaintiff. Opposition at 5. Here, Plaintiff’s proposed Amended Complaint
14 alleges sufficient facts for each element. Plaintiff and Defendant FHP entered into a valid and existing
15 contract known as the Design Guidelines. Plaintiff performed all of its obligations under the contract.
16 Defendant FHP breached the contract by approving Defendant Malek’s construction plans to build on
17 the Golf Parcel. As a result, Plaintiff has been damaged. Therefore, Plaintiff’s breach of contract
18 claim is sufficiently plead.
19

20 **2. Plaintiff Sufficiently Plead a Prima Facie Claim for Breach of Implied**
21 **Covenant of Good Faith and Fair Dealing.**

22 Because Plaintiff sufficiently plead the existence of a valid and enforceable contract between
23 Plaintiff and Defendant FHP, Plaintiff has also sufficiently plead a claim for breach of implied
24 covenant of good faith and fair dealing.

25 **3. Plaintiff Sufficiently Plead a Prima Facie Claim for Breach of Fiduciary**
26 **Duty.**

27 “It is a settled rule of law that homeowners’ associations must exercise their authority to
28 approve or disapprove an individual homeowner’s construction or improvement plans in conformity


1 with the declaration of covenants and restrictions, and in good faith” that is consistent with their
2 **fiduciary duty to homeowners.** Cohen v. Kite Hill Comm. Assn., 142 Cal.App.3d 642, 650, 191
3 Cal.Rptr. 209, 213 (1983) (emphasis added). Here, Defendant FHP owed a fiduciary duty to Plaintiff
4 to exercise good faith when deciding to approve any new construction as set forth in the Design
5 Guidelines. Defendant FHP breached that duty by approving Defendant Malek’s plans to build on the
6 Golf Parcel, and as a result Plaintiff was damaged. Therefore, Plaintiff has a cause of action for breach
7 of fiduciary duty.
8

9 IV. CONCLUSION

10 Based on the foregoing, Plaintiff respectfully requests that this Honorable Court grant leave to
11 permit Plaintiff to amend its complaint to conform to the evidence in this matter.
12

13 DATED this 27th day of June, 2015.

14 Respectfully submitted by:
15 HOWARD KIM & ASSOCIATES

16 
17 KAREN L. HANKS, ESQ.
18 Nevada Bar No. 009578
19 MELISSA BARISHMAN, ESQ.
20 Nevada Bar No. 12935
21 1055 Whitney Ranch Drive, Suite 110
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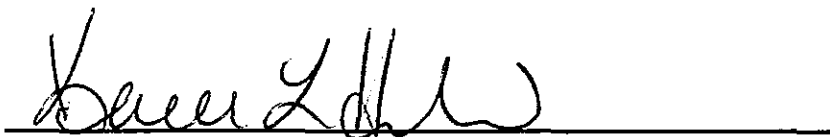
CERTIFICATE OF SERVICE

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Preston.the-firm-lv.com
Attorneys for Shahen Shane Malek

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

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



An Employee of Howard Kim & Associates

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EXHIBIT 1

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

*Shahin Shane Malek
January 27, 2015*

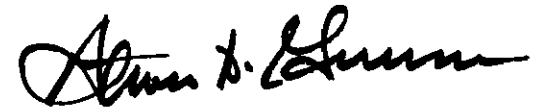
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TAB 40



CLERK OF THE COURT

RPLY

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-689113-C

Dept. No. I

**REPLY TO SHAHIN SHANE MALEK'S
OPPOSITION TO MOTION TO AMEND
COMPLAINT TO CONFORM TO
EVIDENCE**

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST (the "Rosenberg Trust"), files its Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint.

1 This Reply 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 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **A. This Court Should Grant Leave to Amend.**

6
7 By way of its Motion, Plaintiff was anticipating the issues that would be tried in this matter based
8 on the discovery that was conducted. Rather than wait until the parties were in trial, Plaintiff filed the
9 instant motion requesting relief under NRCP 15(b). However, should this court find that sub-section (b)
10 of NRCP 15 is not procedurally ripe, this Court can still grant leave under NRCP 15(a). Pursuant to
11 NRCP 15(a), a party may amend the party's pleading "with leave of the court or by written consent of
12 the adverse party, and leave shall be freely given." "[I]n the absence of any apparent or declared reason-
13 such as undue delay, bad faith or dilatory motive on the part of the movant-the leave sought should be
14 freely given." Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973)
15 citing Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) and Adamson v. Bowker, 85
16 Nev. 115, 121, 450 P.2d 796, 800-801 (1969).) Under Nevada Rule of Civil Procedure 15(d), "upon
17 motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party
18 to serve a supplemental pleading setting forth transactions or occurrences or events which have happened
19 since the date of the pleadings sought to be supplemented." "NRCP 15(d) is intended to promote as
20 complete an adjudication as possible by allowing the addition of claims that arise after the initial
21 pleadings have been filed. William Inglis & Sons Baking Co. v. ITT Continental Baking Co., 668 F.2d
22 1014, 1057 (9th Cir.), cert. denied, 103 S.Ct. 57 (1982).

23 In the present case, Plaintiff learned on January 27, 2015 from Mr. Malek that FHP Ventures had
24 verbally approved his construction plans, but that he was still waiting for written approval. See excerpts
25 from Mr. Malek's deposition, 74:11-25 through 75:2, attached hereto as Exhibit 1. Thereafter, FHP
26 Ventures filed a Motion to Dismiss, and at the hearing of that Motion the Court intimated that the
27 appropriate claims may not have been brought against FHP Ventures. As such, Plaintiff filed the instant
28 motion to amend. As argued in various briefs already filed before this Court, Plaintiff intends to argue,

1 at trial, that FHP Ventures breached the duties owed under the Design Guidelines, and has approved
2 Malek's construction plans in direct contravention of the Design Guidelines. All Plaintiff seeks to do
3 by way of the proposed amendment is assert the appropriate claims. In other words, the facts and
4 arguments underlying Plaintiff's claims against FHP Ventures has not changed; the proposed amended
5 complaint merely re-states these allegations under money damage claims as opposed to equitable claims.
6 As such, leave should be freely given.

7 **B. Plaintiff Does Not Seek any Amendments as to the Claims Against Malek.**

8 Malek wrongfully uses Plaintiff's attempt to amend the complaint as to FHP Ventures, as another
9 opportunity to re-argue his Motion for Summary Judgment on the restrictive covenant issue. Plaintiff
10 made no proposed changes as to the claims and allegations against Malek. Instead, the proposed
11 amended complaint only deals with amendments as to FHP Ventures. As such, any claim by Malek that
12 Plaintiff's proposed claims are futile are without merit.

13 **C. NRS 38.310.(2) Does not Apply to the Claims Proposed by Plaintiff.**

14 None of the claims Plaintiff seeks to add against FHP Ventures invoke NRS 38.310. First, NRS
15 38.300(3), defines "civil action" as "an action for money damages or equitable relief. The term **does not**
16 **include an action in equity for injunctive relief...**" (emphasis added). This action seeks injunctive
17 relief, therefore NRS 38.310 does not apply. Second, NRS 38.310 provides that no civil action, based
18 upon "[t]he interpretation, application or enforcement of any covenants, conditions or restrictions
19 applicable to residential property or any bylaws, rules or regulations adopted by an association," may be
20 brought prior to the claim being submitted to mediation. Here, Plaintiff seeks the interpretation and
21 enforcement of the Design Guidelines. The Design Guidelines are a separate document/contract from
22 the MacDonald Highlands CC&Rs that are enforced not by the HOA Board, but by FHP Ventures.¹
23 Nevertheless, to the extent the Design Guidelines are considered part of the CC&Rs, this only means the
24 claims against FHP Ventures must be dismissed, and first mediated. It does not mean that the claims
25 against the other parties must be dismissed.

26
27
28 ¹ The fact that FHP Ventures did not raise NRS 38.310 speaks volumes. This is so because the Design Guidelines are separate and distinct from the CC&Rs, and are enforced by FHP Ventures, not the HOA Board.

1 In fact, even the claim against FHP Ventures is an alternative claim that only comes into play if
2 a jury determines that an implied restrictive covenant does not exist over the Golf Course. In other words,
3 if a jury determines that an implied restrictive covenant exists, then FHP Ventures' approval of Malek's
4 construction plans are moot; Malek will not be able to build on the golf portion. Simply put, there is no
5 possible way for Plaintiff to mediate this claim until such time as the issue of the implied restrictive
6 covenant is determined. But none of this has anything to do with Plaintiff's claims against Malek. As
7 such, at best, this Court can only dismiss the claims against FHP Ventures, so these claims can be
8 mediated. But under no circumstances is there any basis to dismiss the entire lawsuit merely because a
9 different party might have a claim that deals with the application of a document/contract, separate and
10 apart from the CC&Rs.

11 Nevertheless, if all of the claims against all the parties are viewed as a whole, and are able to
12 piggy back off of a claim potentially invoking NRS 38.310, then the fact that this lawsuit also claims
13 injunctive relief, exempts this entire lawsuit from the application of NRS 38.310. But Malek cannot
14 have it both ways. Because this lawsuit is both exempt from, and does not invoke NRS 38.310, Malek's
15 joinder to Bank of America's Opposition is without merit. Therefore, Plaintiff requests this Court grant
16 it leave to amend its complaint.

17 DATED this 23rd day of June, 2015.

18
19 Respectfully submitted by:
20 HOWARD KIM & ASSOCIATES

21 

22 KAREN L. HANKS, ESQ.

23 Nevada Bar No. 009578

24 MELISSA BARISHMAN, ESQ.

25 Nevada Bar No. 12935

26 1055 Whitney Ranch Drive, Suite 110

27 Henderson, Nevada 89014

28 Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for Plaintiff,

The Fredric and Barbara Rosenberg Living Trust

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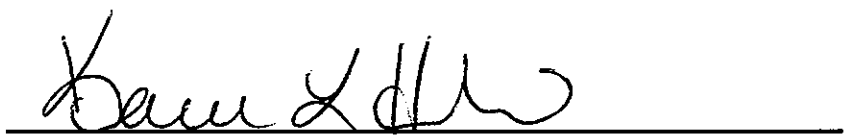
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **REPLY TO SHAHIN SHANE MALEK'S OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE** to the following parties:

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

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

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


An Employee of Howard Kim & Associates

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EXHIBIT 1

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

Shahin Shane Malek
January 27, 2015

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Page 73

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10 obligated to do in terms of your plans before you
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14 words, have you sat down with anyone with the design
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18 several times, yes.
19 Q. Who was present at the meetings when you
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21 MR. DEVOY: Objection. Foundation.
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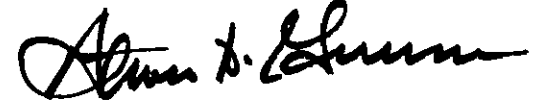
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7 been marked as Exhibit 6, and I'll give you the
8 Bates stamp documents. These are documents
9 Malek0358 through 376.
10 And I understand you're not an architect,
11 but these are documents that were disclosed
12 recently, January 20th, 2015, by your attorneys as
13 part of what we call a 16.1 disclosure, supplement
14 to that. Is that -- these designs that were
15 attached to that disclosure, is that the final
16 design?
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18 design we submitted to you are the final designs.
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TAB 41



CLERK OF THE COURT

ORDR

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
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant
SHAHIN SHANE MALEK

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA) CASE NO.: A-13-689113-C
ROSENBERG LIVING TRUST,) DEPT NO.: I

Plaintiff,

vs.

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

Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,

**ORDER DENYING PLAINTIFF /
COUNTERCLAIM DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

1 Counterdefendant.)
2)

3 Before the Court is Plaintiff, The Frederic and Barbara Rosenberg Living Trust's
4 ("Plaintiff" or "Trust") motion for summary judgment on Defendant/Counterclaimant Shahin
5 Shane Malek's ("Malek") counterclaim for slander of title. The Court heard argument on this
6 motion on June 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa
7 Barishman, Esq., and Jesse Panoff, Esq. appeared on behalf of the Plaintiff. Preston Rezaee,
8 Esq. and Jay DeVoy, Esq. appeared on behalf of Malek. Spencer Gunnerson, Esq. and Jon
9 Randall Jones, Esq. appeared on behalf of Defendants MacDonald Highlands Realty, LLC,
10 Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners. William
11 Habdas, Esq. appeared on behalf of Defendants Bank of America, N.A. and BAC Home Loans
12 Servicing, LP.

13 Summary judgment is appropriate "when the pleadings and other evidence on file
14 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is
15 entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d
16 1026, 1029 (2005). In reviewing the motion, the Court considers the evidence in the light most
17 favorable to the non-moving party. *Collins v. Union Federal Savings and Loan Association*, 99
18 Nev. 284, 302, 662 P.2d 610, 621 (1983).

19 Under Nevada law, a claim for slander of title requires the claimant to prove the
20 defendant made a false and malicious communication disparaging to one's title to property,
21 causing the property owner special damages. *Executive Mgmt., Ltd. v. Ticor Title Co.*, 114 Nev.
22 823, 963 P.2d 465, 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335
23 (1983). "In order to prove malice[,] it must be shown that the defendant knew that the statement
24 was false or acted in reckless disregard of its truth or falsity." *Rowland v. Lepire*, 99 Nev. At
25 313, 662 P.2d at 1335. In his counterclaim, Malek contends that the Trust is liable for slander of
26 title for filing a *lis pendens* on his property. The Trust argued that Malek is unable to show that
27 the Trust acted with actual malice in filing a *lis pendens* on his property, and further that Malek
28 has not adequately pled and cannot show that he has incurred damages as a result of the slander

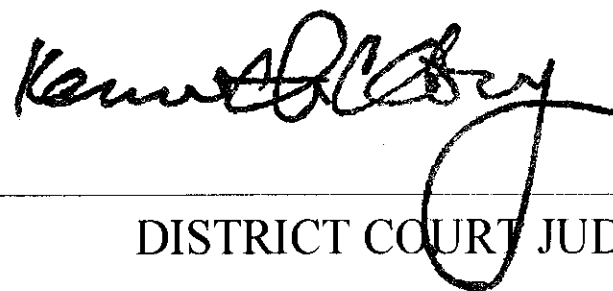
1 of title.

2 The Trust submitted a declaration from its former counsel, Peter Bernhard, and further
3 relied on transcripts from the depositions of Barbara Rosenberg, the Trust's Rule 30(b)(6)
4 designee, and Malek. In opposition, Malek submitted testimony from Barbara Rosenberg's
5 deposition, as well as Malek's Fourth Supplemental NRCP 16.1 Disclosure.

6 Based on the parties' submissions, the Court finds genuine issues of material fact that
7 preclude entering summary judgment in the Trust's favor. First, it is unclear at this time whether
8 the Plaintiff acted with malice in filing the lis pendens and amended lis pendens on 594
9 Lairmont Place during this litigation. Second, it is unclear at this time the damages Malek has
10 incurred as a result of the Trust's lis pendens filing, and the measure of those damages.


11 Consequently, it is **ORDERED** that Plaintiff's motion for summary judgment on
12 Defendant/Counterclaimant Shahin Shane Malek's counterclaim for slander of title is **DENIED**
13 **WITHOUT PREJUDICE**.

14 DATED this 22nd day of July, 2015.


DISTRICT COURT JUDGE

17 Respectfully Submitted:

Approved in content and form by:

18 
19 Preston P. Rezaee
20 Nevada Bar No. 10729
21 Jay DeVoy, of counsel
22 Nevada Bar No. 11950
23 Sarah Chavez, of counsel
24 Nevada Bar No. 11935
25 THE FIRM, P.C.
26 200 E. Charleston Blvd.
27 Las Vegas, NV 89104
28 Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

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Nevada Bar No. 9578
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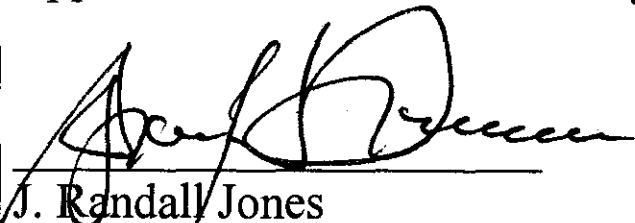
17 Respectfully Submitted:

Approved in content and form by: ^{all appellate} ~~rights reserved~~

18
19 _____
20 Preston P. Rezaee
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26 THE FIRM, P.C.
200 E. Charleston Blvd.
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Telephone: (702) 222-3476
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18
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1 Approved in content and form by:

2 

3 J. Randall Jones

4 Nevada Bar No. 1927

5 Spencer H. Gunnerson

6 Nevada Bar No. 8810

7 Kemp, Jones & Coulthard

8 3800 Howard Hughes Parkway, 17th Floor

9 Las Vegas, NV 89169

10 *Attorneys for Defendants*

11 *MacDonald Highlands Realty, LLC,*

12 *Michael Doiron, and*

13 *FHP Ventures*

14 *(formerly The Foothills Partners).*

Approved in content and form by:

Darren Brenner

Nevada Bar No. 8386

Steven Shevorski

Nevada Bar No. 8256

William Habdas

Nevada Bar No. 13138

Akerman LLP

1160 Town Center Drive, Suite 330

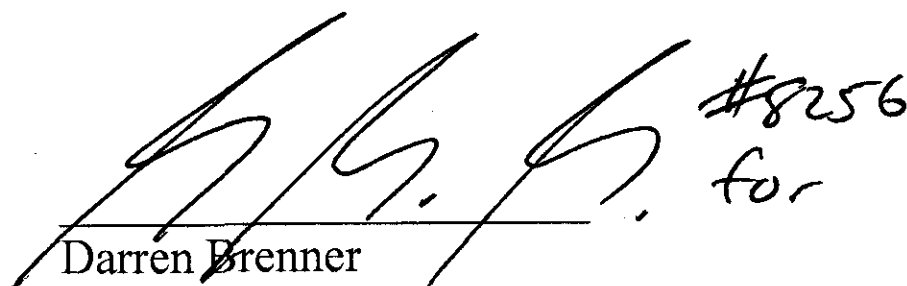
Las Vegas, NV 89144

Attorneys for Defendants

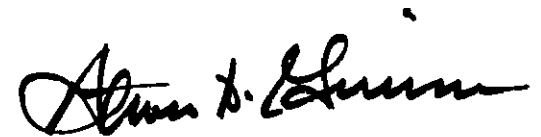
Bank of America N.A. and BAC Home Loans

Servicing, LP

1
2 J. Randall Jones
3 Nevada Bar No. 1927
4 Spencer H. Gunnerson
5 Nevada Bar No. 8810
6 Kemp, Jones & Coulthard
7 3800 Howard Hughes Parkway, 17th Floor
8 Las Vegas, NV 89169
9 *Attorneys for Defendants*
10 *MacDonald Highlands Realty, LLC,*
11 *Michael Doiron, and*
12 *FHP Ventures*
13 *(formerly The Foothills Partners).*

 #8256
for
Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Haddas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP

TAB 42



CLERK OF THE COURT

ANAC
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
STEVE SHEVORSKI, ESQ.
Nevada Bar No. 8256
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: natalie.winslow@akerman.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

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

Defendants.

Case No.: A-13-689113-C

Dept. No.: I

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

ANSWER

Defendant Bank of America, N.A., for itself and as successor by merger to BAC Home Loans Servicing, LP (collectively, **Bank of America**) answers plaintiff The Fredric and Barbara Rosenberg Living Trust's first amended complaint as follows:

I. The Parties

1 1. Bank of America denies the allegations in paragraph 1 because it lacks sufficient knowledge to
2 admit or deny them.

3 2. Bank of America admits it conducts business in the state of Nevada, but is without knowledge
4 of what times plaintiff considers "relevant to this action." On that basis, Bank of America denies the
5 allegations in paragraph 2.

6 3. Bank of America, as successor to BAC Home Loans Servicing, LP, admits it conducts business
7 in the state of Nevada, but is without knowledge of what times plaintiff considers "relevant to this
8 action." On that basis, Bank of America denies the allegations in paragraph 3.

9 4. Bank of America denies the allegations in paragraph 4 because it lacks sufficient knowledge to
10 admit or deny them.

11 5. Bank of America denies the allegations in paragraph 5 because it lacks sufficient knowledge to
12 admit or deny them.

13 6. Bank of America denies the allegations in paragraph 6 because it lacks sufficient knowledge to
14 admit or deny them.

15 7. Bank of America denies the allegations in paragraph 7 because it lacks sufficient knowledge to
16 admit or deny them.

17 8. Bank of America denies the allegations in paragraph 8 because it lacks sufficient knowledge to
18 admit or deny them.

19 9. Bank of America denies the allegations in paragraph 9 because it lacks sufficient knowledge to
20 admit or deny them.

21 10. Bank of America denies the allegations in paragraph 10 because it lacks sufficient knowledge
22 to admit or deny them.

23
24 **II. General Allegations**

25 11. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

26 12. Bank of America admits the allegations in paragraph 12.

27 13. Bank of America admits the subject property is a golf course lot located at the ninth hole of a
28 golf course, but denies the remaining allegations in paragraph 13 because it lacks sufficient knowledge

1 to admit or deny them.

2 14. Bank of America denies the allegations in paragraph 14 because it lacks sufficient knowledge
3 to admit or deny them.

4 15. Bank of America admits that 594 Lairmont Place, Henderson, Nevada, 89012 is adjacent to the
5 subject property.

6 16. Bank of America denies the allegations in paragraph 16 because it lacks sufficient knowledge
7 to admit or deny them.

8 17. Bank of America denies the allegations in paragraph 17 because it lacks sufficient knowledge
9 to admit or deny them.

10 18. Bank of America denies the allegations in paragraph 18 because it lacks sufficient knowledge
11 to admit or deny them.

12 19. Bank of America denies the allegations in paragraph 19 because it lacks sufficient knowledge
13 to admit or deny them.

14 20. Bank of America denies the allegations in paragraph 20 because it lacks sufficient knowledge
15 to admit or deny them.

16 21. Bank of America denies the allegations in paragraph 21 because it lacks sufficient knowledge
17 to admit or deny them.

18 22. Bank of America denies the allegations in paragraph 22 because it lacks sufficient knowledge
19 to admit or deny them.

20 23. Bank of America denies the allegations in paragraph 23 because it lacks sufficient knowledge
21 to admit or deny them.

22 24. Bank of America denies the allegations in paragraph 24 because it lacks sufficient knowledge
23 to admit or deny them.

24 25. Bank of America denies the allegations in paragraph 25 because it lacks sufficient knowledge
25 to admit or deny them.

26 26. Bank of America denies the allegations in paragraph 26 because it lacks sufficient knowledge
27 to admit or deny them.

28 27. Bank of America denies the allegations in paragraph 27 because it lacks sufficient knowledge

1 to admit or deny them.

2 28. Bank of America denies the allegations in paragraph 28 because it lacks sufficient knowledge
3 to admit or deny them.

4 29. Bank of America denies the allegations in paragraph 29 because it lacks sufficient knowledge
5 to admit or deny them.

6 30. Bank of America denies the allegations in paragraph 30 because it lacks sufficient knowledge
7 to admit or deny them.

8 31. Bank of America denies the allegations in paragraph 31 because it lacks sufficient knowledge
9 to admit or deny them.

10 32. Bank of America denies the allegations in paragraph 32 because it lacks sufficient knowledge
11 to admit or deny them.

12 33. Bank of America denies the allegations in paragraph 33 because it lacks sufficient knowledge
13 to admit or deny them.

14 34. Bank of America denies the allegations in paragraph 34.

15 35. Bank of America denies the allegations in paragraph 35 because it lacks sufficient knowledge
16 to admit or deny them.

17 36. Bank of America denies the allegations in paragraph 36 because it lacks sufficient knowledge
18 to admit or deny them.

19 37. Bank of America admits that Michael Doiron listed the subject property for sale on behalf of
20 Bank of America. Bank of America denies the remaining allegations in paragraph 37 because it lacks
21 sufficient knowledge to admit or deny them.

22 38. Bank of America denies the allegations in paragraph 38 because it lacks sufficient knowledge
23 to admit or deny them.

24 39. Bank of America denies the allegations in paragraph 39 because it lacks sufficient knowledge
25 to admit or deny them.

26 40. Bank of America denies the allegations in paragraph 40 because it lacks sufficient knowledge
27 to admit or deny them.

28 41. Bank of America denies the allegations in paragraph 41 because it lacks sufficient knowledge

1 to admit or deny them.

2 42. Bank of America admits the allegations in paragraph 42.

3 43. Bank of America admits the allegations in paragraph 43.

4 44. Bank of America admits the allegations in paragraph 44.

5 45. Bank of America denies the allegations in paragraph 45 because it lacks sufficient knowledge
6 to admit or deny them.

7 46. Bank of America admits that Michael Doiron represented Bank of America in the sale of the
8 subject property to plaintiff. Bank of America denies the remaining allegations in paragraph 46
9 because it lacks sufficient knowledge to admit or deny them.

10 47. Bank of America admits the allegations in paragraph 47.

11 48. Bank of America admits the allegations in paragraph 48.

12 49. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
13 the subject property or its use in an adverse manner. Bank of America denies the remaining
14 allegations in paragraph 49 because it lacks sufficient knowledge to admit or deny them.

15 50. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
16 the subject property or its use in an adverse manner. Bank of America denies the remaining
17 allegations in paragraph 50 because it lacks sufficient knowledge to admit or deny them.

18 51. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
19 the subject property or its use in an adverse manner. Bank of America denies the remaining
20 allegations in paragraph 51 because it lacks sufficient knowledge to admit or deny them.

21 52. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
22 the subject property or its use in an adverse manner. Bank of America denies the remaining
23 allegations in paragraph 52 because it lacks sufficient knowledge to admit or deny them.

24 53. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
25 the subject property or its use in an adverse manner. Bank of America denies the remaining
26 allegations in paragraph 53 because it lacks sufficient knowledge to admit or deny them.

27 54. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
28 the subject property or its use in an adverse manner. Bank of America denies the remaining

1 allegations in paragraph 54 because it lacks sufficient knowledge to admit or deny them.

2 55. Bank of America denies that any change in adjacent lot lines negatively impacted the value of
3 the subject property or its use in an adverse manner. Bank of America denies the remaining
4 allegations in paragraph 55 because it lacks sufficient knowledge to admit or deny them.

5 56. Bank of America denies the allegations in paragraph 56 because it lacks sufficient knowledge
6 to admit or deny them.

7 57. Bank of America denies the allegations in paragraph 57 because it lacks sufficient knowledge
8 to admit or deny them.

9 58. Bank of America denies the allegations in paragraph 58 because it lacks sufficient knowledge
10 to admit or deny them.

11 59. Bank of America denies the allegations in paragraph 59 because it lacks sufficient knowledge
12 to admit or deny them.

13 60. Bank of America denies the allegations in paragraph 60 because it lacks sufficient knowledge
14 to admit or deny them.

15 61. Bank of America denies the allegations in paragraph 61 because it lacks sufficient knowledge
16 to admit or deny them.

17 62. Bank of America denies the allegations in paragraph 62 because it lacks sufficient knowledge
18 to admit or deny them.

19 63. Bank of America denies the allegations in paragraph 63 because it lacks sufficient knowledge
20 to admit or deny them.

21 64. Bank of America denies the allegations in paragraph 64 because it lacks sufficient knowledge
22 to admit or deny them.

23 65. Bank of America denies the allegations in paragraph 65 because it lacks sufficient knowledge
24 to admit or deny them.

25 66. Bank of America denies the allegations in paragraph 66 because it lacks sufficient knowledge
26 to admit or deny them.

27 67. Bank of America denies the allegations in paragraph 67 because it lacks sufficient knowledge
28 to admit or deny them.

68. Bank of America denies the allegations in paragraph 68 because it lacks sufficient knowledge to admit or deny them.

69. Bank of America denies the allegations in paragraph 68 because it lacks sufficient knowledge to admit or deny them.

70. Bank of America denies the allegations in paragraph 70 because it lacks sufficient knowledge to admit or deny them.

71. Bank of America denies the allegations in paragraph 71 because it lacks sufficient knowledge to admit or deny them.

72. Bank of America denies the allegations in paragraph 72 because it lacks sufficient knowledge to admit or deny them.

73. Bank of America denies the allegations in paragraph 73 to the extent they pertain to Bank of America. Bank of America denies the remaining allegations because it lacks sufficient knowledge to admit or deny them.

74. Bank of America denies plaintiff is entitled to the requested relief from Bank of America. Bank of America denies the remaining allegations in paragraph 74 because it lacks sufficient knowledge to admit or deny them.

First Claim for Relief

Breach of Contract against Bank of America

75. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

76. Bank of America states the purchase agreement speaks for itself, and denies any allegation inconsistent with that agreement. Bank of America denies it entered into any agreement with plaintiff.

77. Bank of America states the purchase agreement speaks for itself, and denies any allegation inconsistent with that agreement.

78. Bank of America denies the allegations in paragraph 78.

79. Bank of America denies the allegations in paragraph 79.

80. Bank of America denies plaintiff is entitled to the requested relief.

Second Claim for Relief

Breach of the Implied Covenant of Good Faith and Fair Dealing against Bank of America

81. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

82. Paragraph 82 contains a general conclusion of law, to which no response is required. To the extent a response is nonetheless required, Bank of America admits that the general conclusion of law is correct.

83. Bank of America denies the allegations in paragraph 83. Bank of America never entered into any contract with plaintiff.

84. Paragraph 84 contains a general conclusion of law, to which no response is required. To the extent a response is nonetheless required, Bank of America admits that the general conclusion of law is correct.

85. Bank of America denies the allegations in paragraph 85.

86. Bank of America denies the allegations in paragraph 86.

87. Bank of America denies the allegations in paragraph 87.

88. Bank of America denies plaintiff is entitled to the requested relief.

Third Claim for Relief

Unjust Enrichment against Bank of America, BAC Home Loans Servicing, LP, MacDonald Highlands Realty, LLC, and Michael Doiron

89. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

90. Bank of America denies the allegations in paragraph 90 to the extent they pertain to Bank of America. Bank of America denies the remaining portions of paragraph 90 because it lacks sufficient knowledge to admit or deny them.

91. Bank of America denies plaintiff is entitled to the requested relief from Bank of America. Bank of America denies the remaining portions of paragraph 91 because it lacks sufficient knowledge to admit or deny them.

Fourth Claim for Relief

Fraudulent or Intentional Misrepresentation against Bank of America, BAC Home Loans Servicing, LP, MacDonald Highlands Realty, LLC, and Michael Doiron

92. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

93. Paragraph 93 contains a general conclusion of law, to which no response is required. To the

1 extent a response is nonetheless required, Bank of America admits that the general conclusion of law
2 is correct.

3 94. Bank of America denies the allegations in paragraph 94 to the extent they pertain to Bank of
4 America. Bank of America denies the remaining portions of paragraph 94 because it lacks sufficient
5 knowledge to admit or deny them.

6 95. Bank of America denies the allegations in paragraph 95 to the extent they pertain to Bank of
7 America. Bank of America denies the remaining portions of paragraph 95 because it lacks sufficient
8 knowledge to admit or deny them.

9 96. Bank of America denies the allegations in paragraph 96 to the extent they pertain to Bank of
10 America. Bank of America denies the remaining portions of paragraph 96 because it lacks sufficient
11 knowledge to admit or deny them.

12 97. Bank of America denies plaintiff is entitled to the requested relief from Bank of America.
13 Bank of America denies the remaining portions of paragraph 97 because it lacks sufficient knowledge
14 to admit or deny them.

15 **Fifth Claim for Relief**

16 **Negligent Misrepresentation against Bank of America, BAC Home Loans Servicing, LP,** 17 **MacDonald Highlands Realty, LLC, and Michael Doiron**

18 98. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

19 99. Bank of America denies the allegations in paragraph 99 to the extent they pertain to Bank of
20 America. Bank of America denies the remaining portions of paragraph 99 because it lacks sufficient
21 knowledge to admit or deny them.

22 100. Bank of America denies the allegations in paragraph 100 to the extent they pertain to
23 Bank of America. Bank of America denies the remaining portions of paragraph 100 because it lacks
24 sufficient knowledge to admit or deny them.

25 101. Bank of America denies plaintiff is entitled to the requested relief from Bank of
26 America. Bank of America denies the remaining portions of paragraph 101 because it lacks sufficient
27 knowledge to admit or deny them.

28 **Sixth Claim for Relief**

Real Estate Brokers Violations of NRS 645 against MacDonald Highlands Realty, LLC and Michael Doiron

102. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

103. The allegations in paragraph 103 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

104. The allegations in paragraph 104 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

105. The allegations in paragraph 105 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

Seventh Claim for Relief

Easement against MacDonald Highlands Realty, LLC, Michael Doiron, and Malek

106. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

107. The allegations in paragraph 107 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

108. The allegations in paragraph 108 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

109. The allegations in paragraph 109 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

110. Bank of America denies the allegations in paragraph 110 to the extent they pertain to Bank of America. Bank of America denies the remaining allegations because it lacks sufficient knowledge to admit or deny them.

Eighth Claim for Relief

Declaratory Relief against All Defendants

111. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

112. Bank of America denies the allegations in paragraph 112 because it lacks sufficient knowledge to admit or deny them.

113. Bank of America denies the allegations in paragraph 113 to the extent they pertain to Bank of America. Bank of America denies the remaining allegations because it lacks sufficient knowledge to admit or deny them.

114. Bank of America denies the allegations in paragraph 114 because it lacks sufficient knowledge to admit or deny them.

115. Bank of America denies the allegations in paragraph 115 because it lacks sufficient knowledge to admit or deny them.

116. Bank of America denies plaintiff is entitled to the requested relief from Bank of America. Bank of America denies the remaining allegations because it lacks sufficient knowledge to admit or deny them.

Ninth Claim for Relief**Mandatory Injunction against Malek**

117. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

118. The allegations in paragraph 118 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

119. The allegations in paragraph 119 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

Tenth Claim for Relief**Implied Restrictive Covenant against Malek**

120. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

121. The allegations in paragraph 121 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required,

1 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

2 122. The allegations in paragraph 122 do not pertain to Bank of America; therefore, a
3 response from Bank of America is not required. To the extent a response is nonetheless required,
4 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

5 123. The allegations in paragraph 123 do not pertain to Bank of America; therefore, a
6 response from Bank of America is not required. To the extent a response is nonetheless required,
7 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

8 124. The allegations in paragraph 124 do not pertain to Bank of America; therefore, a
9 response from Bank of America is not required. To the extent a response is nonetheless required,
10 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

11 125. The allegations in paragraph 125 do not pertain to Bank of America; therefore, a
12 response from Bank of America is not required. To the extent a response is nonetheless required,
13 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

14 126. The allegations in paragraph 126 do not pertain to Bank of America; therefore, a
15 response from Bank of America is not required. To the extent a response is nonetheless required,
16 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

17 127. The allegations in paragraph 127 do not pertain to Bank of America; therefore, a
18 response from Bank of America is not required. To the extent a response is nonetheless required,
19 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

20 128. The allegations in paragraph 128 do not pertain to Bank of America; therefore, a
21 response from Bank of America is not required. To the extent a response is nonetheless required,
22 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

23 129. The allegations in paragraph 129 do not pertain to Bank of America; therefore, a
24 response from Bank of America is not required. To the extent a response is nonetheless required,
25 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

26 130. The allegations in paragraph 130 do not pertain to Bank of America; therefore, a
27 response from Bank of America is not required. To the extent a response is nonetheless required,
28 Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

131. The allegations in paragraph 131 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

Eleventh Claim for Relief

Mandatory Injunction against the Foothills Entities

132. Bank of America repeats and re-alleges its answers to the preceding paragraphs.

133. The allegations in paragraph 133 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

134. The allegations in paragraph 134 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

135. The allegations in paragraph 135 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

136. The allegations in paragraph 136 do not pertain to Bank of America; therefore, a response from Bank of America is not required. To the extent a response is nonetheless required, Bank of America denies the allegations because it lacks sufficient knowledge to admit or deny them.

137. Every allegation not expressly admitted is denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Bank of America alleges plaintiff failed to state facts sufficient to constitute any cause of action against Bank of America.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Bank of America alleges plaintiff's claims are barred in whole or in part because of plaintiff's failure to take reasonable steps to mitigate its damages, if any.

THIRD AFFIRMATIVE DEFENSE**(Statute of Limitations)**

Plaintiff's claims are barred by the doctrine of laches, unclean hands and failure to do equity.

FOURTH AFFIRMATIVE DEFENSE**(Privilege)**

Plaintiff's claims are barred, in whole or in part, on the ground that Bank of America's conduct as alleged in plaintiff's complaint was privileged.

FIFTH AFFIRMATIVE DEFENSE**(Plaintiff's Own Negligence)**

Plaintiff is barred from recovery, or said recovery, if any, must be proportionately reduced, as any injury or damage allegedly suffered by plaintiff occurred as a proximate result of the negligence on its own part, in that plaintiff failed to exercise ordinary care on its own behalf at the time and place alleged.

SIXTH AFFIRMATIVE DEFENSE**(Comparative Fault)**

Plaintiff was careless and negligent with respect to all matters alleged in the complaint, and thus were comparatively at fault and proximately caused its own damages. Accordingly, any damages otherwise recoverable by plaintiff, if any, should be reduced in proportion to its own negligence.

SEVENTH AFFIRMATIVE DEFENSE**(Third-Party Fault)**

Bank of America alleges that the damages complained of, if there were any, were proximately contributed to or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other persons, and were not caused in any way by Bank of America or by persons for whom Bank of America is legally responsible.

EIGHTH AFFIRMATIVE DEFENSE**(Reduction of Damages Based on Third Party Fault)**

1 Bank of America is entitled to have any award against it reduced or eliminated to the extent
2 that the negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of
3 other persons that contributed to the plaintiff's damages, if any.

4 **NINTH AFFIRMATIVE DEFENSE**

5 **(Causation)**

6 The acts and omissions of Bank of America alleged in plaintiff's claims for relief were not a
7 proximate cause of the loss or damage for which plaintiff seeks recovery.

8 **TENTH AFFIRMATIVE DEFENSE**

9 **(Suffered No Damages)**

10 Plaintiff's claims are barred because plaintiff suffered no damages as a result of the
11 allegations in the complaint.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Wrongful Conduct of Another)**

14 Plaintiff's damages, if any, were proximately and concurrently caused or contributed to by
15 the fraud, deceit, or other wrongful conduct of persons or entities for which Bank of America is not
16 responsible.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 **(Intervening/Superseding Cause)**

19 The injuries and damages which plaintiff alleges, if any, were proximately caused and
20 contributed to by the acts, omissions or breaches of other defendants, cross-defendants, third-party
21 defendants, persons, and entities, and said acts, omissions or breaches were intervening and
22 superseding causes of injuries and damages, if any, of which plaintiff complains, thus barring
23 plaintiff from any recovery from Bank of America.

24
25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 **(Plaintiff's Acts/Omissions)**

27 Bank of America alleges that, by reason of its own acts and omissions, plaintiff has waived
28 its rights to assert the claims it has asserted against Bank of America.

FOURTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Pursuant to NRCP 11, Bank of America reserves its right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, Bank of America prays for the following:

1. That Plaintiff's Amended Complaint be dismissed in its entirety with prejudice and that Plaintiff take nothing by way of its Amended Complaint;
2. For attorney's fees and costs of defending this action; and
3. For such other and further relief as this Court deems just and proper.

DATED this 28th day of July, 2015.

AKERMAN LLP

/s/ Steve Shevorski, Esq.

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

STEVEN SHEVORSKI, ESQ.

Nevada Bar No. 8256

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of July, 2015 and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S ANSWER TO FIRST AMENDED COMPLAINT**, postage prepaid and addressed to:

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

Attorneys for Plaintiff The Fredric and Barbara Rosenberg Living Trust

J. Randall Jones, Esq.
Spencer H. Gunnerson, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169

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

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

Attorneys for Defendant Shahin Shane Malek

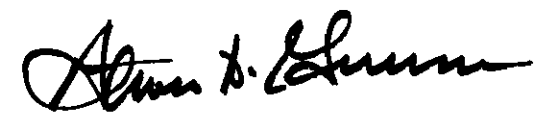
/s/ Julia Diaz

An employee of AKERMAN LLP

TAB 43

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

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CLERK OF THE COURT

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

10 THE FREDERIC AND BARBARA
11 ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

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

21 Defendants.
22
23

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

**[PROPOSED] ORDER, FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND JUDGMENT ON DEFENDANT /
COUNTERCLAIMANT SHAHIN SHANE
MALEK'S MOTION FOR SUMMARY
JUDGMENT**

24 Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion
25 for Summary Judgment on the claims asserted against him by Plaintiff/Counterclaim Defendant The
26 Frederic and Barbara Rosenberg Living Trust ("Plaintiff" or the "Trust"), and on Malek's
27 Counterclaim for slander of title against the Trust. The Court heard argument on this motion on June
28 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse

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

9 I. Introduction

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

18 This order considers Malek’s Motion for Summary Judgment on the Trust’s claims against
19 him: easement, implied restrictive covenant, injunction, and declaratory relief. Malek has also moved
20 for summary judgment on his counterclaim for slander of title against the Trust. In support of his
21 motion, Malek submitted numerous exhibits, including public records, the Trust’s discovery responses,
22 and documents authenticated during depositions, as well as excerpts from numerous depositions taken
23 in this case. The Trust opposed Malek’s Motion for Summary Judgment, and referenced its Cross-
24 Motion for Summary Judgment on Malek’s slander of title counterclaim² in opposing that branch of
25 Malek’s motion. Malek timely replied in support of his motion.

26
27 ¹ At this status check, Karen Hanks, Esq., appeared on behalf of the Plaintiff/Counterclaim Defendant. Jay DeVoy, Esq.
28 appeared on behalf of Defendant/Counterclaimant Malek. Spencer Gunnerson, Esq., appeared on behalf of Defendants
MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners.
Ariel Stern, Esq. appeared on behalf of Bank of America.

² The Court denied this motion at its June 10, 2015 hearing, and subsequently entered an order to that effect. JA_2459

II. Legal Standard

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

III. Findings of Fact

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

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

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

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

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

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

1 5. Before merging the Golf Parcel with 594 Lairmont, MacDonald Highlands needed to
2 re-zone it from its Public / Semi-Public designation to residential use. Bykowski Dep. Vol. I at 38:12-
3 20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9; see Bykowski Dep. Vol. II at 183:25-
4 185:7.

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

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

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

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

23 10. At the time B2 Development mailed its notices for the community meeting in October
24 2012, Defendant Bank of America owned 590 Lairmont. Woodbridge Dep. at 15:1-20; Rosenberg
25 Dep. at 43:31-44:25; *see* Mot. Exh. 8. B2 Development mailed its notice to a valid address for Bank
26 of America, which never objected to the Golf Parcel's re-zoning. Woodbridge Dep. at 15:1-20; Mot.

27
28 ³ As noted above, this practice is not limited to MacDonald Highlands, but is common within other Golf Communities
within the Las Vegas valley. JA_2461

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

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

7 12. MacDonald Highlands' applications for the Golf Parcel's re-zoning were properly heard
8 by the City of Henderson; the City adopted a resolution re-zoning the Golf Parcel to residential use on
9 December 8, 2012, and the City recorded its resolution on January 7, 2013. Bykowski Dep. Vol. II at
10 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:17; Mot. Exhs. 4, 5.

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

15 14. Less than a month later in mid-February of 2013, the Golf Parcel's residential zoning
16 could be seen in an online zoning map publicly available from the City of Henderson's website. *Id.* at
17 30:6-20; Mot. Exh. 7.

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

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

24 17. Beginning in February of 2013, Barbara Rosenberg, an experienced residential real
25 estate broker and a trustee of the Trust, and David Rosenberg,⁴ an attorney in Las Vegas and a
26 beneficiary of the Trust, began contacting Bank of America in an attempt to purchase 590 Lairmont
27

28 ⁴ David Rosenberg had lived in the Green Valley area of the Las Vegas metropolitan region since 2009, and was familiar with the MacDonald Highlands community. JA_2462

1 before the property was publicly listed for sale. Rosenberg Dep. at 43:20-46:3, 55:1-57:14; Mot. Exhs.
2 8, 9.

3 18. Barbara Rosenberg not only had more than 25 years of experience as a residential real
4 estate broker, but estimates she has sold more than 500 homes in her career. Rosenberg Dep. at 12:19-
5 13:15, 88:8-25. Individually and through the Trust, Barbara Rosenberg and her husband have made
6 numerous real estate purchases in the past, including an 8,000 square foot primary residence, two other
7 houses in California, and two condos in Manhattan Beach, California—in addition to 590 Lairmont. *Id.*
8 at 13:16-16:13.

9 19. When 590 Lairmont was listed for sale, Barbara Rosenberg offered to purchase it for
10 \$1,750,000—above the listing price of \$1,600,000—in an all-cash transaction. She then increased her
11 offer and submitted the winning bid to purchase the home for \$2,302,000, all cash. Rosenberg Dep. at
12 43:20-46:3, 50:3-51:25, 85:1-86:5; Mot. Exhs. 8, 9, 14.

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

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

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

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

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

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

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

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

21 28. During the course of the litigation, the Trust's discovery responses indicated its only
22 concern was the loss of view, light, and privacy that might accompany Malek's construction on 594
23 Lairmont (including the Golf Parcel). Barbara Rosenberg's deposition testimony and the Trust's
24 responses to interrogatories propounded by Defendants Bank of America, MacDonald Highlands
25 Realty LLC, and Michael Doiron repeatedly identified potential loss of view, light, and privacy⁵ as the
26
27

28 ⁵ As Barbara Rosenberg noted in her deposition, she did not even know what Malek planned to build on 594 Lairmont, and stated that she nonetheless sought this Court's order prohibiting his construction due to the mere possibility of 590 Lairmont losing what Ms. Rosenberg described as its view and privacy. JA_2464

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

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

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

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

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

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

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

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

28 ⁶ And subsequent approval from the City of Henderson, although the MacDonald Highlands Design Guidelines were stated
to be more restrictive than the City of Henderson's requirements. JA_2465

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

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

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

11 **IV. Conclusions of Law**

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

20 **A. The Trust's Claims of Easement and Implied Restrictive Covenant Are Premised** 21 **on Grounds Not Recognized Under Nevada Law, and Nevada Law Does Not Even** 22 **Recognize the Latter Claim.**

23 1. Nevada law has squarely and repeatedly repudiated the notion that easements or
24 restrictive covenants may arise by implication to protect views, privacy, or access to light. *Probasco v.*
25 *City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969); *Boyd v. McDonald*, 81 Nev. 642, 650-51,
26 408 P.2d 717, 722 (1965).

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

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

8 3. The Trust has not produced any evidence showing the existence of an easement
9 requiring the Golf Parcel to remain part of the golf course indefinitely. While the Trust adopted this
10 argument in opposing Malek’s Motion for Summary Judgment, that is, as far as the Court can tell, the
11 first time such a theory arose. Counsel’s arguments do not replace facts in the analysis of a summary
12 judgment motion. *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 706, 220 P.3d 684, 691, 695
13 (2009).

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

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

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

3 6. Related to its claim for easement, the Court concludes that the Trust's claim for implied
4 restrictive covenant also fails. Nevada has not previously recognized a cause of action for implied
5 restrictive covenant, and this Court declines to do so. Consistent with the precedent of Nevada's
6 Supreme Court, this Court will not recognize a novel cause of action. *Brown v. Eddie World LLC*, 131
7 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440
8 (2001); *Greco v. United States*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-48 (1995); *see Nat'l R.R.*
9 *Passenger Corp v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457-58 (1974) (promoting the
10 doctrine of *expressio unius est exclusion alterius*, which prohibits theories of liability that are not
11 expressly authorized). This Court's decision to not recognize this cause of action is steeped in the lack
12 of a cohesive national standard, the subjective nature of the claim's object, and the difficulty of
13 proving the claim. *Badillo*, 117 Nev. at 42-44, 16 P.3d at 440-41.

14 7. Among the states that do recognize this claim, the standards for offensively imposing an
15 implied restrictive covenant differ widely. *See Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990);
16 *Knotts Landing Corp. v. Lathem*, 315 Ga. 321, 323, 348 S.E. 651, 653 (1986); *Arthur v. Lake Tansi*
17 *Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *see also Peck v. Lanier Golf Club, Inc.*, 315 Ga. App.
18 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012). Moreover, Trust seeks to use this claim to
19 enforce its subjective desire to preserve its view, light, and privacy, further militating against the Court
20 recognizing this cause of action. *Greco*, 111 Nev. at 409, 893 P.2d at 348.

21 8. To the extent the Trust's claim for implied restrictive covenant is duplicative of, or
22 otherwise subsidiary within, the Trust's claim for easement, it fails for the reasons stated above.
23 *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722. The Trust has
24 not advanced any evidence that its claim for an implied restrictive covenant seeks to preserve or
25 protect anything other than its view, light, or privacy. Any of these three concerns are insufficient
26 bases for the Court to imply an easement or restrictive covenant exists over the Golf Parcel. As the
27 Trust has not produced any evidence showing an alternate, cognizable basis for the Court to impose an
28

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

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

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

9 10. Similarly, this Court adopts the position of the United States District Court for the
10 District of Nevada and several other courts, and concludes that injunctive relief is merely a remedy,
11 rather than an independent claim. *In re Walmart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d
12 1091, 1130 (D. Nev. 2007); *see Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999); *Art*
13 *Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640, 646-47 (Cal. Ct. App. 1992).

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

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

21 12. For the same reasons discussed in the Court's Order entered July 23, 2015, denying the
22 Trust's Cross-Motion for Summary Judgment on Malek's counterclaim, and incorporated by reference
23 herein, the Court also denies Malek's Motion for Summary Judgment on the same claim. To prevail,
24 Malek must show that the Trust made a false statement about his title or possession of the Golf Parcel
25 with actual malice—a knowingly false statement, or one made with reckless disregard for the
26 truth—that caused him damage. *Executive Mgmt., Ltd. v. Ticor Title Co.*, 114 Nev. 823, 963 P.2d 465,
27 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

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

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

4 **V. Conclusion**

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

9 **VI. Judgment**

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

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

28 ⁷ "In order to prove malice it must be shown that the defendant knew that the statement was false or acted in reckless
disregard of its truth or falsity." *Rowland*, 99 Nev. at 313, 662 P.2d at 1335. JA_2470