

Case No. 81252  
Consolidated with Case No. 81831

IN THE SUPREME COURT OF THE STATE OF NEVADA

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May 20 2021 04:12 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

JOSEPH FOLINO, an individual, and  
NICOLE FOLINO, an individual,

Appellants,

vs.

TODD SWANSON, an individual,  
TODD SWANSON, Trustee of the  
SHIRAZ TRUST; the SHIRAZ  
TRUST, a Trust of unknow origin,  
and LYON DEVELOPMENT, LLC, a  
Nevada Limited Liability Company,

Respondents.

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RESPONDENTS' SUPPLEMENTAL APPENDIX

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APPEAL

From the Eighth Judicial District Court, Department XXIV  
The Honorable Jim Crockett, District Judge - Case No. A-18-782494-C

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JAY T. HOPKINS, ESQ. Nevada Bar No. 3223  
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CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128

*Attorneys for Respondents Todd Swanson, individually and as Trustee  
of the Shiraz Trust, and the Shiraz Trust*

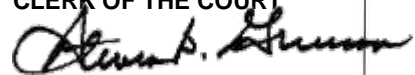
## **RESPONDENTS' SUPPLEMENTAL APPENDIX**

### **Chronological Order:**

<b>Date</b>	<b>Document Title</b>	<b>Vol.</b>	<b>Bates #</b>
4/18/2019	First Amended Complaint	I	RSA000001 RSA000075
9/24/2019	Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	I	RSA000076 RSA000101
11/7/2019	Minute Order	I	RSA000102
2/13/2020	Plaintiffs' Supplemental Brief	I	RSA000103 RSA000126

### **Alphabetical Order:**

<b>Date</b>	<b>Document Title</b>	<b>Vol.</b>	<b>Bates #</b>
9/24/2019	Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	I	RSA000076 RSA000101
4/18/2019	First Amended Complaint	I	RSA000001 RSA000075
11/7/2019	Minute Order	I	RSA000102
2/13/2020	Plaintiffs' Supplemental Brief	I	RSA000103 RSA000126



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff,

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYONS DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**FIRST AMENDED COMPLAINT**

Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for their First Amended Complaint against Defendants asserts, alleges and complains as follows:

**I.**

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1           3.     Upon information and belief, TODD SWANSON, an individual (hereinafter  
2     “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto  
3     was, a resident of Clark County, Nevada.

4           4.     Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ  
5     TRUST (hereinafter “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all  
6     times relevant hereto was, a resident of Clark County, Nevada.

7           5.     Upon information and belief, SHIRAZ TRUST, (hereinafter “SHIRAZ” or  
8     collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto was a lawful entity  
9     believed to have been formed within the State of Nevada, and licensed to conduct business in  
10    Clark County, Nevada.

11          6.     Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited  
12    liability company (hereinafter “LYONS” or collectively “DEFENDANTS”), Defendant is, and at  
13    all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to  
14    conduct business in Clark County, Nevada.

15          7.     Defendants designated herein as Does I-X and Roes Entities I-X are individuals  
16    and legal entities that are liable to Plaintiff for the claims set forth herein, including but not  
17    limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and  
18    the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,  
19    therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their  
20    Complaint to assert the true names and capacities of such Doe and Roe Entities when more  
21    information has been ascertained.

22          8.     At all relevant times hereto, each Defendant was the agent, servant, employee, co-  
23    adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the  
24    knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is  
25    otherwise responsible in some manner for the occurrences alleged in this Complaint.

26          9.     This Court has personal jurisdiction over all Defendants as, at all times relevant  
27    hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or  
28    in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising



1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction  
2 and venue are proper in Clark County, Nevada.

3 **II.**

4 **FACTUAL ALLEGATIONS**

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9  
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,  
8 "Plaintiffs" or "Folinos") entered into a Residential Purchase Agreement ("RPA") to purchase  
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") for  
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the  
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively "Defendants" or individually "Swanson")  
12 and Lyons Development, LLC (collectively "Defendants" or individually "Lyons"). *See*, rpa  
13 attached hereto as **Exhibit 1**.

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the  
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed  
17 electronically by both parties on or about that date. *See*, Counter Offer attached hereto as  
18 **Exhibit 2**.

19 14. The parties had previously exchanged prior counteroffers and the original RPA.  
20 *See* attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as **Exhibit 3**.

21 15. The form of the RPA and the counteroffers are the standard forms used by the  
22 Greater Las Vegas Association of Realtors ("GLVAR").

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,  
24 the Defendants was required to complete and execute a Seller's Real Property Disclosure form  
25 ("SRPD"), and the Defendants did so execute the SRPD on or about October 24, 2017. *See*,  
26 SRPD attached as **Exhibit 4**.

27 17. The SRPD executed by Swanson does not contain any notification to the  
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. *See*, attached **Exhibit 4**,  
2 pp. 1-3.

3 18. There is no description of any water or event, the existence of fungi/mold or  
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss  
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home  
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat  
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. *See*, Inspection  
10 Report attached hereto as **Exhibit 5**.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form  
13 from their realtor to make a formal request to remediate any and all issues identified in the  
14 inspection report. *See*, Request attached hereto as **Exhibit 6**.

15 23. Every item identified in the inspection report was included in the Request for  
16 Repair. *See*, **Exhibit 5** and **Exhibit 6**.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given  
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the  
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,  
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had  
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and  
27 other repairs that were being completed to the Plaintiff's Agent.  
28

1           30. The Plaintiffs' Agent was not told about any previous or other water losses, and  
2 certainly was not told about any plumbing failures, such as defects requiring the complete  
3 replacement of the water supply/plumbing system as a result of a warranty claim having been  
4 made to Uponor, the manufacturer of the plumbing/pipe supply system.

5           31. On or about November 17, 2017, the Plaintiffs effectuated the closing of the real  
6 estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as  
7 **Exhibit 7**.

8           32. Shortly after the closing occurred, the Plaintiffs were made aware of an additional  
9 water loss that had occurred at the Subject Property in approximately February of 2017 by the  
10 plumbing system manufacturer: Uponor.

11           33. After learning of the earlier water loss, the Plaintiffs obtained an additional  
12 inspection report of the plumbing system, water supply pipe system and any related drainage  
13 system.

14           34. The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that  
15 the Defendants had previously made a warranty claim that was accepted by Uponor.

16           35. The payment to conduct the warranty repairs to the plumbing system was made to  
17 the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the  
18 date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as  
19 **Exhibit 8** and June 9, 2017, Uponor letter attached hereto as **Exhibit 9**.

20           36. The Plaintiffs contacted Uponor directly and were informed of the past water  
21 losses that had occurred at the Subject Property. In addition to the water loss that occurred in  
22 November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the  
23 February 2017 water loss. *See*, Uponor email with attachments attached hereto as **Exhibit 10**.

24           37. Uponor provided the warranty claim information for the plumbing system in  
25 response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as  
26 **Exhibit 11**.

27           38. The plumbing defects in the house were systemic and known to the Defendants  
28 prior to the closing of the transaction.

**(Fraud/Intentional Misrepresentation)**

12           42.     Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41,  
13     inclusive, and incorporate the same as if fully set forth herein.

43. Defendants, and each of them, communicated, by and through themselves and their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no defects in the house, the systems or the structure.

44. The Defendants, and each of them, coerced the Plaintiff into closing on the sale of the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that the house was built with defects known to the Defendants, whether repaired or not.

45. The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed to identify the known defects, prior water losses, prior warranty repairs and other material misrepresentations or omissions contained on the SRPD.

46. The Defendants made these intentional misrepresentations on the SRPD form in an effort to induce the Plaintiffs to purchase the Subject Property.

25            47. Defendants, and each of them, intended by their false representations to induce  
26 the Plaintiffs into entering into said transaction.

48. Plaintiffs would not have completed the transaction had they known of the facts alleged herein and withheld from the Plaintiffs by the Defendants.

50. Defendants, and each of them, including DOES I-X and ROES I-X, directly benefited and/or received the funds paid by the Plaintiff based upon the false representations and Plaintiff's reliance upon those false representations.

51. Defendants, and each of them, including DOES I-X and ROES I-X, knew or should have known that the representations made were false, and that the Defendants knew or should have known that the representations to the Plaintiffs failed to identify the defects or the repairs.

52. Plaintiffs' reliance on the above representations was justified and reasonable in light of the facts and circumstances alleged herein.

53. As a direct and proximate result of Defendants' fraudulent representations, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

54. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

55. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

## IV.

## SECOND CAUSE OF ACTION

**(Negligent Misrepresentation)**

56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 55 inclusive, and incorporate the same as if fully set forth herein.

57. Defendants, and each of them, communicated on or about October 24, 2017, to the Plaintiff that there were no defects in the house, the systems or the structure

1           58.     The Defendants, and each of them, induced the Plaintiffs into completing the  
2 purchase of the Subject Property, all the while knowing that there were defects in the structure,  
3 house and workmanship of the Subject Property.

4           59.     Defendants, and each of them intended by their negligent representations to  
5 induce the Plaintiff into entering into said transactions.

6           60.     Plaintiffs relied upon the negligent representations when the Plaintiffs completed  
7 the transaction in favor of the Defendants.

8           61.     Plaintiffs would not have completed the transaction had they known of the facts  
9 withheld from them by the Defendants.

10          62.     The Defendants negligently, and with the intent to deceive the Plaintiffs, failed to  
11 identify the defects, prior water losses and other material misrepresentations on the SRPD.

12          63.     Defendants, and each of them, including DOES I-X and ROES I-X, directly  
13 benefited and/or received the funds paid by the Plaintiff based upon the negligent representations  
14 in Plaintiff's reliance upon those false representations.

15          64.     Defendants, and each of them, including DOES I-X and ROES I-X, knew or  
16 should have known that the representations made were false, and that the Defendants knew or  
17 should have known that there was an insufficient basis for making the representations to the  
18 Plaintiff.

19          65.     Plaintiff's reliance on the above representations was justified and reasonable in  
20 light of the facts and circumstances alleged herein.

21          66.     The Defendants, and each of them, in the course of entering into the transaction  
22 referenced above, in which the Defendants, and each of them, had a pecuniary interest, had a  
23 duty to exercise reasonable care or competence in obtaining or communicating information to the  
24 Plaintiffs and in conducting that transaction, and the Defendants failed to do so as alleged herein.

25          67.     That as a direct and proximate result of Defendant's fraudulent representations,  
26 Plaintiffs have been damaged in the sum in excess of \$15,000, an exact amount to be proven at  
27 the time of trial.  
28



68. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

V.

**THIRD CAUSE OF ACTION**

**(Violation of Nevada Statutes Governing Deceptive Trade Practices –**

**Violation of NRS 598.010 et seq.)**

69. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 68, inclusive, and incorporate the same as if fully set forth herein.

70. Defendants, and each of them, committed deceptive trade practices in violation of Nevada's Deceptive Trade Practices Act ("DPA"), including, but not limited to, NRS 598.015(14) and (15), NRS 598.092(9) and NRS 598.0923(2), by failing to inform the Plaintiffs that there were known defects in the house being purchased by the Plaintiffs from the Defendants.

71. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

72. As a direct and proximate result of the Defendants' deceptive actions, and each of them, and pursuant to violation of the Nevada DPA, Plaintiffs are entitled to recover treble damages.

73. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

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**VI.**

**FOURTH CAUSE OF ACTION**

**(Violation of Nevada Statutes Governing Sale of Real Property and Disclosure of Known**

**Defects –**

**Violation of NRS 113.100 et seq.)**

74. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 73, inclusive, and incorporate the same as if fully set forth herein.

75. Defendants, and each of them, committed violations of Nevada's rules and regulations regarding the Conditions of Residential Property Offered for Sale, and including, but not limited to, NRS 113.100 et seq, and specifically NRS 113.150, by failing to inform the Plaintiff that there were defects known to the Defendants at the time they executed and affirmed compliance with the SRPD regarding the Subject Property, its plumbing system and the structure being purchased by the Plaintiffs from the Defendants.

76. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by the Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form.

77. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

78. As a direct and proximate result of the Defendants' violations, and each of them, and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble damages.

79. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

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**VII.**

**FIFTH CAUSE OF ACTION**

**(Civil RICO Claim)**

80. Plaintiffs repeat and realleges the allegations set forth in paragraphs 1 through 79, inclusive, and incorporate the same as if fully set forth herein.

81. Defendants, and each of them, together with their agents, heirs, assigns, employees, managers and or any other persons acting in concert with the defendants, including DOES I-X and ROES I-X, were parties to an agreement, whether that agreement was explicit or tacit, whose unlawful purpose, aim and/or goal, was to defraud the Plaintiffs out of their money, in an amount in excess of \$15,000.00 by requiring the Plaintiffs to pay for the Subject Property, all the while knowing that the home contained significant defects in its workmanship and structure, and all in violation of the SRPD.

82. The Defendants, and each of them, acted in concert, with the intent to accomplish the unlawful objective of defrauding the Plaintiffs out of their personal property, i.e. lawful money of the United States, when the Defendants, and each of them, using fraudulent and deceptive trade practices, without justification, intentionally defrauded the Plaintiffs out of their personal property, i.e. lawful money of the United States.

83. That as a direct and proximate result of Defendants' actions alleged herein, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

84. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

85. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

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**VIII.**

**SIXTH CAUSE OF ACTION**

**(Respondent Superior)**

86. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85, inclusive, and incorporate the same as if fully set forth herein.

87. At all times relevant hereto, the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, were agents, servants and/or employees of the Defendants, and each of them, and was acting within the scope of his agency, and/or employment with the knowledge, purpose, permission and consent of his employers, the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, who are responsible for the actions of their agent, servants and/or employees, as described herein under the theory of Respondent Superior.

88. Pursuant to the theory of Respondent Superior, and as a result of the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, acted in a willfully, fraudulently, maliciously, oppressively and/or with a conscious disregard of the Plaintiff's rights and/or with the intent to vex, annoy or harass Plaintiffs, and either expressly or with a conscious disregard, affirmed, sanctioned and/or approved of the willful, fraudulent, malicious and or oppressive actions of their employees, and as such are liable for any and all punitive damages awarded as a result of those employees, agents, servants or independent contractors.

89. That as a direct and proximate result of Defendants' actions alleged herein, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

90. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

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**VIII.**

**SEVENTH CAUSE OF ACTION**

**(Pierce the Corporate Veil/Alter Ego Doctrine)**

91. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85, inclusive, and incorporate the same as if fully set forth herein.

92. At all times relevant hereto, Defendant, SWANSON acted as if and purported to be the sole representative of the SHIRAZ and LYONS.

93. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, are owned and controlled by one person: SWANSON.

94. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, have the same addresses as SWANSON.

95. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, did not adhere to the corporate formalities as required by the Nevada Revised Statutes.

96. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, had assets commingled with the assets of SWANSON.

97. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, have been influenced and governed by the actions of SWANSON.

98. Upon information and belief, Plaintiffs assert that the entities, SHIRAZ and/or LYONS, and SWANSON have such unity of interest and ownership that the entities, stockholders, members and Trustee are inseparable from each other.

99. Plaintiffs assert and believe that the adherence to the corporate or trust fiction of a separate entity would sanction fraud or promote a manifest injustice.

100. That as a direct and proximate result of Defendants' actions alleged herein, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

101. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

**PRAYER**

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

1. For general damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages in an amount in excess of \$15,000.00;
4. For treble any damages awarded for Deceptive Trade Practices in an amount in excess of \$15,000.00;
5. For an Order or finding to pierce the Corporate and/or Trust Veil;
6. For reasonable attorney's fees;
7. For costs incurred in the pursuit of this action; and
8. For such other further relief as the court deems proper.

DATED this 15<sup>th</sup> day of April 2019.

**BLACK & LOBELLO**

  
\_\_\_\_\_  
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[swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 18 day of April 2019, I caused the above and foregoing document *Plaintiffs' Amend the Complaint* to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

# **EXHIBIT 1**

RSA000016





## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 10/19/2017

Joseph Folino and Nicole Folino ("Buyer"), hereby offers to purchase  
42 Meadowhawk Lane, Las Vegas, NV 89135 ("Property"), within the  
city or unincorporated area of Las Vegas, County of Clark County, State of Nevada,  
Zip 89135, A.P.N. # \_\_\_\_\_ for the purchase price of \$2,700,000  
(two million seven hundred thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein: BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$150,000 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ wired to title  
\_\_\_\_\_. Upon Acceptance, Earnest Money to be  
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2  
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's  
Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000  
fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

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

\$2,160,000 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:  
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_.

\$ \_\_\_\_\_ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE  
FOLLOWING EXISTING LOAN(S):  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_.  
Interest: ☐ Fixed rate, \_\_\_\_\_ years - OR - ☐ Adjustable Rate, \_\_\_\_\_ years. Seller further agrees to  
provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer  
within FIVE (5) calendar days of acceptance of offer.

\$ \_\_\_\_\_ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS  
IN "FINANCING ADDENDUM" which is attached hereto.

\$390,000 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to  
Close of Escrow ("COE").

\$2,700,000 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees  
and costs associated with the purchase of the Property as defined herein.)

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

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a  
completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard  
factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

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: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:

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applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 26 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

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

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not **-OR-** ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_.  
Said Property ☐ is ☐ is not currently listed **-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) calendar 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(F) of this Agreement, all items are transferred in an "AS IS" condition. 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) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), 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);

The following additional items of personal property: all items per MLS, downstairs barstools and couch in media room.

## 5. ESCROW:

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Chicago Title \_\_\_\_\_ title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Sandy Moursey \_\_\_\_\_ ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

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: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

<i>JF</i>	<i>NF</i>
10/20/17	10/20/17
<i>JS</i>	

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the Escrow Number.

**B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

**C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before: 30 days after acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

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

**6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

**7. BUYER'S DUE DILIGENCE:** Buyer's obligation is ☒ is not ☐ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 12 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

**A. 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 conduct, non-invasive/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.

**B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

GF Buyer's Initials MF Buyer's Initials  
10/20/17 10/20/17

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: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:

GF MF  
10/20/17 10/20/17  
JS

**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	n/a	Fungal Contaminant Inspection	n/a	Well Inspection (Quantity)	n/a
Home Inspection	buyer	Mechanical Inspection	n/a	Well Inspection (Quality)	n/a
Termite/Pest Inspection	buyer	Pool/Spa Inspection	buyer	Wood-Burning Device/Chimney Inspection	n/a
Roof Inspection	n/a	Soils Inspection	n/a	Septic Inspection	n/a
Septic Lid Removal	n/a	Septic Pumping	n/a	Structural Inspection	n/a
Survey (type):		Other:		Other:	

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**8. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50-50	Lender's Title Policy	buyer	Owner's Title Policy	seller
Real Property Transfer Tax	seller	Appraisal	buyer	Other: n/a	

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

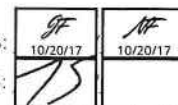
Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:


  
 10/20/17 10/20/17

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

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

**E. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐waives ~~OR~~ ☒requires a Home Protection Plan with TBD. ☒Seller ~~OR~~ ☐Buyer will pay for the Home Protection Plan at a price not to exceed \$1200-. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

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

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	seller	CIC Capital Contribution	seller	CIC Transfer Fees	seller
Other:					

**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) \_\_\_\_\_

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

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:  

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS: 

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**12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

**13. WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 2 \_\_\_\_\_ calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

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

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


**16. ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

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

**18. DEFAULT:**

**A. MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS:

   
10/20/17 10/20/17  
12:34AM EDT 12:15AM EDT

SELLER(S) INITIALS:

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

**C. IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

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: Joseph Folino and Nicole Folino





Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

   
10/20/17 10/20/17  
 

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## Instructions to Escrow

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

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

## Brokers

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

**22. WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

## Other Matters

**23. DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a

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: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

<i>JF</i> 10/20/17	<i>NF</i> 10/20/17
<i>JS</i>	

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

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

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

B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

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

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

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

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: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

<i>JF</i> 10/20/17	<i>NF</i> 10/20/17
<i>JS</i>	

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

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27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

28. ADDITIONAL TERMS: \_\_\_\_\_

### Buyer's Acknowledgement of Offer

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

Buyer's Broker: <u>Ashley Oakes-Lazosky</u>	Agent's Name: <u>Ashley Oakes-Lazosky</u>
Company Name: <u>Vegas Homes and Fine Estates LLC</u>	Agent's License Number: <u>B.1000869</u>
Broker's License Number: <u>B.1000869</u>	Office Address: <u>1180 N. Town Center Dr Ste 100</u>
Phone: <u>702-281-1198</u>	City, State, Zip: <u>Las Vegas, NV 89144</u>
Fax: <u>702-446-4536</u>	Email: <u>ashley@vhfelv.com</u>

**BUYER LICENSEE DISCLOSURE OF INTEREST:** 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. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have 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)

Seller must respond by: 5 ☐ AM ☒ PM on (month) October, (day) 21, (year) 2017. 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. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Joseph Folino  
dotloop verified  
10/20/17 12:34AM EDT  
SNGZ-T3OB-TC4E-MMZH

Buyer's Signature

Joseph Folino 10/19/2017 ☐ AM ☐ PM  
Buyer's Printed Name Date Time

Nicole Folino  
dotloop verified  
10/20/17 12:15AM EDT  
DCZP-LQQA-1YSS-WU9W

Buyer's Signature

Nicole Folino 10/19/2017 ☐ AM ☐ PM  
Buyer's Printed Name Date Time

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: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:

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## Seller's Response

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

Seller's Broker: <u>Forest Barbee</u>	Agent's Name: <u>Ivan Sher</u>
Company Name: <u>BHHS Nevada</u>	Agent's License Number: _____
Broker's License Number: _____	Office Address: <u>1215 S. Fort Apache Rd. Ste 210</u>
Phone: <u>702-315-0223</u>	City, State, Zip: <u>Las Vegas, NV 89117</u>
Fax: _____	Email: <u>ivan@shapiroandsher.com</u>

**SELLER LICENSEE DISCLOSURE OF INTEREST:** 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. Licensee declares that he/she:

☐ **DOES NOT** have an interest in a principal to the transaction. **-OR-**  
☐ **DOES** have 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)

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

SELLER DECLARES that he/she ☒ is not **-OR-** ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. **SELLER(S) INITIALS:** TS   

☒ **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.

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> </div> <div style="border: 1px solid black; padding: 5px;"> <p>Seller's Signature</p> </div>	<p><u>Todd V. Swanson</u></p> <p>Seller's Printed Name</p> <p>Co-trustee, the Shiraz Trust,</p> <p>Manager, Lyons Development, LLC</p> <p>Seller's Printed Name</p>	<p><u>11/21/2017</u> <u>6:30</u></p> <p>Date Time</p>	<p><input type="checkbox"/> AM / <input checked="" type="checkbox"/> PM</p> <p><input type="checkbox"/> AM / <input type="checkbox"/> PM</p>
---	---	---	--

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: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:      

SELLER(S) INITIALS: TS



# **EXHIBIT 2**



## COUNTER OFFER

NO. 2

ATTENTION: Ivan Sher COMPANY: BHHS Nevada Home Services  
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Lyons Development LLC  
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 42 Meadow hawk Lane Las Vegas, NV 89135  
dated: October 19, 2017 is not accepted in its present form, but the following Counter Offer  
is hereby submitted:

Purchase price to be \$3,000,000.00

All existing electronics to convey with the sale (as indicated in the  
original RPA).

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

**OTHER TERMS:** All other terms to remain the same as original Residential Purchase Agreement plus terms  
agreed to in Counter Offer(s) No. 1.

**EXPIRATION:** ☐ Buyer ☒ Seller must respond by: 8 ☐ AM ☒ PM on (month) October,  
(day) 23, (year) 2017. Unless this Counter Offer is accepted by execution below  
and delivered to the ☐ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall  
lapse and be of no further force and effect.

Date: 10/22/2017

Joseph Folino  
dotloop verified  
10/22/17 12:05PM EDT  
BSOP-2VJN-MPHI-R3MO

☒ Buyer ☐ Seller

Signature

Time:                     

Nicole Folino  
dotloop verified  
10/22/17 12:02PM EDT  
MIVE-FIUV-GBHS-DNHH

☒ Buyer ☐ Seller

Signature

The undersigned ☐ Buyer ☒ Seller hereby:

X accepts the Counter Offer;

           accepts the terms of this Counter Offer subject to the attached Counter Offer No.                     ; or

           rejects the Counter Offer.

Date: 10/22/17

Authentisign  
Todd Swanson, Co-Trustee

☐ Buyer ☒ Seller

Signature

Time: 11:30 am

☐ Buyer ☐ Seller

Signature

## **EXHIBIT 3**

**COUNTER OFFER**NO. 1
 ATTENTION: Ashely Oakes-Lazosky COMPANY: Vegas Homes and Fine Estates LLC  
 (Agent) (Name)

 The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Joseph Folino & Nicole Folino  
 (Name)

 to ☒ Buy ☐ Sell the real property commonly known as: 42 Meadowhawk Lane Las Vegas  
 dated: October 19th, 2017 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Purchase price to be \$3,099,000.00.
2. Buyer Pre-approval to be revised to reflect lower down payment (as indicated in purchase agreement)  
or buyer to put 30% down as indicated in Pre-approval letter.
3. Appraisal to be order within 2 business days of accepted offer.
4. Escrow to be opened with Taci Granlund of Equity Title 702-432-1111, TaciG@equitynv.com
5. No personal property to be included in the sale.
6. Seller time to respond to original offer is hereby to be extended to midnight October 21st, 2017.

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

**OTHER TERMS:** All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No.       .

**EXPIRATION:** ☒ Buyer ☐ Seller must respond by: 10:00 ☒ AM ☐ PM on (month) October, (day) 23rd, (year) 2017. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.
Date: 10/21/2017
 AuthentiSIGN  
*Todd Swanson, Co-Trustee*  
☐ Buyer ☒ Seller

Signature

Time: 6:30 PM
☐ Buyer ☐ Seller

Signature

The undersigned ☒ Buyer ☐ Seller hereby:       accepts the Counter Offer;
☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. #2; or  
       rejects the Counter Offer.
Date: 10/22/2017
*Joseph Folino*  
 dotloop verified  
 10/22/17 6:37PM EDT  
 R4NP-LM2L-K5GC-SFL1
☒ Buyer ☐ Seller

Signature

Time:       
*Nicole Folino*  
 dotloop verified  
 10/22/17 6:55PM EDT  
 VJVE-TL6W-NMRF-F5NG
☐ Buyer ☐ Seller

Signature

# **EXHIBIT 4**

RSA000031

## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (*see NRS 113.130 and 113.140*).

Date 10/24/2017Do you currently occupy or have  
you ever occupied this property?YESNOProperty address 42 Meadowhawk Lane

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (*NRS 113.130(3)*)

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☒ Owner-occupier; ☐ Other: \_\_\_\_\_

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

**Instructions to the Seller:** (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (*see NRS 113.150*).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A		YES	NO	N/A
Electrical System .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Shower(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Plumbing .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sink(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sewer System & line .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sauna / hot tub(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Built-in microwave .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Well & pump .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Range / oven / hood-fan .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Yard sprinkler system(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dishwasher .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fountain(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Garbage disposal .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heating system .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Trash compactor .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooling system .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Central vacuum .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solar heating system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alarm system .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fireplace & chimney .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>			
Wood burning system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Smoke detector .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garage door opener .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intercom .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Water treatment system(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Data Communication line(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>				Satellite dish(es) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Water heater .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>			
Toilet(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathtub(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>				

**EXPLANATIONS:** Any "Yes" must be fully explained on page 3 of this form.

TS  
Seller(s) Initials

GF  
11/07/17  
3:07PM EST

MF  
12/12/17  
7:34PM EST

Buyer(s) Initials



**Property conditions, improvements and additional information:** ..... YES NO N/A

Are you aware of any of the following?:

**1. Structure:**

- (a) Previous or current moisture conditions and/or water damage? ..... ☐ YES ☒ NO
- (b) Any structural defect? ..... ☐ YES ☒ NO
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ YES ☒ NO
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ..... ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

**2. Land / Foundation:**

- (a) Any of the improvements being located on unstable or expansive soil? ..... ☐ YES ☒ NO
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ YES ☒ NO
- (c) Any drainage, flooding, water seepage, or high water table? ..... ☐ YES ☒ NO
- (d) The property being located in a designated flood plain? ..... ☐ YES ☒ NO
- (e) Whether the property is located next to or near any known future development? ..... ☐ YES ☒ NO
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ YES ☒ NO
- (g) Is the property adjacent to "open range" land? ..... ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

**3. Roof:** Any problems with the roof? ..... ☐ YES ☒ NO

**4. Pool/spa:** Any problems with structure, wall, liner, or equipment? ..... ☐ YES ☒ NO ☐ N/A

**5. Infestation:** Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ YES ☒ NO

**6. Environmental:**

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ..... ☐ YES ☒ NO
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ..... ☐ YES ☒ NO

**7. Fungi / Mold:** Any previous or current fungus or mold? ..... ☐ YES ☒ NO

**8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?** ..... ☐ YES ☒ NO

**9. Common Interest Communities:** Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ..... ☒ YES ☐ NO

- (a) Common Interest Community Declaration and Bylaws available? ..... ☒ YES ☐ NO
- (b) Any periodic or recurring association fees? ..... ☒ YES ☐ NO
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ YES ☒ NO
- (d) Any litigation, arbitration, or mediation related to property or common area? ..... ☐ YES ☒ NO
- (e) Any assessments associated with the property (excluding property taxes)? ..... ☒ YES ☐ NO (SID or LID)
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ YES ☒ NO

**10. Any problems with water quality or water supply?** ..... ☐ YES ☒ NO

**11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?** ..... ☐ YES ☒ NO

**12. Lead-Based Paint:** Was the property constructed on or before 12/31/77? ..... ☐ YES ☒ NO  
(If yes, additional Federal EPA notification and disclosure documents are required)

**13. Water source:** Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐  
If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐  
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

**14. Conservation Easements** such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ YES ☒ NO

**15. Solar panels:** Are any installed on the property? ..... ☐ YES ☒ NO

If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐

**16. Wastewater disposal:** ☒ Municipal Sewer ☐ Septic System ☐ Other ☐

**17. This property is subject to a Private Transfer Fee Obligation?** ..... ☒ YES ☐ NO

(standard transfer tax)

**EXPLANATIONS:** Any "Yes" must be fully explained on page 3 of this form

TS  
Seller(s) Initials

MF  
11/07/17 3:07PM EST  
12/12/17 7:34PM EST  
Buyer(s) Initials

**EXPLANATIONS: Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
Attach additional pages if needed.**

IS  
Seller(s) Initials

IS  
11/07/17  
3:07PM EST

Buyer(s) Initials

IS  
12/12/17  
7:34PM EST



Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

**CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE**

**NRS 113.100 Definitions.** As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

**NRS 113.110 Conditions required for "conveyance of property" and to complete service of document.** For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
  - (a) Upon the closure of any escrow opened for the conveyance; or
  - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
  - (a) Upon personal delivery of the document to the person being served; or
  - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 844)

**NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property.** The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.

2. Provides notice:

- (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
- (b) That the disclosures set forth in the form are made by the seller and not by his agent.
- (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

**NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.**

1. Except as otherwise provided in subsection 2:

(a) At least 10 days before residential property is conveyed to a purchaser:

- (1) The seller shall complete a disclosure form regarding the residential property; and
- (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.

(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:

- (1) Rescind the agreement to purchase the property; or
- (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

2. Subsection 1 does not apply to a sale or intended sale of residential property:

- (a) By foreclosure pursuant to chapter 107 of NRS.
- (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
- (c) Which is the first sale of a residence that was constructed by a licensed contractor.

(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.

3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.


4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:


- (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
- (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.


5. As used in this section:

- (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
- (b) "Service report" has the meaning ascribed to it in NRS 645H.150.

(Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

  
\_\_\_\_\_  
Seller(s) Initials

  
11/07/17  
3:07PM EST

  
12/12/17  
7:34PM EST

\_\_\_\_\_  
Buyer(s) Initials

**NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.**

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

**NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.**

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

**NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.**

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): John V. Swann Date: 10/24/2017

Seller(s): Co-trustee, the Shiraz Trust Date: \_\_\_\_\_  
Manager, Lyons Development LLC

**BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter ~~113.100-150~~ 113.100-150 inclusive, attached hereto on pages four (4) and five (5).**

Buyer(s): Joseph Folino Date: 10/25/2017  
dotloop verified 11/07/17 3:07PM EST EL77-GGIB-JDHW-QKNG

Buyer(s): Nicole Folino Date: 10/25/2017  
dotloop verified 11/07/17 2:44PM EST WQEE-AXST-1UT2-OLBE

# **EXHIBIT 5**

RSA000037

# The Uniform Building Inspection Report™ Condensed

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**Single Family Residence:**  
42 Meadowhawk Lane, Las Vegas, NV 89135

**Condensed Report Version Prepared for:**  
Joe & Nicole Solino, Client  
Ashley Oakes-Lazosky, Selling Agent  
Ivan Sher, Listing Agent

**Inspection Date:**  
10/27/2017, 9:00:00 AM

**Report Number:**  
1027170900RP

**Inspection Company:**  
Caveat Emptor LV  
Ralph Pane, Lic.# IOS.0002415.RE

Las Vegas, NV 89148  
(702) 210-5333  
www.caveatemptorlv.com

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## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

### Letter Code Definitions:

The letter code definitions provide the inspector's professional opinion regarding the finding significance, severity, ramifications, course of action, or path of resolution recommended. If further clarification is desired please contact your inspector.

- (+) The plus sign indicates a plus for the property.
- (A) APPEARANCE This issue is generally perceived to cosmetic in nature.
- (B) BUILDING STANDARDS This finding does not appear to conform to building standards and practices in effect at the time of construction or installation.
- (C) CAUTION Caution is advised. The finding could be, or could become, hazardous under certain circumstances.
- (D) DAMAGED and/or DAMAGING Damage is observed.
- (E) EFFICIENCY Correction of this issue will generally have a significant impact on efficiency.
- (F) FAILURE The system is not operating as intended.
- (H) HAZARD The finding should be considered hazardous.
- (M) MONITOR Monitor this finding on a regular basis. Corrections by a qualified licensed contractor, if or when necessary, are recommended.
- (N) NOTICE Discretion advised. The significance of the finding is uncertain. Further study is advised.
- (P) PREVENTIVE MAINTENANCE This is generally regarded to be a recurring maintenance issue. Preventive maintenance should be performed to restore the component(s) to proper condition.
- (R) REVIEW BY SPECIALIST The most suitable course of action for addressing this finding is to defer the issue to a licensed and qualified contractor.
- (T) TYPICAL/COMMON This finding appears to be typical and consistent with the age of the structure.
- (U) UPGRADE RECOMMENDED To perform this maintenance action would be considered to be an upgrade.

### IMPORTANT: Findings, Components & Applications Listings:

Each section of the complete report includes a list of Findings, if any, and a list of Components and Applications noted during the inspection. Some component information contains disclosures. Some Findings information may be far-reaching. To obtain this information would require reading all narratives in the Uniform Building Inspection Report™ Reference Manual, referenced by item number. The client is given this manual.



## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

### Condensed Findings:

The condensed version is not the entire report and should not be considered exclusive. In States requiring summary distribution the following listed items are considered by the inspector as inoperative, not operating properly or as intended, health and/or safety concerns, warranting further investigation by a specialist, or warranting continued observation by others. In all other States the summary may include all findings regardless of significance.

#### Grounds Findings:

[R] 0303: Irrigation station supply valve(s) possibly leak(s).  
Observed at the east side of the home. The ground around the irrigation valve box is damp. I did not see the valve leaking but the moisture should be looked into. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0303.

[R] 0313: Irrigation anti-siphon valve leakage observed  
Observed at the southeast corner of the home. Active leaking was observed. Anti siphon valve should be replaced. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0313.

[R] 0323: Irrigation system electric valve control wires amiss.  
Observed on the east side of the home. The low voltage wire is running on the ground when it should be in conduit or buried. Wire should be correctly ran. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0323.

[R] [R] 0350: Irrigation system needs general repairs, maintenance and adjustments.  
This condition was observed at the front of the property. Small underground leak noticed in the front yard drip system. Leaks only when front station is in operation. Leak should be repaired. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor. (rock is pulled back at leak area)  
See Photo(s) 0350.

#### Exterior / Roof Findings:

#### HVAC & Fireplace Findings:

#### Pool / Spa Findings:

### Notes:

## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

### Notes:

**[R] 3770.02: Filter case leaks.**

This condition was observed in the pool equipment area. Small leak observed at the fitting at the bottom of the filter. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3770.02.

**[R] 3911: Gate(s) allowing direct access to pool or spa not self-closing and self latching.**

Observed on both sides of the home, the gates should be adjusted to allow the gate to close and latch properly on its own. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3911.

### Plumbing Findings:

**[R] 4684: Tub drains slow.**

This condition was observed in the master bathroom tub. The drain stop may need adjusting to allow faster drainage. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Plumbing Contractor.  
See Photo(s) 4684.

### Electrical Findings:

**[C] 5645: Electrical faceplate missing.**

Observed in the master bathroom toilet areas. Both outlets are missing the faceplate cover. A missing electrical faceplate can create a potential hazard, especially when small children are present. It is recommended that all missing electrical faceplates be installed as soon as practicable. These products are generally readily available at most major home improvement warehouses such as Lowes or The Home Depot. Caution is advised. The finding could be, or could become, hazardous under certain circumstances.  
See Photo(s) 5645.

### Bathroom(s) Findings:

### General Interior Findings:

**[R] 7424: Door dead bolt fails to fully extend in the jamb.**

Observed at the exterior door of the gym in the basement. Deadbolt does not fully lock. Lock should be adjusted. It is recommended this finding and all associated components be reviewed and corrected as

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

needed by a licensed and qualified Door Contractor.  
See Photo(s) 7424.

**Kitchen / Appliance Findings:**

**Structure Findings:**

**Notes:**



## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 0.32 (1)



Photo: 0303 (1)

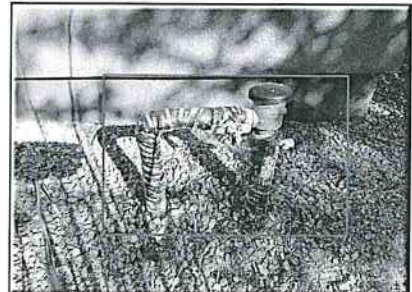


Photo: 0313 (1)



Photo: 0323 (1)



Photo: 0350 (1)

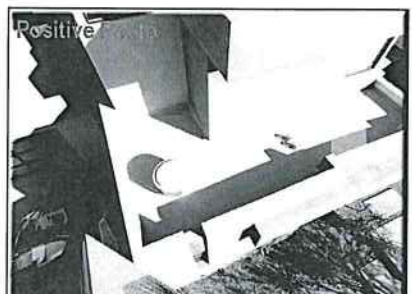


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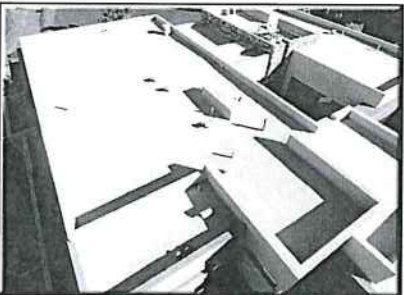


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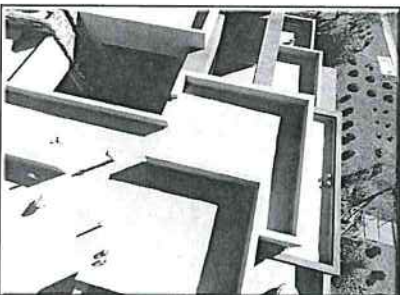


Photo: 1.05 (3)



Photo: 1.05 (4)



Photo: 1.1 (1)



Photo: 1.2 (1)



Photo: 2.02 (1)

Questions or concerns? Please call (702) 210-5333

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Docket 81252 Document 2021-14607

RSA000043



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Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 2.02 (2)



Photo: 2.02 (3)



Photo: 2.02 (4)



Photo: 2.04 (1)



Photo: 2.04 (2)



Photo: 2.52 (1)



Photo: 3.33 (1)

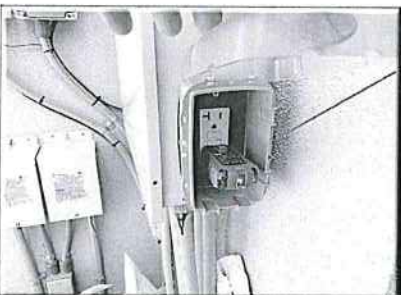


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Photo: 3.73 (1)

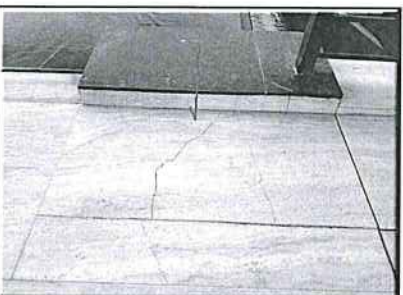


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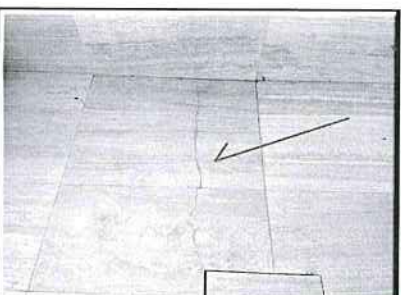


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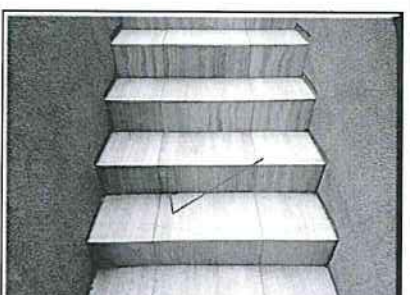


Photo: 3162 (3)

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## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 3770.02 (1)



Photo: 3800 (1)



Photo: 3911 (1)

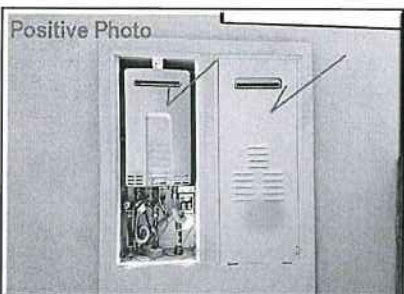


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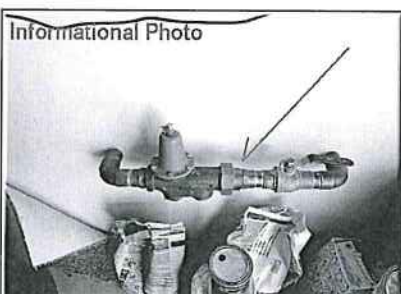


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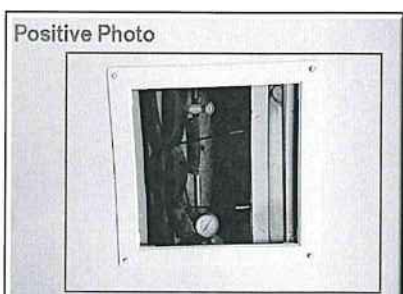


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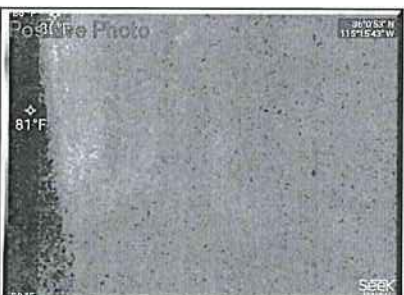


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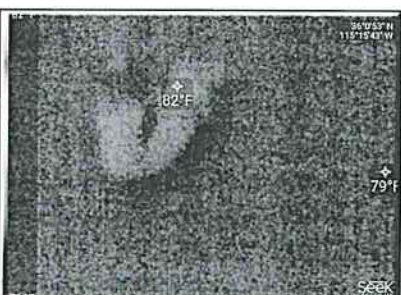


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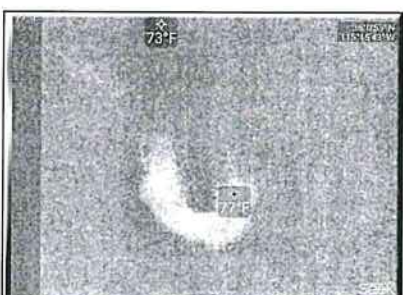


Photo: 4.18 (3)



Photo: 4.18 (4)



Photo: 4.21 (1)



Photo: 4.96 (1)

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Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

Positive Photo

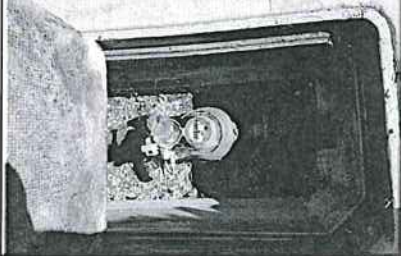


Photo: 4500 (1)



Photo: 4684 (1)

Positive Photo



Photo: 5.2 (1)

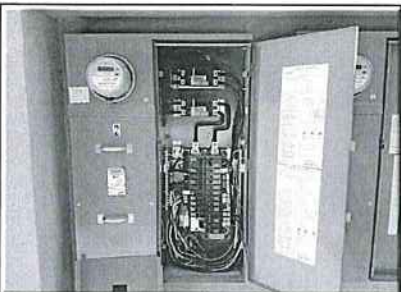


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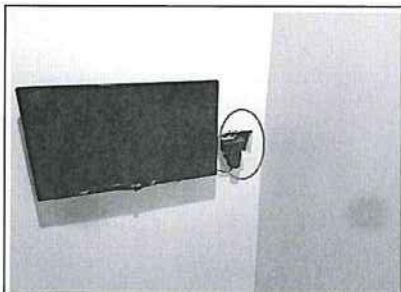


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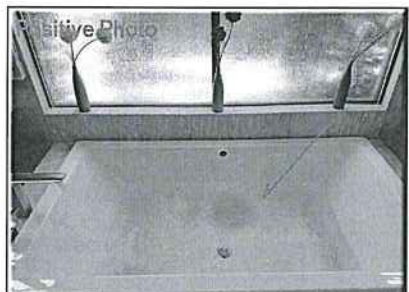


Photo: 6.15 (1)



Photo: 6.410 (1)



Photo: 7.82 (1)



Photo: 7424 (1)



Photo: 8.04 (1)



Photo: 8.04 (2)

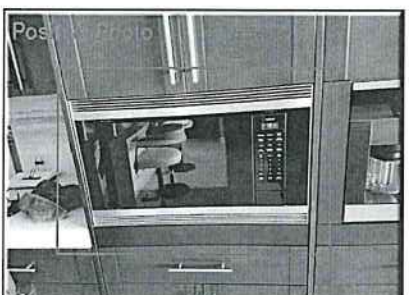


Photo: 8.07 (1)

Questions or concerns? Please call (702) 210-5333

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RSA000046

## Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 8.110 (1)

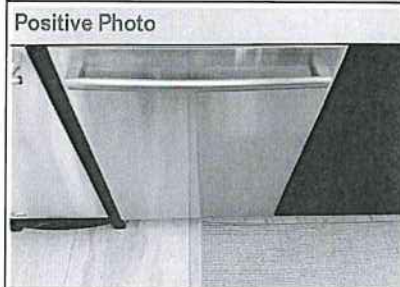


Photo: 8.2003 (1)



Photo: 8.31 (1)



Photo: 8.91 (1)



Photo: 8.91 (2)



Photo: 8.91 (3)

# **EXHIBIT 6**

RSA000048





REQUEST FOR REPAIR No. 1

In reference to the Residential Purchase Agreement dated 10/23/17 ("Agreement") on property known as 42 Meadowhawk Ln, Las Vegas, NV ("Property") executed by Joseph Folino Nicole Folino as Buyer(s) and seller of record as Seller(s). The Buyer hereby notifies the Seller of the following response and request for repairs:


1. BUYER'S NOTICE: (Check one)


- ☐ Buyer has reviewed and **approves** the Home Inspection Report and removes the home inspection contingency.
- ☒ Buyer requests that the Seller perform the following repairs before COE. All repairs (except general home maintenance) are to be done by a licensed Nevada contractor. Buyer reserves the right to approve the repairs at Walk Through Inspection as set forth in the Purchase Agreement. Buyer acknowledges that this Request for Repair does not absolve the Buyer of any obligation under the Residential Purchase Agreement.
- All irrigation systems need to be repaired and replaced at the areas of leaking, etc.  
(see inspection report for details)
- Pool filter case leaks and needs to be repaired/replaced.
- Side gate needs to be repaired properly to allow self-latching properly.
- Drain stops need to be repaired/replaced since tubs drain slowly
- Master bathroom electrical faceplates need to be replaced & installed properly.
- Downstairs room door needs the deadbolt repaired/replaced to function properly.

Amended report by Inspector makes 2 additional items added to this request:

(See provided amended report and photos )

1. Pool decking outside the sliding door has a "lip" that is showing either shifting underneath and/or is a trip hazard. Seek further investigation from pool builder and provide buyers with "warranty" or solution.
2. Flat roof line that is right of the Office Patio is coming off in chunks and needs to be repaired (see report with inspectors suggested remedy.) Buyer inquiring on the builders warranty for continued said issues with the stucco on the flat roof lines of home.

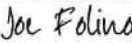
  
11/09/17  
11:55AM EST

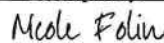
  
11/13/17  
12:17PM EST

Copies of the following reports are attached:

☒ Inspection Report

☐ \_\_\_\_\_

☐ \_\_\_\_\_  
DocuSigned by:  
  
10/30/17  
Buyer Joseph Folino Date

☐ \_\_\_\_\_  
DocuSigned by:  
  
10/30/17  
Buyer Nicole Folino Date







# **EXHIBIT 7**

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:  
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

Joseph R Folino & Nicole Folino  
42 Meadowhawk Lane  
Las Vegas NV 89135

MAIL TAX STATEMENTS TO:  
SAME AS ABOVE

Affix RPTT: \$\$15,300.00  
ESCROW NO.: 17840471 TGR

Inst #: 20171117-0003032

Fees: \$40.00

RPTT: \$15300.00 Ex #:

11/17/2017 03:21:08 PM

Receipt #: 3252384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH THAT:

**Lyons Development, LLC, a Nevada Limited Liability Company**

for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant,  
Bargain Sell and convey to

**Joseph R Folino and Nicole M Folino, husband and wife as joint tenants**

all that real property situated in the County of Clark, State of Nevada, described as follows:

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

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

SUBJECT TO:

1. General and special taxes for the current fiscal year.
2. Covenants, conditions, restrictions, rights of way, easements and reservations of record.

RSA000052

**SELLER:**

Lyons Development, LLC

Todd Swanson, Trustee  
Todd Swanson, Resource Trustee for  
the Shiraz Trust

STATE OF Colorado )  
COUNTY OF Denver ) SS:

On November 11, 2017

personally appeared before me, a Notary Public

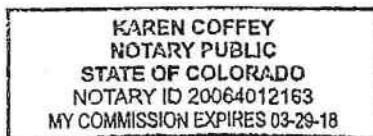
Todd Swanson

who acknowledged that he/she/they executed the  
above instrument.

Karen Coffey

Notary Public

My commission expires: 3/29/18



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot Fourteen (14) as shown on the FINAL MAP OF SUMMERLIN VILLAGE 18 THE RIDGES  
PARCEL "F" FALCON RIDGE as shown by map thereof on file In Book 126 of Plats, Page  
64, in the Office of the County Recorder, Clark County, Nevada.

ASSESSOR'S COPY



**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 164-14-414-014  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

- a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
i. Other \_\_\_\_\_

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 3,000,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value \$ 3,000,000.00  
d. Real Property Transfer Tax Due: \$ 15,300.00

4. **If Exemption Claimed**

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature \_\_\_\_\_ Capacity agent  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Lyons Development, LLC  
Address: 10120 W Flamingo Road Ste. 4333  
City: Las Vegas  
State: NV Zip: 89147

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

Print Name: Joseph R Folino and Nicole Folino  
Address: 42 Meadowhawk Lane  
City: Las Vegas  
State: NV Zip: 89135

**COMPANY/PERSON REQUESTING RECORDING (Required if not Seller or Buyer)**

Print Name: Equity Title of Nevada Escrow No.: 17840471-084-TGR  
Address: 2475 Village View Dr., Suite 250  
City, State, Zip: Henderson, NV 89074

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

RSA000055

# **EXHIBIT 8**



Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

INVOICE

INVOICE NO  
232809

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE		PAGE
UPONOR	5/23/2017	Net 30	6/22/2017		1

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
BID ACCEPTED	1	BID ACCEPTED	2496.00	2,496.00*

Your Business is Appreciated!

\* means item is non-taxable

RSA000057



# INVOICE

INVOICE NO  
232809

Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE			PAGE
UPONOR	5/23/2017	Net 30	6/22/2017			2

TOTAL AMOUNT 2,496.00

RSA000058



# **EXHIBIT 9**

RSA000059



June 9, 2017

Rakeman Plumbing  
ATTN: Aaron Hawley  
4075 Losee Rd  
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

**Uponor North America**

**Uponor, Inc.**  
5925 148th Street West  
Apple Valley, MN 55124  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**Uponor Ltd**  
2000 Argentia Road  
Plaza 1, Suite 200  
Mississauga, ON L5N 1W1  
Tel: (888) 994-7726  
Fax: (800) 638-9517  
Web: [www.uponor.ca](http://www.uponor.ca)

RSA000060

014805

uponor

5925 148TH STREET WEST, APPLE VALLEY, MN 55124

109098 RAKEMAN PLUMBING Jun 7, 2017 14805

OUR REF NUMBER	INVOICE NUMBER	INVOICE DATE	INVOICE DESCRIPTION	NET AMOUNT
418340	RMA746512	Jun 7, 2017		2,496.00
TOTAL AMOUNT				\$2,496.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER, A VOID PANTOGRAPH AND MICROPRINTING.

uponor

5925 148TH STREET WEST  
APPLE VALLEY, MN 55124PNC Bank  
National Association  
Jeannette, PA  
60-162/433

014805

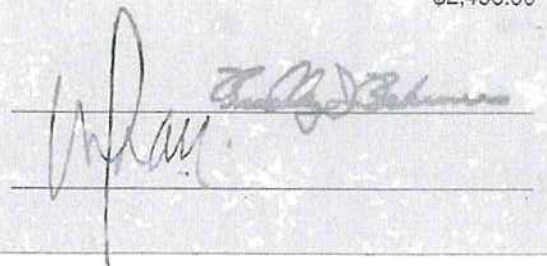
Check Date

07-Jun-2017

Check Amount

\$2,496.00

PAY Two Thousand Four Hundred Ninety-Six Dollars And Zero Cents\*\*\*\*\*

TO  
THE  
ORDER  
OFRAKEMAN PLUMBING  
4075 LOSEE ROAD  
NORTH LAS VEGAS, NV 89030  
United States


⑈014805⑈ ⑆043301627⑆ 1001149485⑈

RSA000061

# **EXHIBIT 10**

**Diane Meeter**

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 12:39 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)  
**Attachments:** 746512\_As\_Received\_\_2\_.JPG; Rakeman\_746512\_42\_meadowhawk\_invoice.pdf; 746512\_\_\_.pdf

Hi Nicole,

I wanted to thank you for taking the time to speak with me today in regards to the Uponor products currently installed in your home. As discussed, Uponor has identified a limited manufacturing related issue with the tubing samples returned to our office for evaluation and are recommending replacement of all red and blue AQUAPEX tubing currently installed in your home with new Uponor AQUAPEX. It is my understanding that you will be discussing this recommendation with your husband and will be following up with me after the 1<sup>st</sup> of the year to begin conversations on how we can work together to accomplish this task.

Per your request, below please find the information associated with the initial claim submitted to Uponor in February 2017.

#### Claimant And Jobsite Information

##### Claimant Information

Builder/Contractor  
rakeman plumbing  
aaron hawley  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
aaron@rakeman.com  
Ph 702 642 8553  
Fax 702 399 1410

##### Jobsite Information

Residential  
aaron hawley  
42 meadow hawk ln.  
LAS VEGAS, NV 89131  
US  
aaron@rakeman.com  
Ph 702 642 8553

##### Estimated Claim Amount

<b>Amount</b>	\$5000 to \$10000
<b>Preferred Reimbursement</b>	Cash
<b>Repairs Complete</b>	No

##### Past Occurrences

##### Past Occurrences



## Installation Information

### Application

<b>Application</b>	Plumbing
<b>Recirculation</b>	Yes
<b>Recirc Type</b>	Timed/On Demand
<b>Failure Location</b>	Supply
<b>Location Detail</b>	master bed room closet

### Contractor Information

rakeman plumbing  
aaron hawley  
4075 losee rd  
NORTH LAS VEGAS, NV  
US  
aaron@rakeman.com  
Ph 702 642 8553  
Installing? Yes

### Temperature/Pressure

<b>Temperature</b>	Hot
<b>System Temp Hot</b>	120 F
<b>System Pressure</b>	65 PSI

### Other Information

**Present for destructive**  
**Phase of Construction**  
**Builder**

### Water Source

<b>Water Source</b>	Municipal
---------------------	-----------

### Customer Comment(s)

tubing split at fitting. Cu

### Dates

<b>Est. Installed Date</b>	19-JUN-2013
<b>Failure Date</b>	16-FEB-2017

## Product Information

Item Number	Description	Return
Q4751775	ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> No Failure		
F2060750	3/4" Uponor AquaPEX Red, 300-ft. coil	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> Manufacturing		
F3060750	3/4" Uponor AquaPEX Blue, 300-ft. coil	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> Manufacturing		
F1041000	1" Uponor AquaPEX White, 100-ft. coil	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> No Failure		
Q4690756	ProPEX Ring with Stop, 3/4"	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> No Failure		
Q4691000	ProPEX Ring with Stop, 1"	
<b>Problem:</b> tubing split at fitting		
<b>Review Result:</b> No Failure		

Should you have any questions or concerns with the information supplied, please do not hesitate to reach out. My direct contact information is below.

Thank you  
Stacey

**uponor**

**Stacey Beissel**  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
5925 148th St W  
Apple Valley, MN, 55124

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RMA748395







RSA000068



# **EXHIBIT 11**

**Diane Meeter**

---

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 1:20 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** RE: Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)  
**Attachments:** 2012 - Plumbing Warranty.pdf

Hi Again,  
I apologize; I just realized I forgot to send the Uponor warranty applicable to your home. I have attached it for your review.

Thanks  
Stacey

---

**From:** Beissel, Stacey  
**Sent:** Wednesday, December 13, 2017 2:47 PM  
**To:** 'Nicole Folino' <nfolino@sandlerpartners.com>  
**Cc:** Joe Folino <jfolino@switch.com>  
**Subject:** Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)

Hi Nicole,  
As requested, the claim information for the most recent claim submitted to Uponor for evaluation (in November 2017) is below:

## Claimant And Jobsite Information

### Claimant Information

Builder/Contractor  
rakeman plumbing  
alison brooks  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
alison@rakeman.com  
Ph 702 642 8553

### Jobsite Information

Single Family  
todd watson  
42 meadowhawk ave.  
LAS VEGAS, NV 89135  
US  
alison@rakeman.com  
Ph 702 642 8553

### Estimated Claim Amount

<b>Amount</b>	\$1000 to \$2500
<b>Preferred Reimbursement</b>	Cash

### Past Occurrences

#### Past Occurrences

#### Past Occurrences Ref



## Installation Information

### Application

<b>Application</b>	Plumbing
<b>Recirculation</b>	No
<b>Location Detail</b>	master bath closet below water heater

### Temperature/Pressure

<b>Temperature</b>	Cold
<b>System Temp</b>	70 F
<b>System Pressure</b>	65 PSI

### Water Source

<b>Water Source</b>	Municipal
---------------------	-----------

### Dates

<b>Est. Installed Date</b>	15-JUL-2013
<b>Failure Date</b>	07-NOV-2017

### Contractor Information

rakeman plumbing  
alison brooks  
4075 losee rd  
NORTH LAS VEGAS, NV  
US  
alison@rakeman.com  
Ph 702 642 8553  
Installing? Yes

### Other Information

**Present for destructive**  
**Phase of Construction**  
**Builder**

### Customer Comment(s)

Blue pipe split at fitting

## Product Information

Item Number	Description	Return
LF4517575	ProPEX LF Brass Sweat Adapter, 3/4" PEX x 3/4" Copper	
<b>Problem:</b> blue tubing split at fitting		
<b>Review Result:</b>		
F3040750	3/4" Uponor AquaPEX Blue, 100-ft. coil	
<b>Problem:</b> blue tubing split at fitting		
<b>Review Result:</b> Manufacturing		

Thank you  
Stacey

# uponor

**Stacey Beissel**  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
5925 148th St W  
Apple Valley, MN, 55124

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PLUMBING SYSTEMS

WARRANTY

**UPONOR, INC. LIMITED WARRANTY Valid for Uponor AquaPEX-a® Tubing, ProPEX® and Other Select Plumbing Products**

**This Warranty is Effective For Installations Made After October 15, 2012**

Subject to the terms and conditions of this Limited Warranty, Uponor, Inc. ("Uponor") warrants to the owner of the applicable real property that the Uponor products listed below shall be free from defects in materials and workmanship, under normal conditions of use when installed as part of a potable water distribution system.

Unless otherwise specified, this Limited Warranty for the applicable Uponor products shall commence on the date the product was installed ("Commencement Date") and will expire after the following number of years:

- (a) Twenty-Five (25) years for Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings when all are installed in combination with each other;
- (b) Ten (10) years for Uponor AquaPEX-a® tubing when installed in combination with non-Uponor fittings;
- (c) Ten (10) years for Uponor EP valves, EP valveless manifolds and Uponor tub ells, stub ells, and straight stubs;
- (d) Two (2) years for Uponor metal manifolds, Uponor EP manifolds with valves;
- (e) Five (5) years for the Uponor D'MAND® system;
- (f) Two (2) years for all other components of the Uponor ProPEX® fitting system and all other plumbing items listed in Uponor's catalog as of the effective date of this limited warranty.

For purposes of this warranty, the use of Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings in combination with each other shall constitute an Uponor ProPEX® system.

**Exclusions From Limited Warranty:**

This limited warranty applies **only** if the applicable Uponor products identified above: (a) are selected, configured and installed by a certified licensed plumbing contractor recognized by Uponor as having successfully completed the Uponor AquaPEX® training course and according to the installation instructions provided by Uponor; (b) are not exposed to temperatures and/or pressures that exceed the limitations printed on the warranted Uponor product or in the applicable Uponor installation manual; (c) remain in their originally installed location; (d) are connected to potable water supplies; (e) show no evidence of misuse, tampering, mishandling, neglect, accidental damage, modification or repair without the approval of Uponor; and (f) are installed in accordance with then-applicable building, mechanical, plumbing, electrical and other code requirements; (g) are installed in combination with Uponor AquaPEX-a® tubing unless otherwise specified below.

Without limiting the foregoing, this limited warranty does not apply if the product failure or resulting damage is caused by: (a) faulty installation; (b) components not manufactured or sold by Uponor; (c) exposure to ultra violet light; (d) external physical or chemical conditions, including, but not limited to chemically corrosive or aggressive water conditions; or (e) any abnormal operating conditions.

The use of non-Uponor termination devices such as tub/shower valves, sill cocks, stops and other similar components that attach at the termination or end-point of a run or branch of Uponor AquaPEX-a® tubing does not disqualify the additional parts of the Uponor ProPEX® fitting system from the terms of this Limited Warranty. Only the non-Uponor termination devices themselves are excluded from the Uponor Limited Warranty.

The use of non-Uponor AquaPEX-a® tubing disqualifies any and all parts of the Uponor ProPEX fitting® system from the terms of this Limited Warranty. This exclusion does not include certain circumstances wherein Uponor AquaPEX-a® tubing is installed in combination with CPVC, copper, PPR, or stainless steel pipe risers as may be required in limited residential and commercial plumbing applications. The use of non-Uponor fittings in combination with Uponor ProPEX® fittings disqualifies Uponor ProPEX fittings® from the terms of this Limited Warranty.

RSA000074



**Warranty Claim Process (for building owners and homeowners only):**

Written notification of an alleged failure of, or defect in, any Uponor part or product identified herein should be sent to Uponor, Attn: Warranty Department, 5925 148th Street West, Apple Valley, Minnesota 55124 or by facsimile to (866) 351-8402, and must be received by Uponor within thirty (30) days after detection of an alleged failure or defect occurring within the applicable warranty period. All products alleged to be defective must be sent to Uponor for inspection and testing for determination of the cause of the alleged failure or defect.

**Exclusive Remedies:**

If Uponor determines that a product identified herein has failed or is defective within the scope of this limited warranty, Uponor's liability is limited, at the option of Uponor, to: issue a refund of the purchase price paid for, or to repair or replace the defective product.

Notwithstanding anything to the contrary in this limited warranty, if Uponor determines that any damages to the real property in which a defective product was installed were the direct result of a leak or failure caused by a manufacturing defect in an Uponor product covered by this limited warranty and occurring within the first ten (10) years after the applicable Commencement Date or during the applicable limited warranty period, whichever is shorter, and if the claimant took reasonable steps to promptly mitigate (i.e., limit or stop) any damage resulting from such failure, then Uponor may at its discretion, reimburse claimant for the reasonable costs of repairing or replacing such damaged real property, including flooring, drywall, painting, and other real property damaged by the leak or failure. Uponor shall not pay for any other additional costs or expenses, including but not limited to, transportation, relocation, labor, repairs or any other work associated with removing and/or returning failed or defective products, installing replacement products, damage to personal property or damage resulting from mold.

**Warranty Claim Dispute Process:**

In the event claimant and Uponor are unable to resolve a claim through informal means, the parties shall submit the dispute to the American Arbitration Association or its successor (the "Association") for arbitration, and any arbitration proceedings shall be conducted before a single arbitrator in the Minneapolis, Minnesota metropolitan area. NOTWITHSTANDING THE FOREGOING, NEITHER THE CLAIMANT NOR UPONOR, INC. SHALL BE ENTITLED TO ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND NEITHER THE CLAIMANT NOR UPONOR SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS WITH ANY OTHER PARTIES IN ARBITRATION OR IN LITIGATION BY CLASS ACTION OR OTHERWISE.

**Transferability:**

This limited warranty may only be assigned by the original owner of the applicable real property and may not be assigned or transferred after the period ending ten (10) years following the Commencement Date.

**Miscellaneous:**

By the mutual agreement of the parties, it is expressly agreed that this limited warranty and any claims arising from breach of contract, breach of warranty, tort, or any other claim arising from the sale or use of Uponor's products shall be governed and construed under the laws of the State of Minnesota. It is expressly understood that authorized Uponor sales representatives, distributors, and plumbing professionals have no express or implied authority to bind Uponor to any agreement or warranty of any kind without the express written consent of Uponor.

THIS LIMITED WARRANTY IS THE FULL EXTENT OF EXPRESS WARRANTIES PROVIDED BY UPONOR, AND UPONOR HEREBY DISCLAIMS ANY WARRANTY NOT EXPRESSLY PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS COVERED HEREUNDER.

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, UPONOR FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THIS LIMITED WARRANTY GIVES THE CLAIMANT SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

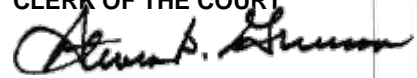
Revised as of 8/2012

Uponor, Inc.  
5925 148th Street West  
Apple Valley, MN 55124 USA  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**uponor**

RSA000075





CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)  
Attorneys for Todd Swanson, et al.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**HEARING REQUESTED**

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee of the  
SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,  
LLC, (hereinafter referred to as "Defendants") by and through its counsel of record Christopher  
M. Young, Esq., and JAY T. HOPKINS of the law firm of Christopher M. Young, P.C., hereby  
submits the following motion seeking dismissal of Plaintiff's Second Amended Complaint.

///


///

///

1 This motion is made and based upon the pleading and papers on file, together with the  
2 following Points and Authorities with exhibits and the arguments at the hearing.

3 DATED this 24<sup>th</sup> day of September, 2019.

4 Respectfully Submitted,

5  
6   
7 CHRISTOPHER M. YOUNG, ESQ.  
8 Nevada Bar No. 7961  
9 JAY T. HOPKINS, ESQ.  
10 Nevada Bar No. 3223  
11 CHRISTOPHER M. YOUNG, PC  
12 2460 Professional Court, #200  
13 Las Vegas, Nevada 89128  
14 Tel: (702) 240-2499  
15 Fax: (702) 240-2489  
16 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
17 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)  
18 Attorneys for Todd Swanson, et al.  
19  
20  
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22  
23  
24  
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28

1 **NOTICE OF MOTION**

2 TO: TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for  
4 hearing on the \_\_\_\_ day of \_\_\_\_\_, 2019, at the hour of \_\_\_\_\_ a.m./p.m. or as soon  
5 thereafter as counsel may be heard, in the Eighth Judicial District Court, Department XXIV,  
6 Courtroom

7 DATED this 24<sup>th</sup> day of September, 2019.

8 Respectfully Submitted,

9 CHRISTOPHER M. YOUNG, PC

10   
11 \_\_\_\_\_  
12 CHRISTOPHER M. YOUNG, ESQ.

13 Nevada Bar No. 7961

14 JAY T. HOPKINS, ESQ.

15 Nevada Bar No. 3223

16 2460 Professional Court, Suite 200

17 Las Vegas, Nevada 89128

18 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)

19 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

20 *Attorneys for Defendant Clark County Nevada*  
21 *Department of Aviation*

22 **I.**

23 **INTRODUCTION**

24 This is a lawsuit relating to the sale of real property in which the buyers claim the sellers  
25 concealed information which materially affected the value of the property. The buyers allege the  
26 sellers' failure to disclose a water leak establishes the sellers knew the plumbing system had a  
27 "systemic defect." The buyers' claims for fraud and statutory concealment under NRS Chapter  
28 113 cannot stand for two reasons:

- The undisputed facts show that the water leak was completely repaired. As such, under Nevada law, the sellers did not have knowledge of a "defect or condition" materially affecting the value of the property. Defendants request a ruling from this Court that the

completed repair negated the sellers' duty to disclose, thus barring the buyers' concealment claim based on NRS Chapter 113;

- The same undisputed facts - that the water leak was repaired and that the Defendants did not know of a defect - negates the intent element of the buyers' fraud claim. Summary judgment is warranted on this ground as well.

## II.

### **PROCEDURAL RECAP**

The Court is well-versed in the procedural history and factual issues in this case because the Court has already considered and ruled on two previous motions to dismiss. However, the following recap is presented to put the instant motion into context: ***On October 19, 2018, the Plaintiffs filed their initial Complaint***

The Plaintiffs' based their case entirely on the Defendants' alleged failure to disclose a known water leak prior to the sale of real property and concealed their knowledge that the water leak was a "systemic defect" in the plumbing system.

***On February 4, 2019, the Defendants filed a motion to dismiss under NRCP 12(b)(5)***

The Court did not rule on the substance of the motion to dismiss but granted the Plaintiffs' request for leave to amend to cure the pleading deficiencies.

***On April 18, 2019, the Plaintiffs filed their First Amended Complaint***

The First Amended Complaint did not change the allegations or claims raised in the original Complaint, but simply added a Seventh Cause of Action for Piercing the Corporate Veil/Alter Ego. The Plaintiffs' First Amended Complaint incorporated several exhibits, including an invoice from Rakeman Plumbing, the plumbing company that repaired the subject water leak. (See Exhibits 8 & 9 to the Plaintiffs Complaint).<sup>1</sup>

***On May 20, 2019, the Defendants filed a motion to dismiss the Plaintiffs' First Amended Complaint***

---

<sup>1</sup> The same exhibits were also attached as exhibits to the Plaintiffs First and Second Amended Complaints and are incorporated by reference, together with the arguments and other information in the two previous motions to dismiss.



1 The Defendants sought dismissal of each of the Plaintiffs' seven claims. Based on the  
2 Rakeman Plumbing invoice and related documents attached to the Plaintiffs' First Amended  
3 Complaint, the Defendants argued the invoice showed the leak had been repaired, thus negating  
4 the duty to disclose under *Nelson v. Heer*, 123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).

5 ***On July 18, 2019, this Court held a hearing on Defendants' Motion to Dismiss***

6 At the hearing, the Court dismissed all but two claims: (1) the Plaintiffs' fraud claim; and  
7 (2) the Plaintiffs' concealment claim under NRS Chapter 113.

8 The Court refused to dismiss the NRS Chapter 113 claim, stating that the Rakeman  
9 Plumbing invoices did not establish that the water leak had been *completely repaired*, as required  
10 by the *Nelson* case. The Court also ruled that the fraud claim could stand because it involved a  
11 question of fact.

12 ***On September 4, 2019, the Plaintiffs filed their Second Amended Complaint***

13 The Plaintiffs' Second Amended Complaint asserted claims for fraud and concealment  
14 under NRS Chapter 113, as ordered by the Court.

15 ***The Instant Motion***

16 The instant Motion for Summary Judgment is supported by undisputed (indisputable)  
17 evidence that Rakeman Plumbing completely repaired the water leak, thus negating the  
18 Defendants' purported "knowing concealment."

19 Following the Court's Order on the Motion to Dismiss the Plaintiffs' First Amended  
20 Complaint, the Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman  
21 Plumbing, who has knowledge regarding the adequacy of Rakeman's repair and what was  
22 communicated to the Defendants. (Exhibit A). Mr. Hawley stated that Rakeman Plumbing  
23 completely repaired the leak and no further information was conveyed to the Defendants. With  
24 these new facts, the Defendants request a ruling from this Court that neither of the Plaintiffs'  
25 claims can survive summary judgment. The concealment claim fails because under *Nelson* and  
26 NRS Chapter 113, the completed repair negates the duty to disclose. Because the Defendants did  
27 not have "knowledge" under the *Nelson* standards, summary judgment on the Plaintiffs' fraud  
28

claim is also warranted.<sup>2</sup>

### III.

#### UNDISPUTED FACTS

The following facts are not disputed or cannot be disputed:

- That there was a previous water leak at the property. (Exhibit A);
- That a licensed plumbing contractor, Rakeman Plumbing, came to the property on May 23, 2017 and completely repaired the leak. *Id.*
- That no information other than that the repair was completed was communicated to the Defendants; *Id.*
- That Rakeman Plumbing was the plumbing company that invoiced and submitted a warranty claim to the plumbing manufacturer, Uponor. *Id.*
- That the Defendants did not disclose the previous water leak in their October 24, 2017 Sellers Real Property Disclosure Form (SRPD). (Exhibit B).

### IV.

#### ARGUMENT

##### **A. Summary Judgment is Warranted on the Plaintiffs' Second Claim for Concealment**

##### **1. The Rakeman Plumbing Affidavit Establishes Undisputed Evidence Supporting Summary Judgment**

Under NRCP 56(a), “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007); *Wood v. Safeway, Inc.*, 731, 121 P.3d 1026, 1031 (2005).

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<sup>2</sup> The documents attached to the Plaintiffs' pleadings are incorporated into the pleadings, which together with the allegations can be viewed under NRCP 12(b)(5)'s standards. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, because the affidavit from Aaron Hawley of Rakeman Plumbing presents facts outside the pleadings, this Court must invoke the summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

1 Under NRCPP 56(c)1(A), facts can be established by affidavit. The affidavit “must be  
2 made on personal knowledge, set out facts that would be admissible in evidence, and show that  
3 the affiant or declarant is competent to testify on the matters stated.” NRCPP 56(c)(4). *See also*  
4 EDCR 2.21. Here, the Rakeman Plumbing affidavit satisfies these requirements. Mr. Hawley  
5 testified he has personal knowledge as the owner of Rakeman Plumbing with oversight of its  
6 operations. Further Mr. Hawley testified that he is competent to testify regarding the facts stated  
7 in his affidavit.

## 8 2. The Undisputed Evidence Supports Summary Judgment

9 In cases like this where the Plaintiffs have the burden of proof at trial, once the  
10 Defendants present evidence which negates an element of the Plaintiffs’ case, the burden shifts  
11 to the Plaintiffs to present *specific facts* showing a material issue of fact. *Cuzze*, 123 Nev. at 602,  
12 172 P.3d at 134. (Emphasis added). Here, the evidence presented in this motion cannot be  
13 controverted.

14 Under *Nelson* and the specific language of NRS §113.140, the Defendants *could not* have  
15 *knowledge* of a defect which triggers the duty to disclose. “NRS §113.140 states the following:  
16 “NRS §113.130 does not require a seller to disclose a *defect* in residential property of which the  
17 seller is not aware.” Tracking the statute, the *Nelson* court explained that “[t]he ‘term ‘aware’  
18 means ‘marked by realization, perception, or knowledge.’” Giving the term “‘aware’ its plain  
19 meaning,” the court “determine(d) that the seller of residential real property does not have a duty  
20 to disclose a defect or condition that ‘materially affects the value or use of residential property in  
21 an adverse manner, *if* the seller does not realize, perceive, or have knowledge of that defect or  
22 condition.” The *Nelson* court stated that “[a]ny other interpretation of the statute would be  
23 unworkable, as it is *impossible* for a seller to disclose conditions in the property of which he or  
24 she has no *realization, perception, or knowledge*.” *Nelson*, 163 P.3d 420, 425, 123 Nev. 217,  
25 224.

## 26 3. *Nelson v. Heer* is Directly on Point and Mandates Summary Judgment

27 Although the *Nelson* case was briefed in earlier motions to dismiss, the Defendants  
28 include the same discussion in this motion because this case is on all fours with *Nelson*. The

1 Nevada Supreme Court rule from *Nelson*, is that a seller repairing a water leak negates the  
2 seller's duty to disclose. *Nelson*, 123 Nev. at 220, 163 P.3d at 423.

3 The facts in *Nelson* are remarkably similar to this case. In *Nelson*, a water pipe on the  
4 third floor of the owner's cabin "burst, flooding the cabin." As in this case, the property owner  
5 hired a general contractor who repaired the broken water pipe. Much worse than this case, the  
6 leak in *Nelson* caused extensive water damage and the owner had to replace the "flooring, ceiling  
7 tiles, several sections of wallboard, insulation, kitchen cabinets, bathroom vanities, kitchen  
8 appliances, and certain furniture." At that time, the owner did not conduct any mold remediation.

9 Four years later, the owner listed the cabin for sale and completed a Seller's Real  
10 Property Disclosure Form (SRPD). The owner did not disclose the previous water damage.  
11 Without being informed of *any* water leaks, the buyer closed on the property. The buyer later  
12 learned the damage would cost \$81,000 to repair.

13 The jury found in favor of the plaintiff. On appeal, following the district court's denial of  
14 the defendants' motion for judgment notwithstanding the verdict, the court considered whether  
15 the seller had a duty to disclose the earlier damages which had been repaired. The Nevada  
16 Supreme Court found that the seller did not violate the disclosure rules because the earlier water  
17 flood and damages *were repaired*, and the seller *could not have knowledge* of a defect. Using  
18 the terms in the statute and the disclosure form, the court noted the seller was not aware of a  
19 "defect or condition" that "materially lessened the value or use of the cabin" because the water  
20 damage was repaired. *Id.*

21 Here, the Plaintiffs allege the Defendants failed to disclose a water leak in their October  
22 24, 2017 disclosures. The exhibits attached to this motion show that the leak was completely  
23 repaired. As in *Nelson*, the Defendants could not have any "realization, perception or  
24 knowledge" of a defective condition because the prior water leak was fixed. This negates the  
25 Plaintiffs' allegations the Defendants had the "knowledge or belief" that answering "no" on the  
26 SRPD form was a false statement. The complete repair of the leak negated the Defendants' duty  
27 of disclosure. Summary judgment regarding the Plaintiffs' second claim for relief is warranted.

28 ///



1 **B. The Plaintiffs Fraud Claim Fails as a Matter of Law**

2 In short, if this Court grants summary judgment on the concealment claim, the Plaintiffs'  
3 fraud claim automatically fails. Under NRCP 56, the Plaintiffs' fraud claim fails because the  
4 undisputed evidence "negates an essential element of [their] claim," and shows "there is an  
5 absence of evidence to support their case." *Cuzze* 123 Nev. at 602-603, 172 P.3d at 134.

6 The first two elements for fraud are: (1) that the Defendant made a false representation or  
7 misrepresentation of fact; and (2) that the Defendant had knowledge or belief that the  
8 representation was false. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev.  
9 44, 75, 110 P.3d 30, 51 (2005). The Plaintiffs cannot establish either element. Rakeman  
10 Plumbing's completed repair eviscerates the factual allegation that the Defendants made a false  
11 representation. With the repair completed and with no other information from the plumbing  
12 company that fixed the leak, the Defendants could not have the knowledge necessary for the  
13 intent element for the fraud claim. Summary judgment is warranted.

14 V.

15 **CONCLUSION**

16 The instant motion and the viability of the Plaintiffs' entire action boils down to one fact,  
17 as recognized by this Court: whether the work done by Rakeman Plumbing completely repaired  
18 the leak which is the basis of the Plaintiffs' claims for fraud and concealment. The evidence  
19 presented in the affidavit of Aaron Hawley of Rakeman Plumbing establishes two critical facts:  
20 First, it establishes that the leak was repaired by Rakeman Plumbing, a licensed plumbing  
21 contractor. Second, it establishes that the Defendants did not have any knowledge of a defect  
22 which the Plaintiffs allege the Defendants concealed.

23 ///

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28 ///

1 Under Nevada law, the Plaintiffs' claims fail. The Defendants request that this Court  
2 grant summary judgment and enter an order dismissing the Plaintiffs' case in its entirety, with  
3 prejudice.

4 DATED this 24<sup>th</sup> day of September, 2019.

5 Respectfully Submitted,

6 CHRISTOPHER M. YOUNG, PC

7   
8 CHRISTOPHER M. YOUNG, ESQ.

9 Nevada Bar No. 7961

10 JAY T. HOPKINS, ESQ.

11 Nevada Bar No. 3223

12 2460 Professional Court, Suite 200

13 Las Vegas, Nevada 89128

14 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)

15 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

16 *Attorneys for Defendant Clark County Nevada*  
17 *Department of Aviation*  
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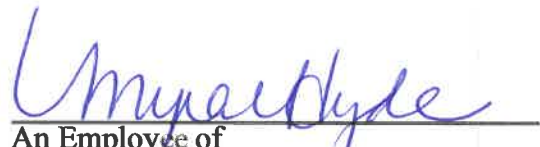
1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and  
3 N.E.F.C.R. 9, I hereby certify that on the 24th day of September, 2019, I caused the foregoing

4 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED**

5 **COMPLAINT** to be electronically filed and e-served on counsel as follows:

6 Rusty Graf, Esq.  
7 Shannon M. Wilson, Esq.  
8 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
9 Las Vegas, Nevada 89135  
10 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
11 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)

12   
13 An Employee of  
14 CHRISTOPHER M. YOUNG, PC

15  
16  
17  
18  
19 H:\Open Case Files\0300.003\MTN DIS 2nd AMD COMP

# EXHIBIT A

# EXHIBIT A



**AFFIDAVIT OF AARON HAWLEY**

STATE OF NEVADA       )  
                                  :  
COUNTY OF CLARK     )       ss.

1. Aaron Hawley, being first duly sworn, deposes and states as follows:

2. I am the owner of Rakeman Plumbing. I have been a plumber since 1982 and have owned Rakeman Plumbing since 2006.

3. This affidavit is made and based upon my personal knowledge.

4. I am competent to testify to all matters and information contained herein, and hereby swear and certify that the Exhibits attached to this Affidavit were kept in the regular course of my business as Rakeman Plumbing's owner.

5. I oversee my employees and have personal knowledge regarding the work they perform on behalf of Rakeman Plumbing.

6. On May 23, 2017, my company received a call regarding a plumbing leak in the master bedroom at 42 Meadowhawk Lane, Las Vegas, Nevada 89135.

7. Rakeman Plumbing was familiar with the Uponor plumbing system installed at the residence because Rakeman Plumbing had installed it during construction of the house. I recall that the leak was in the side wall in the master closet.

8. Rakeman Plumbing technician William "Rocky" Gerber went to 42 Meadowhawk Lane to repair the reported leak. Mr. Gerber met a person at the residence, who informed Mr. Gerber that she was Dr. Todd Swanson's assistant.

9. On site, Mr. Gerber found the following and took the following corrective action:

"Tech found 3/4 Uponor tee leaking on the hot side of the plumbing system.

Cut out leaking fitting and replace with new fitting and restore water with no further leaks.

Rakeman had to remove toe kicks on built in cabinets in closet cut out drywall, carpet pad and place equipment to dry out closet.

After everything is dry, Rakeman repaired all drywall to match existing texture and color and repaired all damaged built in closets the (sic) reset all carpet."

(Exhibit A, PO #13382, Invoice #232809).

10. The May 23, 2017 leak was fully and completely repaired, and we did not expect any further problems. As such, nothing further was conveyed to Dr. Swanson, other than that the leak was repaired and that we remediated the damage to the drywall, paint and carpet.

11. I invoiced Uponor, the manufacturer of the repaired pipe because the pipes at the residence were under a 25-year Uponor warranty.

12. Uponor paid the Rakeman Plumbing invoice on June 9, 2017. (Exhibit B).

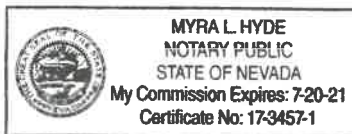
1 13. The attached Exhibits A & B are business records of Rakeman Plumbing. Those records  
2 were kept in the regular course of business. I have personal knowledge that the invoice  
3 was created at or near the time the leak was repaired on or about May 23, 2017 and that  
the June 9, 2017 letter from Uponor was received by Rakeman on or shortly after June 9,  
2017.

4 FURTHER AFFIANT SAYETH NAUGHT.

5  
6   
AARON HAWLEY

7 SUBSCRIBED AND SWORN to before  
8 me this 23 day of September, 2019.

9   
10 NOTARY PUBLIC in and for said  
County and State



26 H:\Open Case Files\0300.003\AFF-RAKEMAN  
27  
28

**AFFIDAVIT  
EXHIBIT A**

**AFFIDAVIT  
EXHIBIT A**



Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

**INVOICE**

INVOICE NO  
232809

CUST **UPONOR**  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE **SWANSON RESIDENCE**  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE		PAGE
UPONOR	5/23/2017	Net 30	6/22/2017		1

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
BID ACCEPTED	1	BID ACCEPTED	2496.00	2,496.00*

Your Business is Appreciated!

\* means item is non-taxable

RSA000091





Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

**INVOICE**

INVOICE NO  
232809

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE		PAGE
UPONOR	5/23/2017	Net 30	6/22/2017		2

TOTAL AMOUNT 2,496.00

**AFFIDAVIT  
EXHIBIT B**

**AFFIDAVIT  
EXHIBIT B**



June 9, 2017

Rakeman Plumbing  
ATTN: Aaron Hawley  
4075 Losee Rd  
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

**Uponor North America**

**Uponor, Inc.**  
5925 148th Street West  
Apple Valley, MN 55124  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**Uponor Ltd**  
2000 Argentia Road  
Plaza 1, Suite 200  
Mississauga, ON L5N 1W1  
Tel: (888) 994-7726  
Fax: (800) 638-9517  
Web: [www.uponor.ca](http://www.uponor.ca)

RSA000094

014805

Uponor 5925 148TH STREET WEST, APPLE VALLEY, MN 55124

109088 RAKEMAN PLUMBING Jun 7, 2017 1005

OUR REF NUMBER	INVOICE NUMBER	INVOICE DATE	INVOICE DESCRIPTION	NET AMOUNT
418340	RMA746512	Jun 7, 2017		2,496.00
TOTAL AMOUNT				\$2,496.00

UPONOR  
5925 148TH STREET WEST  
APPLE VALLEY, MN 55124

PNC Bank  
National Association  
Jeannette, PA  
60-182/433

014805

Check Date  
07-Jun-2017

Check Amount  
\$2,496.00

PAY TO THE ORDER OF  
TWO THOUSAND FOUR HUNDRED NINETY SIX DOLLARS AND ZERO CENTS

RAKEMAN PLUMBING  
402 LOSEE ROAD  
NORTH LAS VEGAS, NV 89001  
UNION SQUARE

*[Signature]*

⑈014805⑈ ⑆043301627⑆ 1001149485⑈

RSA000095

# EXHIBIT B

# EXHIBIT B



## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see NRS 113.130 and 113.140).

Date 10/24/2017

Do you currently occupy or have you ever occupied this property?

YES

NO

☒

☐

Property address 42 Meadowhawk Lane

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☒ Owner-occupier; ☐ Other: \_\_\_\_\_

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

**Instructions to the Seller:** (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A		YES	NO	N/A
Electrical System .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shower(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sink(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer System & line .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sauna / hot tub(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Built-in microwave .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Well & pump .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Range / oven / hood-fan .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yard sprinkler system(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dishwasher .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fountain(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Garbage disposal .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heating system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trash compactor .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooling system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Central vacuum .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solar heating system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Alarm system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireplace & chimney .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>			
Wood burning system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smoke detector .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Garage door opener .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Intercom .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water treatment system(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Data Communication line(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>				Satellite dish(es) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water heater .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/>			
Toilet(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bathtub(s) .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

TS  
Seller(s) Initials

TS  
Buyer(s) Initials

TS  
Buyer(s) Initials

Property conditions, improvements and additional information: \_\_\_\_\_ YES NO N/A

Are you aware of any of the following?

1. Structure:
  - (a) Previous or current moisture conditions and/or water damage? ☐ YES ☐ NO
  - (b) Any structural defect? ☐ YES ☐ NO
  - (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ YES ☐ NO
  - (d) Whether the property is or has been the subject of a claim governed by NRS 40.690 to 40.695 (construction defect claims)? ☐ YES ☐ NO
  - (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. Land / Foundation:
  - (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☐ NO
  - (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☐ NO
  - (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☐ NO
  - (d) The property being located in a designated flood plain? ☐ YES ☐ NO
  - (e) Whether the property is located next to or near any known future development? ☐ YES ☐ NO
  - (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☐ NO
  - (g) Is the property adjacent to "open range" land? ☐ YES ☐ NO
  - (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. Roof: Any problems with the roof? ☐ YES ☐ NO ☐ N/A
4. Pool/spa: Any problems with structure, wall, liner, or equipment? ☐ YES ☐ NO
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☐ NO
6. Environmental:
  - (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ YES ☐ NO
  - (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ YES ☐ NO
7. Fungi / Mold: Any previous or current fungus or mold? ☐ YES ☐ NO
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ YES ☐ NO
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☐ YES ☐ NO
  - (a) Common Interest Community Declaration and Bylaws available? ☐ YES ☐ NO
  - (b) Any periodic or recurring association fees? ☐ YES ☐ NO
  - (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☐ NO
  - (d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☐ NO
  - (e) Any assessments associated with the property (excluding property taxes)? ☐ YES ☐ NO
  - (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☐ NO
10. Any problems with water quality or water supply? ☐ YES ☐ NO
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ YES ☐ NO
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ YES ☐ NO  
(If yes, additional Federal EPA notification and disclosure documents are required)
13. Water source: Municipal ☐ Community Well ☐ Domestic Well ☐ Other ☐  
If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐  
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.
14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ YES ☐ NO
15. Solar panels: Are any installed on the property? ☐ YES ☐ NO  
If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐
16. Wastewater disposal: ☐ Municipal Sewer ☐ Septic System ☐ Other ☐
17. This property is subject to a Private Transfer Fee Obligation? ☐ YES ☐ NO (standard transfer tax)

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form

TS  
Seller(s) Initials

[Signature]  
Buyer(s) Initials

**EXPLANATIONS:** Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
**Attach additional pages if needed.**

TS  
*Seller(s) Initials*

[Signature]  
11/07/17  
2:05PM EST

[Signature]  
12/12/17  
7:54PM EST

*Buyer(s) Initials*



**NRS 113.135** Certain sellers to provide copies of certain provisions of NRS and give notice of certain sell reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:
    - (a) Provide to the initial purchaser a copy of NRS 11.201, to 11.206, inclusive, and 40.600 to 40.605, inclusive;
    - (b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and
    - (c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.
  2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.
  3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.
- (Added to NRS by 1999, 1446)

**NRS 113.140** Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.
  2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
  3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.
- (Added to NRS by 1995, 843; A 2001, 2896)

**NRS 113.150** Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.
  2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:
    - (a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or
    - (b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
  3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:
    - (a) On the holder of any escrow opened for the conveyance; or
    - (b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.
  4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.
  5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:
    - (a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or
    - (b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.
  6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.
- (Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): John V. Lyons Date: 10/24/2017  
 Co-trustee, the Shiraz Trust  
 Seller(s): Manager, Lyons Development LLC Date: \_\_\_\_\_

**BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-160, including attached forms on pages four (4) and five (5).**

Buyer(s): Joseph Folino Date: 10/25/2017  
 Buyer(s): Nicole Folino Date: 10/25/2017



Other Tort

COURT MINUTES

November 07, 2019

---

A-18-782494-C      Joseph Folino, Plaintiff(s)  
vs.  
Todd Swanson, Defendant(s)

---

November 07, 2019      09:00 AM      Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint

HEARD BY:      Crockett, Jim      COURTROOM: Phoenix Building 11th Floor 116

COURT CLERK: Ortega, Natalie; Packer, Nylasia

RECORDER:

REPORTER:

PARTIES PRESENT:

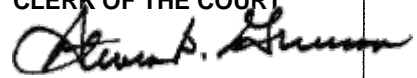
J. Rusty Graf      Attorney for Plaintiff

Jay T. Hopkins      Attorney for Defendant, Trustee

### JOURNAL ENTRIES

Court stated its inclination as to the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint noting an affidavit was required seeking 56 (d) relief. Further, there were two questions of fact. Moreover, the Court was inclined to grant the motion for summary judgment and to deny to inappropriately filed counter motion for sanctions. Arguments by counsel. Colloquy regarding affidavits, discovery, and conducting depositions. Court GRANTED counsel ninety (90) days to demonstrate a genuine issue of material fact by February 6th; Defendant's Reply February 20th. COURT ORDERED, matter CONTINUED. Counsel to adhere to compliance with the rules. Additionally, the parties could conduct their 16.1 even in advance of their answers or bring the answers to the 16.1. Moreover, Defendants need to file supplemental affidavits as to the two technicians.

CONTINUED TO: 02/27/20 9:00 AM



1 SB  
2 Rusty Graf, Esq.  
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4 Mark Lounsbury  
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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 JOSEPH FOLINO, an individual and NICOLE  
17 FOLINO, an individual,

18 Plaintiff,

19 v.

20 TODD SWANSON, an individual; TODD  
21 SWANSON, Trustee of the SHIRAZ TRUST;  
22 SHIRAZ TRUST, a Trust of unknown origin;  
23 LYONS DEVELOPMENT, LLC, a Nevada  
24 limited liability company; DOES I through X;  
25 and ROES I through X,

26 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**PLAINTIFFS' SUPPLEMENTAL BRIEF**

27 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
28 Rusty Graf, Esq. and Mark Lounsbury, Esq., of Black & LoBello, their attorneys of record,  
hereby respectfully submit their Supplemental Memorandum of Points And Authorities to  
Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint  
(the "Supplemental Brief").

1 This Supplemental Brief is made and based on the memorandum of points and  
2 authorities that follow, the Supplemental Production of Documents served and produced  
3 contemporaneously herewith, the pleadings, papers, and other records on file with the clerk of  
4 the above-captioned Court, and the argument of counsel at the time of the hearing on the  
5 Supplemental Brief.

6 DATED this 13<sup>th</sup> day of February 2020.

7 **BLACK & LOBELLO**

8  
9  
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11 Nevada Bar No. 6322  
12 Mark Lounsbury  
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On or about October 22, 2017, Plaintiffs, Joseph Folino and Nicole Folino entered into a Residential Purchase Agreement (“RPA”) to purchase the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, (“Subject Property”). The Parties to the RPA included the Plaintiffs and the Defendants, Shiraz Trust (“Trust”), Dr. Todd Swanson (“Swanson”), Trustee of the Shiraz Trust, and Lyons Development, LLC (“Lyons”) (hereinafter collectively referred as “Defendants”). Thereafter, Swanson executed the Sellers Real Property Disclosure Form for Subject Property on or about October 24, 2017 (the “SRPD”).

The Subject Property had a water leak in the plumbing system that occurred on or about November 7, 2017. Plaintiffs were not notified of any plumbing problems with Subject Property prior to November 17, 2017 (*See Affidavit of Joe Folino and Affidavit of Nicole Folino*). of the Plaintiffs.) On or about November 16, 2017, Plaintiffs executed the closing documents for the real estate transaction of the Subject Property. On the SRPD, electronically signed by Dr. Swanson on October 24, 2017, Dr. Swanson had represented that there were no previous incidents of water loss or moisture conditions.<sup>1</sup> The evidence being presented with this supplemental brief (verified interrogatories, deposition transcripts, and other documents subpoenaed from third parties) clearly indicates that there have been at least six (6) water losses in the little over two years (April 2015 to November 2017) that Dr. Swanson owned the home.

Prior to closing on the Subject Property, Plaintiffs were never informed of the numerous, now identified, incidents of water loss which had occurred at the Subject Property over the two (2) years since its construction. These included at least two (2) and possibly four (4) leaks in the Subject Property’s recirculation pumps (two (2) were identified in the May 2015 Criterium Home Inspection Report for Subject Property (*See Exhibit 49 of Plaintiffs’ Supplemental*

---

See Plaintiffs’ Supplemental Production Exhibit 4, Sellers Real Property Disclosure Form for Subject Property.

1 *Production; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for*  
2 *color photos documenting the leaks))* and an additional two (2) in the same location were  
3 repaired by Rakeman Plumbing in August, 2015),<sup>2</sup> a leak in the ceiling of the basement  
4 bathroom (also identified in May 2015 Criterium Report),<sup>3</sup> and three (2) separate leaks in the  
5 master bathroom.<sup>4</sup> Further, evidence indicates that these incidents of water loss potentially went  
6 months without being addressed, with no mold or fungus tests conducted except incident to the  
7 final incident of water loss on or about November 7, 2017.<sup>5</sup>

8  
9 **II.**

10 **PROCEDURAL HISTORY**

11 On October 19, 2018, Plaintiffs filed their initial Complaint for Defendants’ failure to  
12 disclose known water leaks and issues with a plumbing system prior to the sale of the Subject  
13 Property. Defendants filed their first Motion to Dismiss on February 4, 2019, but it was not  
14 granted, and the Court instead granted Plaintiffs Leave to Amend. On May 20, 2019, Defendants  
15 filed their Motion to Dismiss the Amended Complaint. On July 18, 2019, the Court dismissed  
16 several of Plaintiffs claims, but denied Defendants’ Motion to Dismiss the claim for fraud and  
17 claim of concealment in violation of NRS 113.  
18

19 Plaintiffs then filed their Second Amended Complaint, with the surviving claims of fraud  
20 and concealment in violation of NRS 113 on September 4, 2019. Defendants’ Motion to Dismiss  
21  
22

23 <sup>2</sup> See Plaintiffs’ Supplemental Production, Exhibit 49, May 2015 Criterium Home Inspection Report for  
24 Subject Property; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color  
photos documenting the leaks); See also Deposition of Todd Swanson, Pg. 83 ln 1 – Pg. 84 ln 25;

25 <sup>3</sup> Id.

26 <sup>4</sup> See Deposition of Todd Swanson, Volume I, Pg. 83 ln 1 – Pg. 84 ln 25.

27 <sup>5</sup> See Deposition of Todd Swanson, Volume I, Pg. 215, ln 12-17; See also Deposition of Aaron Hawley,  
28 Pg.75, ln 22.



1 the Second Amended Complaint was heard by the Court on November 7, 2019, and the matter  
2 was ordered continued for this Supplemental Brief and Production of Documents.

3  
4 **III.**

5 **LEGAL ARGUMENT**

6 **A. STANDARD FOR SUMMARY JUDGMENT**

7 The Defendants' original motion was filed as a Motion to Dismiss but, because it  
8 contains matters outside the pleadings, the Court will apply summary judgment standards. *See*  
9 *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998). Under NRCP 56,  
10 evidence supporting a motion for summary judgment must be viewed in the light most favorable  
11 to the Plaintiffs as the non-moving party. *See NRCP 56.*

12 **B. PLAINTIFFS' CLAIM OF FRAUDULENT MISREPRESENTATION**  
13 **MUST SURVIVE SUMMARY JUDGMENT**

14  
15 Fraudulent misrepresentation occurs when (1) a false representation is made with either  
16 knowledge or belief that it is false or with an insufficient basis of information for making the  
17 representation, (2) with an intent to induce another's reliance, and (3) damages that result from  
18 this reliance. *See Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007). At least 10 days  
19 before residential property is conveyed to a purchaser the seller "shall complete a disclosure  
20 form regarding the residential property." *See NRS 113.130(1)(a)*. Here, the SRPD for the Subject  
21 Property asked if Defendants were aware of any "**previous or current** moisture conditions  
22 and/or water damage" and the question was answered "No".<sup>6</sup> (emphasis added).

23 Fraudulent misrepresentation undoubtedly occurred when Defendant Todd Swanson  
24 falsely represented on the SRPD for the Subject Property that there had been no previous or  
25 current incidents of moisture conditions and/or water damage for the purpose of inducing the  
26

27 <sup>6</sup> See Plaintiffs' Supplemental Production Exhibit 4, Sellers Real Property Disclosure Form for Subject  
28 Property.

1 Folinos to purchase the property.<sup>7</sup> Setting aside for the moment the defense's argument that  
2 ignores the actual language of the SRPD that the repairs of the previous water leaks were  
3 complete and "like new," the water loss identified in the Criterium report as the leak in the  
4 ceiling of the basement bathroom, was never repaired or even located. *See Exhibit 49 of*  
5 *Plaintiffs' Supplemental Production*. The fact of this one water loss is not disputed, and it is  
6 clearly irrefutably documented as an unrepaired water loss or known incident of a condition of  
7 water and moisture. There is clear evidence that there in fact were previous moisture conditions  
8 and/or water damage, and under the Summary Judgment standard this evidence must be viewed  
9 in the light most favorable to the Plaintiffs. Thus, Plaintiffs' claim of fraudulent  
10 misrepresentation and violations of the NRS 113 claims therefore survive Summary Judgment.

11 Defendants have argued that under *Nelson v. Heer* and NRS 113.140, they did not  
12 commit concealment because they were not "aware" of the defect after they believed it  
13 completely repaired. *See Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to*  
14 *Dismiss Plaintiffs' Second Amended Complaint*. In their previous pleadings Defendants argued  
15 that under *Nelson*, if a defect or condition is repaired, the seller is not aware that a condition  
16 "which materially affects the value of the property" and used this alleged lack of awareness due  
17 to repairs to argue that fraudulent misrepresentation could not have occurred. *Id.*, at Pg. 5.  
18 Though Defendants' argument was already deficient, subsequent discovery has revealed  
19 evidence making it abundantly clear that Defendant Todd Swanson was fully aware that he was  
20 answering the SRPD question untruthfully and inapposite of the knowledge he had. In *Nelson v.*  
21 *Heer*, the Court held that "The determination of whether a seller is aware of a defect, however, is  
22 a question of fact to be decided by the trier of fact." *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d  
23 420, 425 (2007). Plaintiffs have plead that Swanson is aware and this is now a question of fact to  
24 be decided by the trier of fact.  
25  
26

27 \_\_\_\_\_  
28 <sup>7</sup> *Id.*

1 The question on the SRPD was explicitly clear. Todd Swanson has stated that he  
2 understood moisture condition to only refer to “something that was an ongoing or chronic  
3 problem.”<sup>8</sup> Any moisture condition that was an ongoing or chronic problem would fall under the  
4 current or prior moisture conditions and/or water damage portion of the question. There is no  
5 reasonable rationale for thinking that when the question asked about previous moisture  
6 conditions and/or water damage, it was only referring to ongoing issues when these would be  
7 covered under current moisture conditions and/or water damage. Ignoring six (6) or more prior  
8 instances of water loss of conditions of moisture aside, the one identified incident not repaired  
9 bars the granting of this motion.  
10

11 Moreover, it does not matter whether the Defendants believe that any repair removed  
12 their awareness of the issue, because the question did not only ask about current issues, it clearly  
13 asked about prior issues. To put a finer point on this issue, why would it ask for prior issues, if it  
14 was not seeking information about even repaired issues. Thus, giving the purchaser notice of  
15 what to look for and make sure in their own mind what had been repaired. The SRPD  
16 specifically asked, if there were any “previous or current moisture conditions and/or water  
17 damage”.<sup>9</sup> A repair does not remove one’s awareness of previous occurrences. This becomes a  
18 question of fact when there are so many instances in separate locations. Despite this, on the  
19 SRPD Defendants indicated “No,” that they were not aware of any previous moisture conditions  
20 or water damage.<sup>10</sup> This is concealment.  
21

22  
23 ///  
24

25 <sup>8</sup> See Deposition of Todd Swanson, Volume 1, Pg. 64, ln 18-20.

26 <sup>9</sup> See Plaintiffs’ Supplemental Production Exhibit 4, Seller’s Real Property Disclosure Form, Pg. 2,  
27 Question 1.

28 <sup>10</sup> Id.

i. **EVEN UNDER TODD SWANSON'S OWN DEFINITION OF  
MOISTURE CONDITIONS AND/OR WATER DAMAGE THAT  
MUST BE DISCLOSED, HE STILL COMMITTED FRAUDULENT  
MISREPRESENTATION**

In his deposition, Todd Swanson stated that he believed he only had to disclose moisture issues or water damages "that was an ongoing or chronic problem".<sup>11</sup> This is clearly incorrect, but even if Swanson's definition was the standard to be applied, he would still be required to disclose the leaks due to their "chronic and ongoing" nature.

Todd Swanson stated under oath that he was aware of at least five (5) additional leaks that occurred prior to the final November 2017 leak immediately prior to the sale of the Subject Property. These included two (2) leaks at the location of the recirculation pumps that were identified in the May 2015 Criterium Home Inspection Report,<sup>12</sup> these two (2) additional leaks at the recirculation pumps were allegedly repaired by Rakeman Plumbing in August of 2015 (it may be that these are the same two leaks that were simply left unrepaired for months, as Swanson has no recollection or documentation of getting them fixed),<sup>13</sup> a leak in the ceiling of the basement bathroom that was also identified in the May 2015 Criterium Home Inspection

<sup>11</sup> See Deposition of Todd Swanson, Volume I, Pg. 64, ln 18-20.

<sup>12</sup> See Plaintiffs' Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for Subject Property; see also Deposition of Todd Swanson, Volume I, Pg. 130 – 133; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for Criterium report color photos documenting the leaks).

<sup>13</sup> Id.

1 Report,<sup>14</sup> and a leak that occurred in February of 2017. However the Rakeman affidavit of  
2 completed repairs does not address the 2015 leaks.

3  
4 The Rakeman affidavit previously submitted does not speak to the 2015 recirculation  
5 pump leaks. Further, the affidavit of Dr. Swanson does state that the recirculation pumps were  
6 replaced, but it does not speak to the extent of the water damage and the extent of the repairs as a  
7 result of that water damage. *See Exhibit 60, Affidavit of Todd Swanson, and Exhibit 50,*  
8 *Deposition Exhibit 13 – Executive Summary of Findings (for color photos documenting the*  
9 *leaks), to Plaintiffs’ Supplemental Production of Documents.* Further, the evidence shows that  
10 the condition and the subsequent damage existed for months and was left in the Subject Property.  
11 *See Deposition of Todd Swanson, Volume II, Pg. 332- 333, Deposition of Aaron Hawley, Pg. 62*  
12 *– 64, and Deposition of William Gerber Pg. 36.* Moreover, there are inconsistencies in the  
13 occurrence dates and repair dates for the leak that occurred in the Subject Property during or  
14 about January to May of 2017. *Id.*

15  
16 In addition to the fact that these leaks should have been disclosed simply due to either a  
17 plain reading of the SRPD question or that they represented an ongoing and chronic problem  
18 with the Subject Property, there are two other key issues. First, the fact that the recirculation  
19 pump leaks were identified in the Criterium Home Inspection Report dated May 21, 2015, and  
20 then those leaks were not invoiced as repaired until after the August 2, 2015 incidents. Todd  
21 Swanson admitted in his deposition that he could not point to any document or way of him  
22 knowing that the repairs were conducted shortly after the May 2015 Criterium report, other than  
23 simply stating “To the best of my knowledge, yes” they were repaired and this knowledge was  
24  
25

26  
27 <sup>14</sup> See Plaintiffs’ Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for  
28 Subject Property; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color  
photos from the Criterium report documenting the leaks)



1 based only on “the fact that I wouldn’t have let them not fix these items, unless there was some  
2 reason and there would be no reason not to fix a water leak.”<sup>15</sup> Thus, there is no affirmative  
3 statement as to how long or when those repairs were completed. Further, when asked if he agreed  
4 that the leaks in the recirculation pumps existing from May to August of 2015 would constitute a  
5 chronic condition, Dr. Swanson stated “If they existed for that full period, yes.”<sup>16</sup> This makes it  
6 clear that it was fraudulent misrepresentation when Todd Swanson answered “No” on the SRPD  
7 question.  
8

9  
10 **ii. EVEN IF REPAIRED LEAKS DO NOT HAVE TO BE**  
11 **DISCLOSED, THERE WAS STILL FRAUDULENT**  
12 **MISREPRESENTATION**

13 Though as discussed above, Plaintiffs do not concede that the SRPD question did not  
14 cover repaired leaks, fraudulent misrepresentation still occurred due to the second key issue, the  
15 failure of Swanson to repair or disclose a leak in his basement bathroom ceiling. There is  
16 uncontroverted evidence that this leak was required to be disclosed on the SRDP, using whatever  
17 common sense application, definition of standards. The leak in the ceiling of the basement  
18 bathroom was identified and documented in the May 2015 Criterium Home Inspection Report,<sup>17</sup>  
19 yet Swanson admitted in his deposition that it was never repaired.<sup>18</sup> There are color pictures  
20 clearly showing the leak to the reader, of which Dr. Swanson was one. *See deposition of*  
21 *Swanson Volume I, Pg. 118, ln 5 – Pg. 127, ln 4., admitting he received and read the report.*  
22

23  
24 <sup>15</sup> See Deposition of Todd Swanson, Volume I, Pg. 130 – 133.

25 <sup>16</sup> *Id.*, at 127, ln 14-15.

26 <sup>17</sup> See Plaintiffs’ Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for  
27 Subject Property, Pg. 82-83. See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of  
Findings (for color photos from the Criterium report documenting the leaks)

28 <sup>18</sup> See Deposition of Todd Swanson, Volume I, Pg. 146.

Moreover, Dr. Swanson, in a sort of obsessive-compulsive act, kept not one, but four versions of the report where he wrote ongoing notes on the progress of the repairs of the conditions. *See Exhibit 38, Deposition Exhibits 13 and 14 to the Supplemental Production of Documents.* Swanson has also essentially admitted to providing false information in his affidavit,<sup>19</sup> and in effect admitted that, regardless of the interpretation of the SRPD question, he should have answered yes.<sup>20</sup> Further, there is no reference to the basement bathroom leak or the third leak in the master bath in response to the relevant interrogatory responses verified by Dr. Swanson. *See Swanson deposition pg. 133, lns 16-22, and Swanson Interrogatory Responses, submitted as Exhibit 30 to the Supplemental Production of Documents.* All of which support the claims as plead in this Complaint and all of which remain uncontroverted by the Defendants.

In light of these facts and admissions, answering “No” on the SRPD was clearly a false misrepresentation meant to induce the Folinos to purchase the property. Further, it must be emphasized that, as Plaintiffs are the non-moving party, all of these facts discussed above must be viewed in the light most favorable to them. Therefore, Defendants’ Motion should be dismissed.

**C. DEFENDANTS ALSO FAILED TO DISCLOSE POTENTIAL ISSUES  
WITH MOLD AND FUNGUS**

Question seven (7) on the SRPD asked whether there were any “previous or current fungus or mold” in the Subject Property, and Defendants again answered “No”.<sup>21</sup> This too was a

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<sup>19</sup> See Plaintiffs’ Supplemental Production Exhibit 60, Affidavit of Todd Swanson.

<sup>20</sup> Swanson states that he understood the SRPD question should be answered yes if there was “something that was an ongoing or chronic problem” (*See Deposition of Todd Swanson, Volume 1, Pg. 64, ln 18-20*) and subsequently in his Deposition reveals knowledge of chronic leaks occurring at the subject property.

<sup>21</sup> See Plaintiffs’ Supplemental Production Exhibit 4, *Seller’s Real Property Disclosure Form, Pg. 2, Question 7.*

1 false representation, as Todd Swanson stated in his deposition that he did not have Rakeman or  
2 any other contractors conduct any mold or airborne fungal post-remediation verification tests  
3 after the August 2015 or the February 2017 water loss incidents.<sup>22</sup> Aaron Hawley of Rakeman  
4 Plumbing verified this in his deposition, stating Rakeman wouldn't always do mold test, only if  
5 either "extreme water or spores were found".<sup>23</sup> When asked specifically why they didn't do mold  
6 reports for either the January/May 2017 leaks or the August 2015 leaks, he stated "Probably  
7 because we didn't see anything."<sup>24</sup>

8 The issue with this choice not to test for mold or fungus, and the subsequent answer  
9 given on the SRPD, is the fact that for at least one of the 2015 leaks, it is likely that the water sat  
10 their unaddressed for months! As discussed above, the recirculation pump leaks identified in the  
11 Criterium Home Inspection Report in May of 2015 were likely not repaired until August of 2015  
12 or they were repaired twice. Dr. Swanson was on notice of those leaks from May 2015 until they  
13 were eventually fixed. There is no documentation as to when. Todd Swanson admitted in his  
14 deposition that he could not point to any document or way of knowing that the repairs were  
15 conducted earlier.<sup>25</sup> Further, when asked if he could say with any certainty that the May 2015  
16 leaks had been fixed before August of 2015, Dr. Swanson stated, "I would have no way of  
17 knowing, not being a plumber".<sup>26</sup>

18 What we do have are the versions of the Criterium notes regarding the progress of the  
19 repairs by Dr. Swanson on the Criterium report.<sup>27</sup> These notes span several weeks/months. Over  
20

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21 <sup>22</sup> See Deposition of Todd Swanson, Volume I, Pg. 215, ln 12-17.

22 <sup>23</sup> See Deposition of Aaron Hawley, Pg. 73, ln 15.

23 <sup>24</sup> See Deposition of Aaron Hawley, Pg. 75, ln 22.

24 <sup>25</sup> See Deposition of Todd Swanson, Volume I, Pg. 130 – 133.

25 <sup>26</sup> See Deposition of Todd Swanson, Volume II, Pg. 316, lns 1-2.

26 <sup>27</sup> See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color photos from  
27 the Criterium report documenting the leaks); See also Exhibit 51, Deposition Exhibit 14 – Executive  
28 Summary of Findings.

1 the course of these several weeks/months, Dr. Swanson updated if and when the repairs were  
2 made. Given Dr. Swanson's own interpretation of whether the water loss or moisture condition  
3 was chronic would control, and thus require him to answer yes on the SRPD, then this creates yet  
4 another material issue of fact upon which the Court must deny the current motion.

5 As the only documentation for the repair of these pumps is from Rakeman in August of  
6 2015,<sup>28</sup> it is evident that those conditions of moisture were not repaired immediately, at the very  
7 least, and the moisture condition remained unaddressed for months (rather than believe the  
8 Defendants exacted same repairs, twice in the same year, the documentation was lost, and  
9 Swanson cannot remember or identify who conducted the repairs). Further, the same issue likely  
10 occurred in the February 16, 2017 leak. This leak was identified as occurring in an Uponor  
11 warranty claim on February 16, 2017,<sup>29</sup> yet Rakeman invoices for the repair demonstrate that it  
12 did not occur until May 23, 2017.<sup>30</sup> This means the chronic leak, using Dr. Swanson standard,  
13 was there for at least three months and possibly more unaddressed. Therefore, this moisture  
14 condition was required to be identified and reported on the SRPD.

15 With the moisture remaining for so long in both incidents, a reasonable person would  
16 understand that mold or fungus is a significant risk. Dr. Swanson was the Plaintiff in a mold  
17 case in approximately 2003-2005. *See Volumes I and II of Dr. Swanson's deposition in that case,*  
18 *included as Exhibit 28 in Plaintiffs' Supplemental Production of Documents.* Dr. Swanson  
19 cannot claim lack of awareness as to this issue and the proper SRPD response as well. Any lack  
20 of awareness would be either purposeful or as a direct result of his failure to exercise reasonable  
21 judgment and simply have a test conducted. Additionally, it is again worth noting that all of these  
22 facts and pieces of evidence must be interpreted in the light most favorable to Plaintiffs under the  
23 summary judgment standard.

24 ///

25 \_\_\_\_\_  
26 <sup>28</sup> See Plaintiffs' Supplemental Production Exhibit 139, Aaron Hawley Deposition Exhibit 12.

27 <sup>29</sup> See Plaintiffs' Supplemental Production Exhibit 12, E-correspondence regarding water loss that  
28 occurred in February 2017.

<sup>30</sup> See Plaintiffs' Supplemental Production Exhibit 18, Rakeman Production – Invoice No. 232809.

D. PLAINTIFFS' CLAIM OF VIOLATION OF NRS 113.100 ET SEQ. MUST  
ALSO SURVIVE SUMMARY JUDGMENT

As discussed in depth above, Defendants committed numerous violations of Nevada's rules and regulations regarding the Conditions of Residential Property offered for Sale, specifically NRS 113.115, by failing to inform Plaintiffs that there were "defects" known to Dr. Swanson at the time he executed and affirmed compliance with the SRPD regarding the Subject Property. *See NRS 113.115*. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form. *Id.*

Not only is there significant evidence that the Defendants violated their duty under NRS 113, in the form of invoices, warranties, and emails regarding chronic and unaddressed water leaks, there is also deposition testimony that directly proves Defendants failed to make the required disclosures. Dr. Swanson directly admitted that there was at least one leak (the bathroom ceiling leak) of which he was notified by the home inspection report<sup>31</sup> and yet never had repaired and failed to disclose. Further, under the legal standard for summary judgment, all of this evidence must be interpreted in the light most favorable to Plaintiffs as the non-moving party. Thus, it is clear that Defendants were in violation of NRS 113.100 and Plaintiffs' cause of action should therefore survive this Summary Judgment Motion.

In addition, Dr. Swanson evidenced his knowledge of the need to supplement the SRPD by producing the Addendum 4-A, dated November 16, 2017. *See Deposition of Todd Swanson, Volume II, Pg. 333, ln 20 – Pg. 334, ln 25*. However, Addendum 4-A does not indicate any presence of mold, and Dr. Swanson was aware of the presence of mold on or after November 17,

<sup>31</sup> See Plaintiffs' Supplemental Production of Documents Exhibit 49, May 2015 Criterium Home Inspection Report for Subject Property, Pg. 82-83. See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color photos from the Criterium report documenting the leaks);

<sup>31</sup> See Deposition of Todd Swanson, Volume I, Pg. 146.



2017, the date of closing.<sup>32</sup> Infinity Environmental Services, an industrial hygienist firm, was on that day, November 17, 2017, performing tests for the presence of mold at the Subject Property. On or about, November 24, 2017, during which time Dr. Swanson was still leasing back the Subject Property and residing at the Subject Property, Infinity Environmental produced a report that was positive for the presence of mold. This fact alone creates an issue of material fact of whether Dr. Swanson was on notice and had knowledge of the presence of mold as they were clearly testing for it, and it subsequently came back positive for the presence of Aspergillus and other harmful forms of mold/fungi. *See Exhibit 24 of Plaintiffs' Supplemental Production of Documents.* More importantly, Dr. Swanson informed the Plaintiffs of the water loss/moisture condition, and he failed to inform them of the presence of mold. It is likely the defense will come back with the statement that they were not aware of the positive test for mold on November 16, 2017, when they prepared Addendum 4-A. However, Dr. Swanson was aware that there were pictures showing black mold that was tested at or about that time. *See Plaintiffs' Supplemental Production, Exhibit 25, Infinity Environmental documents produced pursuant to Subpoena, November 24, 2017 Report, (PLT001813 - PLT001831).*

IV.

**DOCUMENTS BEING PRODUCED AND INCORPORATED BY REFERENCE  
HEREIN THIS SUPPLEMENTAL BRIEF TO THE OPPOSITION TO THE  
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

The Plaintiffs hereby incorporate by reference, and as cited to above, all documents being produced in its Supplemental Production of Documents as follows:

<i>No.</i>	<i>Document</i>	<i>Bates Numbers</i>
1	Residential Purchase Agreement	PLT000001 - PLT000010
2	Counter Offer No. 1	PLT000011
3	Counter Offer No. 2	PLT000012
4	Seller's Real Property Disclosure Form	PLT000013 - PLT000017

<sup>32</sup> See Plaintiffs' Supplemental Production of Documents Exhibit 72, Deposition Exhibit 5 - Various addendums and counteroffers that were included on this property.

5	The Uniform Building Inspection Report Condensed	PLT000018 - PLT000027
6	Request for Repair No. 1	PLT000028 - PLT000029
7	Grant, Bargain, Sale Deed	PLT000030 - PLT000033
8	Rakeman Plumbing Invoice	PLT000034 - PLT000035
9	Rakeman Plumbing Letter with enclosure of payment record	PLT000036 - PLT000037
10	E-correspondence from Uponor informing past water losses	PLT000038 - PLT000046
11	Upnor Warranty	PLT000047 - PLT000048
12	E-correspondence regarding water loss that occurred in February 2017	PLT000049 - PLT000053
13	Rakeman Production – Email from Whitfield to Hawley	PLT000054 – PLT000055
14	Rakeman Production – Letter to Swanson from Hawley	PLT000056
15	Rakeman Production – Work Order 2018.01.05 – Invoice 237000	PLT000057 – PLT000058
16	Rakeman Production – Invoice No. 236828	PLT000059 – PLT000060
17	Rakeman Production – Invoice No. 236151	PLT000061 – PLT000062
18	Rakeman Production – Invoice No. 232809	PLT000063 – PLT000064
19	Americana LLC dba Berkshire Hathaway HomeServices – Nevada Properties – Subpoena	PLT000065 – PLT000156
20	The Ridges Community Association - Subpoena	PLT000157 – PLT000764
21	Las Vegas Homes and Fine Estates, LLC – Documents produced pursuant to Subpoena	PLT000765 – PLT001007
22	Uponor, Inc. – Documents produced pursuant to Subpoena	PLT001008 – PLT001648
23	EH Designs LLC. - Documents produced pursuant to Subpoena	PLT001649 – PLT001800
24	Infinity Environmental - Documents produced pursuant to Subpoena	PLT001801 – PLT001843
25	Ivan Sher – Documents produced pursuant to Subpoena	PLT001844 – PLT002038
26	Kelly Contenta – Documents produced pursuant to Subpoena	PLT002039 – PLT002132
27	Document Removed (Bates Number Purposefully Omitted from Production)	PLT002133 – PLT002235
28	Todd Swanson v. Trophy Homes Deposition Transcripts (Add the Case Number)	PLT002236 – PLT002405

29	Todd Swanson Response To Plaintiffs' First Set of Requests For Production & Attached Documents	PLT002406 – PLT002900
30	Todd Swanson Interrogatory Response Verification and Interrogatory Responses to Plaintiffs' First Set of Interrogatories	PLT002901 – PLT002916
31	Todd Swanson Response to Plaintiffs' First Set of Requests For Admission	PLT002917 – PLT002922
32	Shiraz Trust Response to Plaintiffs' First Set of Requests for Production & Attached Documents	PLT002923 – PLT003415
33	Shiraz Trust Response to Plaintiffs' First Set Of Interrogatories	PLT003416 – PLT003428
34	Shiraz Trust Response to Plaintiffs' First Set of Requests for Admission	PLT003429 – PLT003433
35	Lyons Development Response to Plaintiffs' First Set of Interrogatories	PLT003434 – PLT003446
36	Lyons Development Response to Plaintiffs' First Set of Requests for Admission	PLT003447 – PLT003451
37	Todd Swanson Deposition Transcript – 1/24/2020 (A-18-782494-C)	PLT003452 – PLT003781
	Todd Swanson Deposition Exhibits - 1/24/2020 (A-18-782494-C)	
38	Deposition Exhibit 1 - Notice of deposition	PLT003782 – PLT003785
39	Deposition Exhibit 2 – Defendant Swanson's Responses to Plaintiffs' First Request for Production of Documents	PLT003786 – PLT003796
40	Deposition Exhibit 3 – Seller's Real Property Disclosure Form	PLT003797 – PLT003801
41	Deposition Exhibit 4 – Residential Purchase Agreement	PLT003802 – PLT003813
42	Deposition Exhibit 5 – Curriculum Vitae	PLT003814 – PLT003836
43	Deposition Exhibit 6 – Defendant Swanson's Responses to Plaintiffs' First Request For Interrogatories	PLT003837 – PLT003849
44	Deposition Exhibit 7 – Defendant Swanson, as Trustee of Shiraz Trust, Responses to Plaintiffs' First Request For Interrogatories	PLT003850 – PLT003862
45	Deposition Exhibit 8 – Defendant Lyon Development's Responses to Plaintiffs' First Request For Interrogatories	PLT003863 – PLT003875
46	Deposition Exhibit 9 – Verification	PLT003876
47	Deposition Exhibit 10 - Verification	PLT003877
48	Deposition Exhibit 11 – Verification	PLT003878
49	Deposition Exhibit 12 – Home Inspection Report	PLT003879 – PLT003946

50	Deposition Exhibit 13 – Executive Summary of Findings	PLT003947 – PLT003966
51	Deposition Exhibit 14 – Executive Summary of Findings	PLT003967 – PLT003986
52	Deposition Exhibit 15 - November 16, 2017, letter	PLT003987 – PLT003988
53	Deposition Exhibit 16 - December 13, 2017, e-mail	PLT003989 – PLT003993
54	Deposition Exhibit 17 - November 17, 2017, e-mail	PLT003994 – PLT004004
55	Deposition Exhibit 18 - December 7, 2017, letter	PLT004005 – PLT004010
56	Deposition Exhibit 19 - December 15, 2017, e-mail	PLT004011
57	Deposition Exhibit 20 - November 16, 2017, e-mail	PLT004012
58	Deposition Exhibit 21 - November 21, 2017, e-mail	PLT004013
59	Deposition Exhibit 22 - August 9, 2015, e-mail	PLT004014
60	Deposition Exhibit 23 – Affidavit of Todd Swanson	PLT004015 – PLT004017
61	Deposition Exhibit 24 – Receipt	PLT004018
62	Deposition Exhibit 25 – August 25, 2015, e-mail	PLT004019
63	Deposition Exhibit 26 - Invoice	PLT004020
64	Deposition Exhibit 27 - Invoice	PLT004021
65	Deposition Exhibit 28 – Defendants’ Motion To Dismiss Plaintiffs’ Second Amended Complaint	PLT004022 – PLT004047
66	Ivan Sher Deposition Transcript – 2/3/2020 (A-18-782494-C)	PLT004048 – PLT004200
67	Kelly Contenta Deposition Transcript – 2/3/2020 (A-18-782494-C)	PLT004201 – PLT004244
	Ivan Sher & Kelly Contenta Deposition Exhibits - 2/3/2020 (A-18-782494-C)	
68	Deposition Exhibit 1 - Notice of deposition	PLT004245 – PLT004248
69	Deposition Exhibit 2 - Subpoena for the records	PLT004249 – PLT004253
70	Deposition Exhibit 3 - MLS sheet regarding 42 Meadowhawk	PLT004254
71	Deposition Exhibit 4 - Residential purchase agreement	PLT004255 – PLT004266
72	Deposition Exhibit 5 - Various addendums and counteroffers that were included on this property	PLT004267 – PLT004275
73	Deposition Exhibit 6 - E-mail dated October 24, 2017 between Mike Pappas and Swanson	PLT004276

74	Deposition Exhibit 7 - Seller's Real Property Disclosure Form	PLT004277 – PLT004281
75	Deposition Exhibit 8 - E-mail string dated November 2, 2017 between Sherwood and Swanson	PLT004282 – PLT004312
76	Deposition Exhibit 9 - E-mail string Bates stamped SWANSON 370 to SWANSON 372	PLT004313 – PLT004315
77	Deposition Exhibit 10 - E-mail string Bates stamped SWANSON 248 to 251	PLT004316 – PLT004319
78	Deposition Exhibit 11 - E-mail string Bates stamped SWANSON 302 to SWANSON 304	PLT004320 – PLT004325
79	Deposition Exhibit 12 - Extended e-mail chain that includes some, if not all, of previous e-mails, Bates stamped SWANSON 363 through SWANSON 369	PLT004326 – PLT004332
80	Deposition Exhibit 13 - E-mail from Austin to Nicky and Dr. Swanson, Bates stamped SWANSON 235	PLT004333 – PLT004334
81	Deposition Exhibit 14 - November 16th e-mail	PLT004335 – PLT004336
82	Deposition Exhibit 15 - Rakeman Plumbing letter dated November 16, 2017	PLT004337
83	Deposition Exhibit 16 - Correspondence between Mr. Sher and Dr. Swanson	PLT004338 – PLT004342
84	Deposition Exhibit 17 - E-mail from Dr. Swanson to Mr. Sher on November 17th	PLT004343
85	Deposition Exhibit 18 - E-mail from Austin Sherwood to Dr. Swanson, dated June 15, 2018	PLT004344 – PLT004348
86	Deposition Exhibit 19 - A November 17, 2017, e-mail at 9:36 from Dr. Swanson to Mr. Sher	PLT004349 – PLT004352
87	Deposition Exhibit 20 - A November 22nd e-mail from Austin Sherwood to Dr. Swanson and Nicky Whitfield	PLT004353
88	Deposition Exhibit 21 - E-mail chain, Defendant 69 through Defendant 72	PLT004354 – PLT004357
89	Deposition Exhibit 22 - E-mail string between Nicky Whitfield and Dr. Swanson	PLT004358 – PLT004360
90	Deposition Exhibit 23 - December 15, 2017, e-mail from Dr. Swanson to Mr. Sher	PLT004361
91	Deposition Exhibit 24 - E-mail between Mr. Sher and Dr. Swanson, dated July 5, 2018	PLT004362 - PLT004363
92	Deposition Exhibit 25 - Notice of deposition Kelly Contenta	PLT004364 - PLT004367
93	Deposition Exhibit 26 – Subpoena for Records Kelly Contenta	PLT004368 - PLT004372
94	Nicole Whitfield Deposition Transcript – 1/29/2020 (A-18-782494-C)	PLT004373 – PLT004528



	Nicole Whitfield Deposition Exhibits – 1/29/2020 (A-18-782494-C)	
95	Deposition Exhibit 1 - E-mails	PLT004529 – PLT004532
96	Deposition Exhibit 1B – Timeline and miscellaneous documents	PLT004533 – PLT004578
97	Deposition Exhibit 2 – Addendum to Purchase Agreement	PLT004579 – PLT004580
98	Deposition Exhibit 3 - Affidavit of Aaron Hawley	PLT004581 – PLT004583
99	Deposition Exhibit 4 - E-mails	PLT004584 – PLT004587
100	Deposition Exhibit 5 - E-mails	PLT004588 – PLT004596
101	Deposition Exhibit 6 - E-mails	PLT004597 – PLT004605
102	Deposition Exhibit 7 - E-mails	PLT004606 – PLT004609
103	Deposition Exhibit 8 - E-mails	PLT004610 – PLT004612
104	Deposition Exhibit 9 – Text Messages	PLT004613 – PLT004619
105	Deposition Exhibit 10 - Affidavit of Nicole Whitfield	PLT004620 – PLT004623
106	Deposition Exhibit 11 – Affidavit of Todd Swanson	PLT004624 – PLT004627
107	Deposition Exhibit 12 - December 7, 2017, Environmental Services	PLT004628 – PLT004634
108	Deposition Exhibit 13 – E-mails	PLT004635 – PLT004636
109	Deposition Exhibit 14 - E-mails	PLT004637 – PLT004638
110	Deposition Exhibit 15 - Receipt	PLT004639 – PLT004640
111	Deposition Exhibit 16 - Nova Geotechnical report	PLT004641 – PLT004643
112	Deposition Exhibit 17 - E-mails	PLT004644 – PLT004647
113	Deposition Exhibit 18 - E-mails	PLT004648 – PLT004650
114	Deposition Exhibit 19 - E-mails	PLT004651 – PLT004653
115	Deposition Exhibit 20 - E-mails	PLT004654 – PLT004660
116	Deposition Exhibit 21 - E-mails	PLT004661 – PLT004668
117	Deposition Exhibit 22 - E-mails	PLT004669 – PLT004670
118	Deposition Exhibit 23 - November 24, 2017 Infinity Environmental Services report	PLT004671 – PLT004688
119	Deposition Exhibit 24 - Home Inspection Report	PLT004689 – PLT004756

120	William Gerber Deposition Transcript – 1/31/2020 (A-18-782494-C)	PLT004757 – PLT004874
	William Gerber Deposition Exhibits – 1/31/2020 (A-18-782494-C)	
121	Deposition Exhibit 1 - Documents Bates No PLT 01049 - 01052	PLT004875 – PLT004878
122	Deposition Exhibit 2 - Documents Bates No. 1014 - 1041	PLT004879 – PLT004906
123	Deposition Exhibit 3 - Documents Bates No. SWANSON 0140 - 0141	PLT004907 – PLT004908
124	Deposition Exhibit 4 - E-Mail Chain	PLT004909 – PLT004919
125	Deposition Exhibit 5 - November 24, 2017, Report - Infinity Environmental Services	PLT004920 – PLT004944
126	Deposition Exhibit 6 - December 7, 2017, Report - Infinity Environmental Services	PLT004945 – PLT004952
127	Aaron Hawley Deposition Transcript – 1/29/2020 (A-18-782494-C)	PLT004953 – PLT005083
	Aaaron Hawley Deposition Exhibits – 1/29/2020 (A-18-782494-C)	
128	Deposition Exhibit 1 - Documents Bates No PLT 01049 - 01052	PLT005084 – PLT005087
129	Deposition Exhibit 2 - Documents Bates No. 1014 - 1041	PLT005088 – PLT005115
130	Deposition Exhibit 3 - Documents Bates No. SWANSON 0140 - 0141	PLT005116 – PLT005117
131	Deposition Exhibit 4 - E-Mail Chain	PLT005118 – PLT005128
132	Deposition Exhibit 5 - November 24, 2017, Report - Infinity Environmental Services	PLT005129 – PLT005153
133	Deposition Exhibit 6 - December 7, 2017, Report - Infinity Environmental Services	PLT005154 – PLT005161
134	Deposition Exhibit 7 - Documents Bates No. PLT 01646	PLT005162
135	Deposition Exhibit 8 - Documents Bates No. PLT 01645	PLT005163
136	Deposition Exhibit 9 - Documents Bates No. PLT 01645 - 01648	PLT005164 – PLT005165
137	Deposition Exhibit 10 - Home Inspection Report	PLT005166 – PLT005233
138	Deposition Exhibit 11 - Executive Summary of Findings	PLT005234 – PLT005253

139	Deposition Exhibit 12 - Documents Bates No. 183 - 184	PLT005254 – PLT005255
140	Deposition Exhibit 13 - Documents Bates No. SWANSON 179 - 181	PLT005256 – PLT005258
141	Todd Swanson Continued Deposition Transcript – 2/6/2020 (A-18-782494-C)	PLT005259 – PLT005346
	Todd Swanson Continued Deposition Exhibits – 2/6/2020 (A-18-782494-C)	
142	Deposition Exhibit 29 - May 21, 2015, e-mail string	PLT005347 – PLT005371
143	Deposition Exhibit 30 - May 26, 2015, e-mail string	PLT005372 – PLT005375
144	Deposition Exhibit 31 – September 3, 2015, e-mail string	PLT005376 – PLT005383
145	Deposition Exhibit 32 – October 13, 2015, e-mail string	PLT005384 – PLT005386
146	Deposition Exhibit 33 - October 13, 2015, e-mail string	PLT005387 – PLT005388
147	Deposition Exhibit 34 - May 31, 2017, e-mail string	PLT005389 – PLT005401
148	Deposition Exhibit 35 – November 24, 2017, Infinity Environmental Services report	PLT005402 – PLT005420
149	Deposition Exhibit 36 - December 7, 2017, Infinity Environmental Services report	PLT005421 – PLT005426
150	Deposition Exhibit 37 – Affidavit of Todd Swanson	PLT005427 – PLT005429

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V.

**CONCLUSION**

When viewing the facts in the light most favorable to Plaintiffs and drawing all reasonable inferences therefrom in their favor, it is clear Defendant's both engaged in fraudulent misrepresentation and violated the duty imposed upon them by NRS 113. Therefore, Defendants Motion should be dismissed, and the matter allowed complete discovery and to proceed to trial.

DATED this 15<sup>th</sup> day of February 2020.

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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and  
3 that on the 13<sup>th</sup> day of February 2020, I caused the above and foregoing document  
4 **PLAINTIFFS' SUPPLEMENTAL BRIEF** to be served as follows:

5 ☒ by placing same to be deposited for mailing in the United States Mail **[FLASH DRIVE**  
6 **CONTAINING PRODUCTION]**, in a sealed envelope upon which first class postage was  
7 prepaid in Las Vegas, Nevada; and

8 ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's  
9 electronic filing/service system.

10 ☐ pursuant to EDCR 7.26, to be sent via facsimile;

11 ☐ hand delivered

12 to the party or their attorney(s) listed below at the address and/or facsimile number indicated  
13 below:

14 Christopher M. Young, Esq.

15 Nevada Bar No. 7961

16 Jay T. Hopkins, Esq.

17 Nevada Bar No. 3223

18 Christopher M. Young, PC

19 2640 Professional Court, #200

20 Las Vegas, Nevada 89128

21 Jeffrey L. Galliher, Esq.

22 Galliher Legal, P.C.

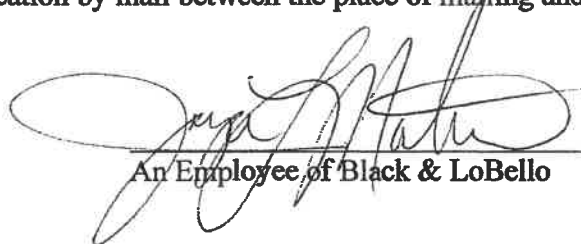
23 Nevada Bar No. 8078

24 1850 E. Sahara Ave., #107

25 Las Vegas, NV 89104

26 Attorneys for Defendants

27 and that there is regular communication by mail between the place of mailing and the place(s) so  
28 addressed.

29   
An Employee of Black & LoBello

BLACK & LOBELLO  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669



Dated this 20<sup>th</sup> day of May 2021.

CHRISTOPHER M. YOUNG, PC

*/S/ CHRISTOPHER M. YOUNG, ESQ.*

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*Attorneys for the Swanson Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of May 2021, the foregoing  
RESPONDENTS' SUPPLEMENTAL APPENDIX was electronically  
submitted for filing and transmitted through the Notice of Electronic Filing  
to those parties listed on the Court's Master Service List:

Rusty Graf, Esq.

Jeffrey Galliher, Esq.

Dated this 20<sup>th</sup> day of May 2021.

/s/ TONI HANSEN

An employee of Christopher M. Young, PC