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

16 **HORIZON HOLDINGS 2900, LLC, a Nevada**  
17 **Limited Liability Company,**

18 **Plaintiff,**  
19 **vs.**

20 **SHEA AT HORIZON RIDGE OWNERS**  
**ASSOCIATION, a Domestic Non-Profit**  
21 **Corporation; TAYLOR MANAGEMENT**  
**ASSOCIATION, a Nevada Limited Liability**  
22 **Company;**

23 **Defendants.**

CASE NO.: A-17-758435-C  
DEPT. NO.: XXII

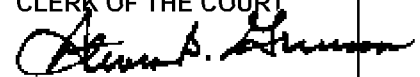
24 **NOTICE OF APPEAL**

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Electronically Filed  
6/29/2020 3:56 PM  
Steven D. Grierson  
CLERK OF THE COURT



Electronically Filed  
Jul 06 2020 01:37 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NOTICE OF APPEAL**

Notice is hereby given that HORIZON HOLDINGS 2900, LLC, Plaintiff, above named, hereby appeals to the Supreme Court of Nevada from the Notice of Entry of Findings of Fact and Conclusions of Law and Judgment entered in this action June 1, 2020, a true and correct copy of which is attached hereto as Exhibit "A."

Dated this 29th day of June, 2020.

**PEEL BRIMLEY LLP**

*/s/ Eric B Zimbelman*

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*Attorneys for Plaintiff*  
*HORIZON HOLDINGS 2900, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 29th day of June, 2020, I caused the above and foregoing document, **NOTICE OF APPEAL**, 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/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other \_\_\_\_\_

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

**Shea at Horizon Ridge Owners Association:**

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**Taylor Management Association:**

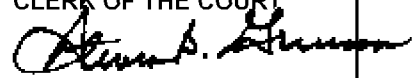
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/s/ Amanda Armstrong

\_\_\_\_\_  
An employee of **PEEL BRIMLEY, LLP**

# **EXHIBIT A**





**NEFF**  
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*Attorneys for Defendants*  
*Shea at Horizon Ridge Owners Association and*  
*Taylor Management Association*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

HORIZON HOLDINGS 2900, LLC, a Nevada  
limited liability company;

Plaintiff,

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, a Domestic Non-Profit  
Corporation, TAYLOR MANAGEMENT  
ASSOCIATION, a Nevada Limited-Liability  
Company, FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company, TAG HORIZON RIDGE, LLC, a Nevada  
Limited-Liability Company, and THE ALIGNED  
GROUP LLC, a Nevada Limited Liability Company;

Defendants.

CASE NO. A-17-758435-C  
DEPT. NO.: XXII

**NOTICE OF ENTRY OF  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT**

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Gordon Rees Scully Mansukhani, LLP  
300 S. 4th Street, Suite 1550  
Las Vegas, NV 89101

**NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT**

PLEASE TAKE NOTICE that on May 26, 2020 a **FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT** was entered in the above-entitled matter, a copy of which is attached hereto as **Exhibit “1.”**

DATED this 1<sup>st</sup> day of June 2020.

**GORDON REES SCULLY  
MANSUKHANI, LLP**

*/s/ Robert E. Schumacher*

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Las Vegas, NV 89101

*Attorneys for Defendants  
Shea at Horizon Ridge Owners Association  
and Taylor Management Association*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of June, 2020 I served a true and correct copy of  
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT** via the Court's Electronic Filing/Service system upon all parties on the E-Service  
Master List as follows:

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*Horizon Holdings 2900, LLC*

/s/ Andrea Montero

An employee of GORDON REES SCULLY  
MANSUKHANI LLP

# EXHIBIT 1

# EXHIBIT 1

1 FFCL

2  
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 HORIZON HOLDINGS 2900, LLC, a  
6 Nevada Limited Liability Company,

7 Plaintiff,

8 Vs.

9 SHEA AT HORIZON RIDGE OWNERS  
10 ASSOCIATION, a Domestic Non-Profit  
11 Corporation; TAYLOR MANAGEMENT  
12 ASSOCIATION, a Nevada Limited  
13 Liability Company,<sup>1</sup>

14 Defendants.

Case No. A-17-758435-C  
Dept. No. XXII

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

16 This matter came on for non-jury trial on the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> days of  
17 February 2020 before Department XXII of the Eighth Judicial District Court, in and for Clark  
18 County, Nevada, with JUDGE SUSAN JOHNSON presiding; Plaintiff HORIZON HOLDINGS  
19 2900, LLC appeared by and through its attorney, ERIC ZIMBELMAN, ESQ. of the law firm, PEEL  
20 BRIMLEY; and Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION appeared by  
21 and through its attorneys, ROBERT E. SCHUMACHER, ESQ. and BRIAN K. WALTERS, ESQ. of  
22 the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and  
23 pleadings on file herein, including the exhibits admitted as evidence at trial,<sup>2</sup> heard the testimonies

24  
25  
26 <sup>1</sup>As noted more fully, *infra*, this Court granted partial summary judgment in favor of Defendant TAYLOR  
27 MANAGEMENT ASSOCIATION, which resulted in dismissal of the remaining claims against this defendant. *Also see*  
28 this Court's Order filed February 4, 2020.

<sup>2</sup>The exhibits admitted into evidence were Joint Trial Exhibits 1-10, 12-18, 21-24, 26-31, 34-44 and 46-50;  
Plaintiff's Trial Exhibits 101, 103, 108, 115-117, 124, 127, 131, 133-134, 145, 157 and 170-176; and Defendant's Trial  
Exhibits 547-548, 587-588, 606-607 and 645.

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 of the witnesses, DON L. GIFFORD, MATT LUBAWY, STEPHEN BURFORD, HARVEY IRBY,  
2 STACY RIVERA, WITHOLD IGLIKOWSKI, ROXANNA NORRIS, LAURA WAALKS,  
3 MARVIN BRYAN, MARK KAPETANSKY, CATHERINE JORDAN, NATHAN HILL,<sup>3</sup>  
4 WILLIAM BIRD, GARY BORDERS and MARISSA CHIEN, as well as the oral statements and  
5 arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:

6 **FINDINGS OF FACT**

7  
8 1. This case arises as a result of alleged deficiencies Plaintiff HORIZON HOLDINGS  
9 2900, LLC has experienced with the heating, ventilation and air conditioning (also referred to as  
10 "HVAC" herein) system within its approximate 5,200 square-foot condominium office space  
11 purchased in 2015 and located within Defendant SHEA AT HORIZON RIDGE OWNERS'  
12 ASSOCIATION'S (also referred to as the "ASSOCIATION" herein) common-interest community.  
13 Specifically, Plaintiff claims the building's HVAC system does not direct sufficient air to its unit,  
14 whereby 2,500 square feet of its office space is unbearably hot and unusable in the warmer months.  
15 More specifically, Plaintiff alleges the office suite suffers a massive six-ton shortfall of cool air as  
16 the ASSOCIATION'S HVAC system is not properly balanced. Stating the issue differently,  
17 Plaintiff avers its office suite is not receiving its *pro rata* share of the cooler air. As a consequence,  
18 HORIZON HOLDINGS 2900, LLC alleges it has endured over \$225,000.00 in lost rents and  
19 approximately \$800,000.00 decrease in the property's fair market value. By way of its Second  
20 Amended Complaint filed November 28, 2018, Plaintiff HORIZON HOLDINGS 2900, LLC  
21 asserted the following causes of action against Defendants SHEA AT HORIZON RIDGE  
22 OWNERS' ASSOCIATION and TAYLOR MANAGEMENT ASSOCIATION:  
23  
24  
25 ...  
26

27  
28 <sup>3</sup>MR. HILL testified only in the hearing held pursuant to Rule 37 of the Nevada Rules of Civil Procedure (NRCPP). MR. BRYAN testified at both the NRCPP 37 hearing and the non-jury trial.

1 (1) Breach of contract against the ASSOCIATION;

2 (2) Breach of covenant of good faith and fair dealing against the ASSOCIATION;

3 (3) Declaratory relief against the ASSOCIATION;

4 (4) Negligence against both the ASSOCIATION and TAYLOR ASSOCIATION  
5 MANAGEMENT (also referred to as "TAM" herein); and

6 (5) Negligent undertaking against TAM.  
7

8 The Fourth and Fifth Causes of Action asserting negligence and negligent undertaking against the  
9 ASSOCIATION and TAM were dismissed by way of summary judgment issued February 4, 2020  
10 which was unopposed by HORIZON HOLDINGS 2900, LLC. The causes of action addressed in  
11 the trial before the Court were solely the first three lodged against the ASSOCIATION. The  
12 following facts were adduced at trial:

13  
14 2. The commercial office subdivision, SHEA AT HORIZON RIDGE, was constructed  
15 in approximately May 2005. The subdivision consists of two two-story office buildings,<sup>4</sup> as well as  
16 certain other improvements on the property. The property is a common-interest community  
17 governed by the Declaration of Commercial Office Subdivision Covenants, Conditions &  
18 Restrictions and Reservation of Easements for SHEA AT HORIZON RIDGE (also referred to herein  
19 as "CC&Rs").<sup>5</sup>  
20

21 3. The CC&Rs set forth the Declarant's intention to develop and convey commercial  
22 office subdivision units within the Project pursuant to the general plan. The Project was restricted

23 ...

24 ...  
25

26  
27 <sup>4</sup>The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge  
28 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will  
be identified as 2900 and 2904 herein. It is noted here, however, at the trial, the parties did refer to the 2900 Building as  
"Building 1" and the 2904 Building as "Building 2."

<sup>5</sup>See Joint Trial Exhibit 1 admitted into evidence.

1 exclusively to non-residential use, and, according to the CC&Rs and pursuant to NRS  
2 116.1201(2)(b), the Declaration and Project was not subject to NRS Chapter 116.<sup>6</sup>

3 4. At all times pertinent herein, DON GREIG, GARY BORDERS and MARISSA  
4 CHIEN<sup>7</sup> were owners of commercial suites within the common-interest community and members of  
5 the ASSOCIATION'S Board of Directors with the latter two filling the offices of President and  
6 Secretary/Treasurer,<sup>8</sup> respectively. MR. BORDERS testified at trial he was the first owner to build  
7 out his approximate 7,500 square-foot commercial space located on the second floor or Suite 200 of  
8 the 2900 Building in 2005.<sup>9</sup> When doing so, he retained a designer who created the place for work  
9 in terms of space planning and placement of offices. Of note, MR. BORDERS testified, at the time  
10 of his build-out, he had to change the HVAC ducting as it did not meet what he was constructing.  
11 He sought and acquired Board approval to change the ducts pursuant to the CC&Rs' Section 2.10,  
12 and further, to install a stand-alone HVAC unit on the roof to cool the 140 square-foot room housing  
13 his computer server.<sup>10</sup> This stand-alone HVAC unit exclusively services Suite 200 and is MR.  
14 BORDER'S sole responsibility to maintain, unlike the ASSOCIATION'S concern for two 60-ton  
15 roof-top units (also referred to as "RTUs" herein) serving the entire building's common elements  
16 and owners' suites.  
17

18 5. Sometime between 2005 and 2014, Suite 101 within the 2900 Building was  
19 purchased and presumably built out by TAG HORIZON RIDGE, LLC. In late 2014, TAG  
20 HORIZON RIDGE, LLC sold Suite 101 "as is" to HORIZON HOLDINGS 2900, LLC and the  
21  
22  
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24 <sup>6</sup>*Id.*

25 <sup>7</sup>MS. CHIEN testified she owed her office suite located in the 2900 Building from September 2014 to July  
26 2019.

27 <sup>8</sup>The records identify MS. CHIEN as the "Secretary," but MR. BORDERS testified she oversaw the accounting.

28 <sup>9</sup>MR. BORDERS testified, of the 7,500 square feet, 6,300 were usable.

<sup>10</sup>During the course of the ASSOCIATION'S history, other than MR. BORDER, only one owner has sought  
and received approval to install a stand-alone HVAC to service his unit exclusively and that was in the 2904 Building.  
MR. BORDERS testified no owner has ever been denied permission to install a stand-alone HVAC to exclusively  
service his own unit.



1 purchase/sale closed in February 2015.<sup>11</sup> CATHERINE JORDAN is the managing member and  
2 principal of HORIZON HOLDINGS 2900, LLC. The offices were leased by Plaintiff, as the holding  
3 company, to QUALITY NURSING, LLC, PHYSICIANS TO HOME and JORDAN MEDICAL,<sup>12</sup>  
4 all three limited liability companies of which MS. JORDAN is and was the principal and managing  
5 member. At or near time of purchase, MS. JORDAN entered into a Fixed Price Agreement with  
6 RYCON CONSTRUCTION, LLC to convert the then existing offices to medical suites at a total  
7 cost of \$177,679.00.<sup>13</sup> Such conversion or “tenant improvements” (also referred to as “TIs” herein)  
8 involved the removal of walls existing between two and three smaller offices to create larger offices  
9 and medical suites. MARVIN BRYAN of RYCON CONSTRUCTION, LLC testified he also  
10 arranged the installation of a dryer vent and exhaust fan, the replacement of a damaged thermostat  
11 and addition of a 220 volt for washer/dryer and plumbing as the anticipated medical suites needed  
12 running water and drainage.<sup>14</sup> The general contractor’s scope of work also included painting and  
13 installing other aesthetics such as flooring.<sup>15</sup> MR. BRYAN testified, while the build-out involved  
14 new framing, he did not raise or lower the ceiling. Other than the repair of the damaged thermostat,  
15 MR. BRYAN testified RYCON CONSTRUCTION, LLC performed no HVAC work.  
16  
17

18 6. As the weather changed from cool to warm and hot, HORIZON HOLDINGS 2900,  
19 LLC and its tenants’ employees, notably STACY RIVERA, WITHOLD IGLIKOWSKI,  
20 ROXANNA NORRIS and LAURA WAALKS, began to experience uncomfortably warm conditions  
21  
22

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23 <sup>11</sup>See Joint Trial Exhibit 4, E-mail from CATHERINE JORDAN to STEPHANIE FREEMAN, Community  
24 Manager, TAYLOR ASSOCIATION MANAGEMENT, dated June 30, 2015, admitted into evidence.

25 <sup>12</sup>See Joint Trial Exhibit 23, Commercial Lease Agreement between HORIZON HOLDINGS 2900, LLC and  
26 JORDAN MEDICAL AESTHETICS, LLC, admitted into evidence. The parties identified JORDAN MEDICAL  
27 AESTHETICS, LLC as “JORDAN MEDICAL” throughout the course of the trial. Of note, MR. BORDERS testified  
28 HORIZON HOLDINGS 2900, LLC never provided the ASSOCIATION copies of its leases with its tenants as required  
by Section 7.1(m) of the CCRs.

<sup>13</sup>See Defendant’s Trial Exhibit 547, Fixed Price Agreement along with Scope of Work, admitted into evidence.

<sup>14</sup>See Joint Trial Exhibit 3, SPARKS ENGINEERING, LLC’S Dryer Vent Calculations, admitted into evidence.

<sup>15</sup>See Defendant’s Trial Exhibits 547 and 548, RYCON CONSTRUCTION, LLC’S drawings, admitted into  
evidence.

1 in the south and west-facing offices. MS. JORDAN testified she complained to the ASSOCIATION  
2 and its property manager, TAM, on numerous occasions regarding the lack of cool air coming into  
3 Plaintiff's office suite.

4 7. In March 2015, the ASSOCIATION arranged for its then preferred HVAC vendor,  
5 STEVE BURFORD of CORPORATE AIR MECHANICAL SYSTEMS, INC. (also referred to as  
6 "CAMS" herein), to repair leaks and duct separation within the common elements. The York  
7 communication board on the RTU was repaired and interconnected with the computerized Building  
8 Management System (also referred to as "BMS" herein). As reported by MR. BURFORD in e-mail:  
9 "Schneider<sup>16</sup> was able to re-add the unit to the BMS and it is working again."<sup>17</sup> While it was  
10 completing its TI improvements within Plaintiff's office suite in May 2015, RYCON  
11 CONSTRUCTION, LLC contracted with CAMS to install four (4) Schneider Electric wall sensors at  
12 a cost of \$760.00.<sup>18</sup> According to MR. BURFORD, the work was performed and everything was  
13 working correctly. MR. BURFORD also testified he did look at some of the VAVs in Plaintiff's  
14 unit, but he did not inspect all. He noted, by this time, the ASSOCIATION had upgraded its  
15 buildings' air control system software and the owners needed to upgrade their VAVs to  
16 communicate with the new system.  
17  
18

19 8. In May and July 2015, HORIZON HOLDINGS 2900, LLC borrowed funds from its  
20 tenant, QUALITY NURSING, LLC, to purchase window blinds for the office suites to reduce or  
21 ...  
22  
23  
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25 <sup>16</sup>"Scheider" was the ASSOCIATION'S prior preferred HVAC vendor replaced by CAMS.

26 <sup>17</sup>See Joint Trial Exhibit 27, E-mail communications between STEVE BURFORD and LORAIN CONTI,  
27 Community Manager, TERRAWEST (the ASSOCIATION'S former property manager) on March 25, 2015, admitted  
28 into evidence. Property management changed in or about April 2015 to TAYLOR ASSOCIATION MANAGEMENT  
(TAM). See Joint Trial Exhibit 28, E-mail from DON GREIG; also see Joint Trial Exhibit 44, Community Management  
Agreement between the ASSOCIATION and TAM for period May 1, 2015 to April 30, 2016, admitted into evidence.

<sup>18</sup>See Joint Trial Exhibit 25, CAMS' Proposal dated May 13, 2015, admitted into evidence.

1 mitigate the heat coming into the offices. Such blinds were described by MS. JORDAN in her  
2 testimony as that company's "best sun filtration" at a total cost of \$8,385.89.<sup>19</sup>

3 9. On June 30, 2015, MS. JORDAN sent MS. FREEMAN of TAM an e-mail directed to  
4 "To whom it May Concern" (sic), requesting "a ledger that consists of all charges and credits that  
5 have occurred since I purchased the property Feb (sic) 12, 2015."<sup>20</sup> MS. JORDAN also alerted MS.  
6 FREEMAN she had had no air conditioning in half of her unit since purchase. She had been "back  
7 and forth" between MR. BURFORD and "Nicholas [ANGELL] at the software company who had  
8 been hired to do the revamp." She stated she was informed by MR. ANGELL that day the "air  
9 problem is a break in the duct work before the VAV which according to the CCR's that this is the  
10 responsibility of the Association Management to handle."<sup>21</sup> I will need a monthly breakdown of the  
11 charges sent to suite so I can pay them. Please let me know immediately when the duct work will be  
12 fixed so I can stop having my business obstructed." This e-mail was directed to MS. CHIEN who  
13 forwarded it to MR. BURFORD. MR. BURFORD replied: "Nick did mention to us that he thought  
14 one of the VAV's didn't have air coming to it. So we went out shortly after this and inspected the  
15 VAV he said didn't have any air coming to it and found that it did have air, and the damper was  
16 opening and closing properly. If she's having additional issues with other VAVs, I have not been  
17 made aware of it. We can check all of her VAVs if she would like us to."<sup>22</sup>

18 10. In late July 2015, MS. JORDAN contacted MR. BURFORD regarding HVAC issues  
19 relating to Plaintiff's office unit. According to MS. JORDAN, MR. BURFORD related three  
20 controller units "were out," and such could be replaced at a cost of \$3,800.00. Given what she  
21

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22 <sup>19</sup>See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted  
23 into evidence.

24 <sup>20</sup>See Joint Trial Exhibit 4.

25 <sup>21</sup>A duct located next to a VAV suggests it is servicing a unit and not the common elements, and if that be the  
26 case, it is the owner's responsibility to repair a break in the duct "before the VAV." See CC&Rs, Sections 1.17., 1.19  
27 and 2.10.

28 <sup>22</sup>See Joint Trial Exhibit 5, E-mail between MS. CHIEN and MR. BURFORD dated August 5, 2015, admitted  
into evidence.

1 perceived to be a high price quote, MS. JORDAN acquired bids from two other HVAC vendors, one  
2 of which was from PRIME HVAC, LLC for \$2,587.00 to install three (3) ct. Spyder Lon  
3 Programmable VAV Controller and 3 ct. Zio LCD/Syk Bus Wall Modules.<sup>23</sup>

4 11. On August 18, 2015, MARK KAPETANSKY of PRIME HVAC, LLC, wrote MS.  
5 JORDAN an e-mail with a courtesy copy sent to MR. ANGELL;<sup>24</sup> it read as follows in salient part:

6 Hi Catherine,

7  
8 Nice to meet you in person, thanks for getting me in late in the afternoon to try and sort  
9 through the comfort issues you are having in your suite. Just to recap what was noted during  
10 the analysis:

11 1. Space temperature was displayed between 78 and 81 degrees throughout the  
12 office space in question. While not ideal this temperature does indicate some  
13 performance from the equipment providing space climate control.

14 2. The zone sensors displaying space temperature are providing command  
15 instruction to variable air volume (VAV) equipment in the ceiling space, and these  
16 devices are in fact fully providing supply air from the central air handling system.

17 3. My specific analysis of cooling performance throughout the space found  
18 normal supply air temperatures (upper 50's on my thermometer) from supply  
19 diffusers in the north half of the office space. as (sic) I moved south the air  
20 temperature measured at supply diffusers rose significantly indicating at some point  
21 in the air distribution system there is a split in the ductwork between rooftop air  
22 conditioning equipment that is working normally and other equipment not operating  
23 at sufficient capacity.

24 4. At some point in the past your south hallway diffuser was disconnected from  
25 the supply duct system and capped, likely to provide increased airflow to other end  
26 points in that circuit. You would like that duct work re-attached.

27 5. Analysis of rooftop air conditioning equipment is required to specifically  
28 itemize deficiencies.

I spoke with Nick on the phone and cc'd him on this email, we discussed the findings today  
and I also inquired about follow up. He mentioned speaking with Marissa [CHIEN] about a  
suitable course of action regarding provision of rooftop access. Once the required  
acknowledgement and authorization have been provided by building management we can  
move forward and follow up on today's findings.

12. On August 25, 2015, MS. JORDAN wrote a "To Whom It May Concern" letter,  
presumably to the ASSOCIATION and/or TAM, which read:

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<sup>23</sup>See Defendant's Trial Exhibit 587, PRIME HVAC, LLC's Service Proposal 15-103, admitted into evidence.

<sup>24</sup>See Joint Trial Exhibit 13, MR. KAPETANSKY'S e-mail to MS. JORDAN dated August 18, 2015, admitted  
into evidence.

1 My name is Catherine Jordan. I am the owner of 2900 W. Horizon Ridge Pkwy (sic)  
2 #101, Henderson, NV 89052. I took occupancy at the end of May 2015. I am writing this  
3 letter in regards to the fact that half of my suite cannot get below 80 degrees and is  
4 obstructing my ability to do business.

5 It is my understanding that as the owner I am responsible for the VAV's (which  
6 includes the controller) down to the registers that enter my unit.

7 I was told that the association hired a company named CAMS to perform some  
8 revamping of software and compressor replacements that are on the roof.

9 It took CAMS over two months to get the software and replace the compressors on  
10 the roof.

11 I was then told by CAMS that I had three controller units out and they gave me a bid  
12 of \$3800.00 to fix those units. I got two other bids for \$2400.00 to do the same work. I went  
13 with one of the lower bids rather than CAMS.

14 Now that my controls are fixed, half of my unit is still 80 degrees during the day. I  
15 had the company evaluate the air temp that was blowing out of my registers on the half of my  
16 unit that remains 80 degrees. They found the air to be blowing out at 75 degrees when it  
17 should be blowing out at between 55-59 degrees. This would lead one to believe that the  
18 compressors are not cycling or working correctly. I am requesting immediately (at my  
19 expense) that the compressors and roof units be evaluated by someone other than CAMS.  
20 Given the fact of CAMS' excessive costs and taking months to repair issues in the past. (sic)

21 As I stated earlier, I cannot conduct business and this issue is hindering my ability to  
22 bring in revenue. I have forwarded a copy of this to my attorney and requesting a list of who  
23 is on the board for my association and when the board meetings are scheduled.

24 Please let me know if there is anyone else I should contact or notify of this matter.

25 Also, there is a leak on the west exterior wall that occurs every time it rains and water  
26 enters one of my exam rooms where there is 100K piece of equipment. The leak comes from  
27 up above my unit. This is the second time I have reported this.<sup>25</sup>

28 13. On August 27, 2015, MS. JORDAN wrote MR. BURFORD and MS. FREEMAN  
another "To whom it may concern" e-mail. It reads as follows:

My name is Catherine Jordan. I am the owner of 2900 West Horizon Ridge #101, Henderson  
NV. I have been without complete air conditioning in my unit for 90 days. This is  
obstructing my business. I just spoke with Steve at CAMS who the board contracted to fix  
the units. He stated that at this time there is a circuit breaker and a TXV power head valve  
that needs to be replaced on the northern unit which requires being ordered from out of state.  
I am authorizing Steve at CAMS to order the parts immediately and if the board has issues I  
will pay for it and I can have my attorney seek after them for reimbursement.<sup>26</sup>

...

<sup>25</sup>See Joint Trial Exhibit 42, Letter from MS. JORDAN dated August 25, 2015, admitted into evidence; *also see* Plaintiff's Trial Exhibit 133, p. 2, MS. JORDAN'S August 26, 2015 e-mail to MS. FREEMAN.

<sup>26</sup>See Joint Trial Exhibit 6, E-mails between MS. JORDAN, MR. BURFORD, MS. FREEMAN and MS. CHIEN, admitted into evidence.

1 Upon receiving word from MR. BURFORD he would "order the circuit breaker now," MS. CHIEN  
2 instructed he not directly communicate with MS. JORDAN regarding common element business as  
3 work on the common elements was to be performed when the ASSOCIATION Board or its  
4 management company gave him authorization "—not Catherine Jordan."<sup>27</sup>

5 14. In late August/early September 2015, MS. JORDAN retained PRIME HVAC, LLC to  
6 perform work in Plaintiff's office suite for the bid of \$2,587.00. As indicated within an Invoice sent  
7 to MS. JORDAN on September 9, 2015,<sup>28</sup> the following work took place:

9 Work to complete removal of 3 existing/malfunctioning invinsys VAV actuators and provide  
10 replacement with Honeywell Spyder programmable logic controllers. VAV actuators  
11 retrofitted to south office space service. Work included installation of required VAV wall  
12 mounted thermostat modules and necessary programming to front end. Work performed per  
13 Prime Proposal 15.103. Noted disconnected and capped duct feed to hallway diffuser during  
14 actuator installation and notified Catherine. Per ongoing suite cooling performance concerns  
15 from state and management of Quality Nursing, follow-up analysis work was performed to  
16 confirm and evaluate VAV operation. Airflow analysis throughout space in question was  
17 performed on entire diffuser inventory with data subsequently uploaded and emailed. During  
18 regular device testing on 8/28, found # 3 actuator (feed to center administrative office space)  
19 recently replaced was unresponsive to normal zone sensor/space temp command, follow up  
20 repair on 9/1 provided programming flash and re-installation to device. Commencement of  
21 normal operation was then immediately verified. Space temperature evaluation on 8/28/15  
22 found significant discrepancy between supply air temperatures in the north and south ends of  
23 suite, with north diffusers providing normal air conditioning supply air temperatures and  
24 southern most diffusers providing poor cooling. Follow up work to provide verification of  
25 central mechanical (rooftop) cooling equipment is required to ensure availability of adequate  
26 cooling capacity. All duct connections throughout suite were verified as structurally intact,  
27 all VAV equipment was operationally verified 9/9/15.

28 15. On September 2, 2015 and in response to MS. JORDAN'S August 26, 2015 e-mail  
where she indicated she was forwarding documentation to her attorney and "instruct him to go with  
legal actions to cure this situation," WILLIAM PAUL WRIGHT, ESQ., counsel for the  
ASSOCIATION wrote MS. JORDAN requesting her lawyer's contact information.<sup>29</sup>

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<sup>27</sup>*Id.*

<sup>28</sup>See Joint Trial Exhibit 14, PRIME HVAC, LLC'S Invoice ESH-0805 dated September 9, 2015, admitted into evidence; *also see* Defendant's Trial Exhibit 587 and Plaintiff's Trial Exhibit 115, both admitted into evidence.

<sup>29</sup>See Joint Trial Exhibit 7, E-mail string between MR. WRIGHT, MS. JORDAN and MATTHEW EKINS,

1           16.     On September 3, 2015, MR. BURFORD wrote MS. JORDAN an e-mail, which was  
2 copied to ASSOCIATION Board members and MS. FREEMAN of TAM.<sup>30</sup> This e-mail reads in  
3 part:

4           Hi Catherine,

5           I stopped by on Tuesday to take a look at your offices and take some temperature readings of  
6 the air coming out of the supply registers. I found you had between 59 and 63 degree air  
7 coming out of all the registers I checked. The two Southern offices specifically had 63  
8 degree air coming out. I noticed the smaller office facing the South had one supply register  
9 and no return registers. The larger office on the Southwest corner had two supply registers  
10 and one return register. In my opinion this is not a supply air temperature problem but rather  
11 a (sic) air volume problem. I would recommend you hire an AC company to come in and  
12 take actual air flow readings (Cubic Feet per Minute, not temperature) to see what volume of  
13 air you have coming from the supply registers in those offices. Once you know that  
14 information you will be able to balance the air flow so those perimeter offices get more air to  
15 them since they have a greater heat load from the windows. This may require the AC  
16 company to install dampers in your duct work to regulate the air flow to the different  
17 registers. I would also recommend you install additional return air grilles (sic) in all of the  
18 perimeter offices. Removing the warm air from the offices is equally as important as  
19 supplying cold air to the offices.<sup>31</sup>

20           17.     MATTHEW EKINS, ESQ. responded to MR. WRIGHT'S September 2, 2015 e-mail  
21 on September 8, 2015, indicating "[t]oday my client asked me to become involved and facilitate a  
22 timely resolution. I will be calling you this afternoon to see what can be done to resolve the 90 plus  
23 days without sufficient air conditioning for my client's office."<sup>32</sup> Apparently, MR. WRIGHT missed  
24 MR. EKINS' telephone call, and noted he (WRIGHT) would contact MR. EKINS' "tomorrow."

25           MR. EKINS responded by e-mail the following day, noting he was leaving town for a funeral  
26 and available only by e-mail. His September 9, 2015 e-mail further read:

27           The primary concern is having the AC system fixed in a timely fashion. Also, it would be  
28 helpful to have the Taylor and Associates and my client to be able to speak directly on

---

ESQ., Plaintiff's lawyer, admitted into evidence.

<sup>30</sup>See Joint Trial Exhibit 8, E-mail from MR. BURFORD of CAM dated September 3, 2015, admitted into evidence.

<sup>31</sup>MR. BURFORD testified at trial he had been contracted by the ASSOCIATION and TAM to complete a duct survey on the 2904 Building. He was not contracted to conduct work on the 2900 Building, but did look at HORIZON HOLDINGS 2900, LLC'S offices. He did not know if the layout for the two buildings, 2900 and 2904, were the same.

<sup>32</sup>See Joint Trial Exhibit 7.

1 resolution of the problem. My client informs me that she has had her space inspected by a  
2 different HVAC company and it verified all her systems are working properly. There is  
3 simply no cold air coming in from the compressors. I am working on getting a letter from  
4 that HVAC company to confirm this. Can you let me know where Taylor & Assoc (sic) is at  
5 on working with CAMS or another HVAC company to get this problem solved?<sup>33</sup>

6  
7 18. On September 10, 2015, MR. WRIGHT wrote MR. EKINS an e-mail which reads:  
8 Matt:

9 Attached are invoices for HVAC repairs done in 2014 to the tune of nearly \$15K. The  
10 compressors that were causing issues this year were installed last year in another repair.  
11 Why they failed again in (sic) being looked into. However, any claim that the Board is not  
12 performing its duties and taking care of the portions of the building that it is responsible for,  
13 in (sic) simply not accurate.

14 Another e-mail was sent by MR. WRIGHT, indicating once the lawyers had an opportunity to speak,  
15 they needed to address MS. JORDAN'S interference with the ASSOCIATION'S vendors and her  
16 directives towards TAM and the ASSOCIATION.<sup>34</sup> MR. EKINS responded four days later,  
17 providing an invoice for the work MS. JORDAN had completed for the system for which Plaintiff  
18 was responsible. He also inquired whether "management" had verified the compressors were  
19 supplying cool air to all of his client's space, and could inspect and verify "today" cold air was being  
20 supplied and all compressors were functional. On September 16, 2015, MR. WRIGHT indicated the  
21 ASSOCIATION would like to coordinate with MS. JORDAN to have the respective HVAC vendors  
22 meet on site to review the situation and one or two Board members would be present.<sup>35</sup> No evidence  
23 was provided to indicate whether such a site visit ever took place.

24 19. In mid-September 2015, MR. GREIG of the Board discussed prospects of balancing  
25 "the whole building at the same time" with MR. BURFORD.<sup>36</sup> MR. BURFORD discussed the  
26 reasoning in his communication to the Board:

27 <sup>33</sup>Id.

28 <sup>34</sup>Id.

<sup>35</sup>Id.

<sup>36</sup>See Joint Trial Exhibit 30, E-mail communication between MR. GREIG, MR. BORDERS, MS. CHIEN and  
MR. BURFORD dated September 11, 2015, admitted into evidence.



1 ...there's a duct status pressure set point and sensor that make sure the correct volume of air  
2 is going through the main duct work to all of the suites, so that should be a constant (unless  
3 there's a break in the duct work somewhere). All we really need to do is balance each  
VAV's supply registers so we can push an equal amount of air to each register (or push more  
air to higher heat load areas such as East, South and West facing window offices).

4 MR. BORDERS testified, prior to incur the expenses of balancing the entire building, it was decided  
5 certain repair work and replacement of deficient equipment would be completed. Further, before the  
6 ASSOCIATION incurred such expenses for balancing, the owners of suites in the 2900 Building,  
7 including HORIZON HOLDINGS 2900, LLC, needed to repair the deficiencies for which they were  
8 responsible.  
9

10 20. In mid-October 2015, MR. BURFORD of CAMS installed a new condenser fan  
11 motor to resolve the problems in Plaintiff's office suite at the ASSOCIATION'S expense. Further,  
12 new control boards were needed for the four (4) RTUs so they could "speak with the software," as  
13 the old ones were ten (10) years old and no longer compatible.<sup>37</sup>  
14

15 21. MS. JORDAN sent a certified letter, return receipt requested to the ASSOCIATION  
16 on October 28, 2015, relaying: "This is the fourth time in 2 months I have issued this complaint.  
17 Our back offices stay at 77 degrees during the day."<sup>38</sup> It was about the time MS. JORDAN sent her  
18 letter, the ASSOCIATION was arranging repairs to the RTU #2 located on the 2900 Building's  
19 rooftop. As noted by MR. KAPETANSKY in his e-mail to both ASSOCIATION Board members  
20 and TAM dated October 29, 2015:  
21

22 Good morning all,

23 Wanted to send out one quick follow up from the conversations I had with both Don  
24 [GREIG] and Marissa [CHIEN] yesterday. We are replacing (and upgrading) unit  
25 communication and control on rooftop AC # 2 at 2900 W Horizon Ridge Pkwy (sic) due to a

26 <sup>37</sup>See Joint Trial Exhibit 31, E-mail communication between MR. GRIEG and MR. BURFORD dated October  
27 23, 2015, admitted into evidence.

28 <sup>38</sup>MS. JORDAN wrote MS. FREEMAN an e-mail on November 12, 2015: "The temperature in my entire office  
is 62 degrees today. Please let me know you received this email and what is being done to render the issue." See Joint  
Trial Exhibit 34, p. J34-3, admitted into evidence.

1 board level failure with communication. This board was previously repaired and is now not  
2 communicating with the computer control system, preventing the equipment from following  
3 an occupancy schedule and promotion excessive electrical consumption. While this upgrade  
4 is desirable from an enhanced control capability (as well as the obvious restoration of  
communication) the cost of this upgrade outweighs the benefits of an immediate overhaul of  
the remaining (still communicating) rooftop equipment.

5 In summary, if/when we see the remaining rooftop equipment at Shea exhibit board level  
6 malfunction we can continue with this upgrade to that equipment at that time. ...

7 22. A few days later, on or about November 4, 2015, MS. JORDAN acquired a bid from  
8 PRIME VAC, LLC to replace six VAVs at a cost of \$4,500.00.<sup>39</sup> On November 26, 2015, MR.  
9 KAPETANSKY of PRIME HVAC, LLC wrote MS. JORDAN with courtesy copies to MR. GREIG,  
10 MR. ANGELL and MS. CHIEN:

11 Hi Catherine,

12 Happy Thanksgiving. I was able to make some corrective action in your suite and  
13 increase total heating available, however I was surprised to see no less than 2 VAVs in your  
14 suite with no zone sensor control. No zone sensor likely equals very little cooling capability  
15 and no heating capability whatsoever. Whoever was responsible for your T.I. work was  
16 derelict in their placement of some of the zone sensors for space climate control. I would say  
the actual articulation of the supply diffusers was typical of what I've found throughout the  
Shea campus providing the not uncommon aspect of zone sensors feeding input to VAV  
terminal units that supply air to two or even three different locations in the suite.

17 I started with the VAV marked "9", not sure of the device ID (Nick [ANGELL] looks  
18 at those on the computer and some of them are correct anyway). This unit has zone sensor  
19 wiring ran to a junction box in the wall with no sensor...I include a picture, attached and  
20 labeled "VAV 9". When we replace the actuator in VAV 9 I can install the new zone sensor  
21 at the existing junction box and there should be no issues. Worst case scenario is pulling  
some sensor wire through the existing conduit and then wiring in the new sensor, so this  
won't be a large additional cost even if we have to re-work the wire as the infrastructure is in  
place.

22 Moved on to VAV "8", device ID marked "11". This unit had the heat locked out on  
23 airflow proving. I adjusted the manual supply damper upstream of the VAV unit and had no  
24 effect on air flow sampling through the pitot tube. I moved the pitot tube around in its  
25 insertion window until I found a satisfactory position for it that seemed to keep the heat  
enabled. I may have to come back and completely relocate the pitot tube but for now the  
heat on this unit is fairly reliable.

26  
27 <sup>39</sup>See Defendant's Trial Exhibit 588, PRIME HVAC, LLC'S Service Proposal 15-108 dated November 4, 2015,  
28 admitted into evidence; also see Plaintiff's Trial Exhibit 115 showing \$4,500.00 payment to PRIME HVAC, LLC from  
QUALITY NURSING, LLC.

1 VAV "2", device ID labeled "25" is the terminal unit supplied from the zone sensor  
2 with the "ABN: diagnostic on the display, we can expect no function from this unit until the  
3 actuator and zone sensor are replaced. I found the unit with the high voltage temperature  
4 limit safety tripped and I reset the safety to examine operation, again locked out through the  
5 loss of the zone sensor.

6 VAV labeled "1", remarked "3", supplies your office as well as the northern most  
7 office space and seemed to be working well. Not sure if the supply to your office is choked  
8 off through a physical duct connection or not. I will investigate it when we're there  
9 replacing actuators.

10 The last unit I looked at is also labeled VAV "1", remarked "6", and I have pictures  
11 attached of the zone sensor wiring ran loose to the ceiling cavity approximately 10 feet west  
12 of the VAV itself. They didn't even try to hook up a zone sensor for this unit, and the wire  
13 will likely have to be re-ran to an appropriate location to allow for normal VAV operation.  
14 Expect some additional cost for this repair and to allow normal operation from your unit.

15 I stopped my inspection at that point as most of the units have now been examined  
16 and serious deficiencies of the VAV terminal units in your suite had already been noted.  
17 Any further repair work required can be performed as needed during the actuator retrofit and  
18 other repair requirements listed here. ...<sup>40</sup>

19 23. On May 20, 2016, TAM provided notice to CAMS the ASSOCIATION was  
20 cancelling its contract for services as of June 30, 2016.<sup>41</sup> PRIME HVAC, LLC, who MS. JORDAN  
21 initially hired as her HVAC contractor, was retained by the ASSOCIATION as one of its preferred  
22 vendors.

23 24. The evidence presented indicates there were no complaints by MS. JORDAN,  
24 HORIZON HOLDINGS 2900, LLC, its tenants or employees from December 2015 until early June  
25 2016.<sup>42</sup> On June 8, 2016, MS. JORDAN wrote MS. FREEMAN, the e-mail of which was copied  
26 and sent to ASSOCIATION Board members: "The temperature in my office is 76 today and was 78  
27 all evening yesterday. I am still waiting on the AC schedule I requested yesterday. Can you tell me  
28 when these issues will be addressed?"<sup>43</sup> MS. FREEMAN responded the following day:

...

<sup>40</sup>See Defendant's Trial Exhibit 606, E-mail from MR. KAPETANSKY to MS. JORDAN dated November 26, 2015, admitted into evidence.

<sup>41</sup>See Joint Trial Exhibit 9, Letter from TAM to CAMS dated May 20, 2016, admitted into evidence.

<sup>42</sup>See, for example, Plaintiff's Trial Exhibit 103, E-mail communication between MS. JORDAN, MS. FREEMAN, LORI PUGH, Maintenance Coordinator for TAM, MR. BORDERS and MS. CHIEN from November 12, 2015 to July 27, 2016, admitted into evidence.

<sup>43</sup>*Id.*

1 Hi Catherine,

2 Please note that the A/C schedule is Monday thru Friday from 4:00 a.m. – 6:00 p.m. The  
3 scheduling of the A/C is at the discretion of the Board. You are the only owner in the front  
4 building that has made the request to have the A/C run on nights and weekends. The other  
5 owners shouldn't have to subsidize your sole usage. If you want to pay for the entire cost of  
6 providing A/C to the building on weekends, we can come up with a charge for that.<sup>44</sup>

7 MS. JORDAN replied to MS. FREEMAN'S response: "[C]orrection to last email[.] It needs to read  
8 that I have medical equipment and computers that should not be exposed to high temperatures."<sup>45</sup>

9 At that point, MR. BORDERS noted in his responsive e-mail:

10 Folks,

11 Each owner operates a unique business with varying needs.

12 For example, my computer server room requires constant air conditioning. For this reason  
13 we installed a separate unit to manage. I paid for the unit and continually pay and for the  
14 energy required to power it. As I read the CC&R's this is my problem and not an association  
15 problem.<sup>46</sup>

16 The evidence presented at trial showed HORIZON HOLDINGS 2900, LLC never sought approval  
17 from the ASSOCIATION'S Board to install a stand-alone air conditioning to exclusively service its  
18 office suite, including the cooling of its medical equipment and computers as MR. BORDERS had  
19 done when he built out his space in or about 2005.

20 25. On June 23, 2016, MS. JORDAN wrote MS. FREEMAN again: "Please note that it is  
21 79 in all my office today." MS. FREEMAN responded within the hour: "Thank you Catherine—we  
22 will contact Prime to go out and adjust." On June 29, 2016, MS. JORDAN wrote MS. FREEMAN:

23 Stephanie

24 I am giving you an update regarding the AC status in our unit. I contacted Mark at Prime  
25 and told him that the AC was to come on at 4am and wasn't coming on until 6am as I am  
26 there at 5am several mornings a week. He said he would check with Nick Angel who does  
27 the programming. Also my unit is at 78-80 every day. He said he adjusted some airflow and

28 <sup>44</sup>*Id.*: also see Joint Trial Exhibit 34, E-mail exchange between MS. JORDAN, MS. FREEMAN, MR.  
BORDERS and MS. CHIEN from November 12, 2015 to June 9, 2016, admitted into evidence.

<sup>45</sup>See Joint Trial Exhibit 34.

<sup>46</sup>*Id.*

1 had to wait to talk to York because he was unsure how to adjust it. We go to the unit above  
2 us every day and their unit is at 72. So this doesn't make any sense as heat travels upward  
3 and it should be harder to cool the upstairs unit. Mark acknowledged in a text the other day  
4 for some reason the airflow is having trouble getting down to my unit. When do you think it  
5 is reasonable to have an answer to this problem as its (sic) been going on for a year now?

6 MS. FREEMAN responded that day:

7 Hi Catherine,  
8 I was told that the back unit is running at half capacity and Mark is working on finding out  
9 what is wrong. I will keep you apprised of any updates I receive.<sup>47</sup>

10 On July 27, 2016, MS. JORDAN wrote MS. FREEMAN again:

11 Dear Stephanie  
12 It is 81 degrees in all of my office today. I need to know what we are going to do to come up  
13 with a permanent solution to this issue. This is the constant temp in my office everyday (sic)  
14 after noon time. The last I heard from you On (sic) June 29<sup>th</sup> was that one unit was working  
15 at 50 percent and Mark was working on it and would you "keep me apprised". I have not  
16 heard anything from you or Mark and now it has been a solid year that I haven't had proper  
17 airconditioning (sic). Please let me know what is going to be done.

18 MS. FREEMAN responded that day: "Lori [PUGH] will contact Mark to get status on repairs."

19 MS. PUGH responded to MS. FREEMAN and the Board members: "I have left him a voicemail and  
20 will advise once I hear back from him." MR. BORDERS replied to all on the e-mail chain: "The  
21 AC in 200-2900 has been malfunctioning for 3 days now. Mark was out yesterday but I never  
22 received the cause/cure download."<sup>48</sup> MS. PUGH responded she would inquire "on this one as well  
23 when I hear back from him." Shortly thereafter, MS. PUGH relayed to all MS. CHIEN'S reply:

24 Ok everyone,

25 I just got of (sic) the phone with Mark just at this very moment. First of all Catherine is  
26 misinformed as usual. The issue from June 29<sup>th</sup> was on the North Unit and it has been  
27 resolved and is working normally.

28 Our current problem is with the South unit which services Gary's [BORDERS] unit and  
Catherine's south end.

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<sup>47</sup>See Plaintiff's Trial Exhibit 103.

<sup>48</sup>*Id.*

1 There is a condenser coil refrigerant leak and it is currently operating at 50% capacity.  
2 Unfortunately the condenser coil is an extremely complicated and intricate bar of the A/C  
3 rooftop unit. To take it apart you would have to take the entire unit offline as in 0% capacity.  
4 Assuming you find the cause of the leak there is no guarantee that one will up later or that  
5 you found them all. Mark is strongly advising that we evaluate replacing the coil (which  
6 requires a crane) in the fall when it cools down.

7 We have 2 options: 1) Do nothing and operate at 50% capacity because that is the best we  
8 can do. You don't want to have zero A/C capacity in 115 degree heat.

9 2) We could dump refrigerant into the system and hoping it is a slow leak so we could have  
10 100% capacity for awhile (sic). It's kind of like when your car has an oil leak and instead of  
11 fixing it you just keep on putting more oil into it. The cost of putting a load of refrigerant is  
12 going to be \$2,000. The problem is that you don't know how long that it will last. It might  
13 last a day, a week, or a month or two. I think we should do it and see how bad of a leak we  
14 have.<sup>49</sup>

15 26. MS. JORDAN'S next communication concerning HVAC issues was October 20,  
16 2015.<sup>50</sup>

17 Dear Stephanie

18 This is Catherine Jordan with Horizon Holdings in 2900 West Horizon Ridge 101. Our air  
19 conditioning has not work (sic) correctly in over the year I have been here. I have written  
20 several emails. I would like to schedule an afternoon appt (sic) when someone from your  
21 company who can come walk with me on my issues. This problem is interrupting my  
22 business and has for the past year. Please let me know you received this e-mail.

23 This e-mail was forwarded to MS. CHIEN, who, in turn, sent it to MR. KAPETANSKY. MR.  
24 KAPETANSKY responded on October 24, 2016:

25 Hi all,

26 I spoke with Catherine and followed up with marissa (sic) last week. Catherine is still  
27 complaining her perimeter office space being insufficiently cooled, although I've been in the  
28 suite on different occasions and the problems are more intermittent than she is  
acknowledging. Her employees are usually happy when I check with them the times I  
happen to see someone in the halls.<sup>51</sup> Hopefully when the repairs are complete to RTU 2 and  
the capacity is restored we can quiet her concerns again.

<sup>49</sup>*Id.*

<sup>50</sup>See Joint Trial Exhibit 48, E-mail exchange between MS. JORDAN, MS. FREEMAN, MS. CHIEN and MR. KAPETANSKY between November 12, 2015 and October 24, 2016, admitted into evidence.

<sup>51</sup>MR. KAPETANSKY testified he had told the ASSOCIATION'S Board his belief MS. JORDAN was exaggerating the conditions in Plaintiff's unit.

1 My intention was to perform the repairs on RTU 2 today but the weather is challenging.  
2 Tomorrows (sic) forecast is clear skies. I'll update you when repairs are complete and we'll  
3 see how it goes.<sup>52</sup>

4 27. The evidence presented shows there were no further HVAC complaints made by MS.  
5 JORDAN, HORIZON HOLDINGS 2900, LLC, its tenants and employees between October 20,  
6 2016 and January 12, 2017 when MS. JORDAN wrote the following e-mail to MS. PUGH.<sup>53</sup>

7 Lori

8 ...Also I want to confirm that he (sic) A/C and heating issues I have had for the past year are  
9 unresolved. As per Brandon yesterday he said that he and Mark agree that I have flow issues  
10 getting through to my ducts. He stated that the owners of the other units would not let them  
11 in. I own the bottom half of the building so its (sic) not me. I spoke with the other two  
12 owners down here and they stated it wasn't them not letting them in. I went to Ameriprise  
13 financial and they stated of course they would let them in if they were approached. That  
14 leaves two owners that need to be contacted and the (sic) would be western Medical  
15 associates and the Marketing firm upstairs. Would you please contact both of those to  
16 facilitate Mark entry into their units if need be. It should not be hard as I understand both of  
17 them are board members. I need follow up on all these issues I have addressed.

18 28. On January 17, 2017, MR. KAPETANSKY wrote MS. JORDAN a report of the  
19 findings and recommendations:

20 Good morning,

21 Based on our findings from 1/11 we note that temps in the office space are within normal  
22 guidelines for space comfort. Temperature set points are in-line with facility energy  
23 conservation goals. Please see the attached service invoice.

24 Attached are the photos that Brandon took on Wednesday, January 11 at about 12:45  
25 in the afternoon. He verified normal temps in the afternoon after his first trip in earlier the  
26 same morning. The attached photos also include tag info showing date and geo location.  
27 Also attached is a photo I took from December 2015 which clearly shows one of your VAV  
28 thermostats at ceiling height, that is the stat serving the center conference room area. This  
situation was never corrected. I've instructed a number of times in the past that the stat has  
to be moved to a normal temperature sensing heat to prove normal space temp comfort, if the  
unit is still operating it's going to steal capacity from elsewhere in your suite to try and  
satisfy the temperature set point from 10 feet off the floor. Needless to say, that's a tall order  
that would be inhibiting performance elsewhere in your suite.

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<sup>52</sup>*Id.*

<sup>53</sup>See Joint Trial Exhibit 46, E-mail exchange between MS. JORDAN and MS. PUGH, admitted into evidence.

1 You still have this unit and one other (photo of zone sensor also attached) that require  
2 replacement of the VAV actuator to ensure control and calibration capability. Without a  
3 complete retrofit of all the VAV actuators in your suite, you cannot achieve full control and  
4 maximize targeted comfort to the space. We cannot guarantee any operation at all from  
5 original VAV actuators, not heating, not cooling. Further, your suite is fully ¼ of the  
6 building at 2900 W. Horizon Ridge Pkwy. The suites elsewhere on the property campus are  
7 all designed to operate with 12 total VAV terminal units for that square footage, you have 11.  
8 Your north office space, where you reside as well as the ladies in the accounting area is  
9 served inadequately with one VAV providing air to 5 separate diffusers spread out across 4  
10 separate rooms (your original corner office, Laura's [WAALK] office, your new office and  
11 your new office restroom). The 12<sup>th</sup> VAV was likely removed during your T.I. where (along  
12 with the legacy of the thermostat 10 feet off the floor) we previously corrected one VAV that  
13 did not have a zone sensor installed at all (where we provided both the sensor and  
14 termination of wiring we found simply laying in the ceiling) and another that had zone sensor  
15 wire ran to a box in the wall and left there, unterminated. We have worked to correct duct  
16 work runs, air flow sensing faults and failed heating assemblies in your suite along with  
17 providing only a partial retrofit of VAV actuators.<sup>54</sup>

11 The pricing to complete the remaining 2 actuators and zone sensors (including installation  
12 and programming) would be \$2300.00.

13 Pricing to install a 12<sup>th</sup> VAV serving north office space (requiring updated drawings, high  
14 and low volt wiring infrastructure, duct work modification and space termination, terminal  
15 unit installation, actuator installation and programming as well as modification of existing  
16 duct runs to properly balance load) would be \$7800.00.

16 Detailed quotations are available should you decide to perform these strongly recommended  
17 improvements, pricing is included here so you can shop around if you like. Let us know if  
18 you'd like to proceed.

18 The evidence adduced at trial showed HORIZON HOLDINGS 2900, LLC never arranged for the  
19 installation of the twelfth VAV to serve the north office space.

20  
21 29. MS. JORDAN retained the services of an electrical contractor, DON L. GIFFORD of  
22 GIFFORD CONSULTING GROUP (also referred to as "GCG" within the evidence), and HARVEY  
23 H. IRBY, P.E. in or about March 2017 to evaluate and analyze the HVAC system in the 2900  
24 Building and particularly Suite 101. Both MR. GIFFORD and MR. IRBY eventually were retained  
25 as Plaintiff's electrical and mechanical engineering experts in this litigation. The parties stipulated  
26

27  
28 <sup>54</sup>See Defendant's Trial Exhibit 607, MR. KAPETANSKY'S e-mail to MS. JORDAN dated January 18, 2017,  
admitted into evidence.



1 to the admission of these gentlemen's "Preliminary HVAC Building Analysis, Suite 101" dated  
2 March 27, 2017 into evidence.<sup>55</sup> Both MR. GIFFORD and MR. IRBY concluded the available cubic  
3 foot per minute (also referred to as "CFM") within Suite 101 is inadequate "based not only on the  
4 results of our calculations, but are substantiated by [MS. JORDAN'S] descriptions of the inadequacy  
5 of the system to provide a reasonable environment in which to work and to serve ...clientele."  
6 They recommended HORIZON HOLDINGS 2900, LLC retain a contractor to add a twelfth (12<sup>th</sup>)  
7 VAV to the suite's northeast office, including an in-office thermostat, both of which would be  
8 Plaintiff's responsibility as the unit's owner pursuant to the CC&Rs. "This will require a  
9 modification to the existing medium-pressure ductwork. VAV 12 and the appropriate interfacing  
10 thermostat will need to be attached to System 2." MR. GIFFORD and MR. IRBY also  
11 recommended Plaintiff lower the height of the existing conference room thermostat to standard  
12 height, which, again, would be Plaintiff's responsibility.<sup>56</sup> In addition, MR. GIFFORD and MR.  
13 IRBY opined: "The 6-ton shortfall we delineate above is the result of building system inadequacies  
14 in design and/or operation as substantiated by Table 1 and the succeeding analysis. There is no  
15 evidence that the building HVAC system was ever properly commissioned, an industry standard for  
16 this quality and size of building. Hence, it is essential that property management commission and  
17 balance the system. Based on this assumption, it is our opinion that the system, once properly  
18 commissioned and balanced is capable of meeting the standard demands imposed by your office  
19 square footage." In rendering their opinions, MR. GIFFORD and MR. IRBY reviewed and relied  
20 upon mechanical drawings and construction plans for the 2904 Building, but not the 2900 Building  
21 where Plaintiff's office suite is located.<sup>57</sup> In this regard, MR. GIFFORD noted he saw nothing to  
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26 <sup>55</sup>See Joint Trial Exhibit 17 stipulated as admitted into evidence.

27 <sup>56</sup>*Id.*, p. 4.

28 <sup>57</sup>Only building plans for the 2904 Building were offered for admission into evidence. This Court understands MS. JORDAN went to the City of Henderson Building Department to acquire a copy of the Master Plan, and she

1 suggest the 2904 and 2900 Buildings were constructed differently. MR. IRBY admitted he had no  
2 intimate knowledge of the air conditioning systems in the 2900 Building and each building should  
3 have their individual or separate plans. He also noted the office in question was typical space that  
4 did not generate a lot of heat. He saw no obvious problems with installation.

5           30. WILLIAM BIRD, an expert in HVAC and plumbing, testified on behalf of the  
6 ASSOCIATION. He was retained to review the report authored by MR. GIFFORD and MR. IRBY.  
7 He was not provided any documents, such as mechanical engineering and other building plans, for  
8 the 2900 Building. He testified there had to be existing plans as one could not acquire a permit  
9 without the submission of plans. He would not have rendered an opinion using plans of a different  
10 building. Further, he did not know how MR. GIFFORD reached the conclusion there was a 6-ton  
11 shortfall when neither he nor MR. IRBY did a design. MR. BIRD also was critical of MR. IRBY'S  
12 position Plaintiff's suite was a "standard office," and the fact MR. GIFFORD inputted information  
13 for standard office space when conducting load calculations using a HAP<sup>58</sup> software program, a tool  
14 used by engineers to estimate loads and design HVAC systems. In MR. BIRD'S view, Plaintiff's  
15 unit is not a standard office; it houses several employees and patients, and consist of medical suites  
16 with examination rooms and equipment, such as EKGs, all of which generate heat.<sup>59</sup> In short,  
17 Plaintiff's suite has different loads than a typical office. MR. BIRD further opined the existing duct  
18 work should have been moved during the TI renovation if Plaintiff had intended to change the  
19 previous office space to medical suites. In addition, the server room housing Plaintiff's computers  
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24 received only that for the 2904 Building, although some mechanical engineering drawings for the 2900 Building were  
25 contained in the city's file for 2904. No other efforts were made during the course of discovery by the Plaintiff to  
26 acquire plans for the 2900 Building. Defense counsel subpoenaed the 2900 Building plans and received those for the  
27 2904 Building. During the course of the trial, it became apparent Plaintiff and its experts were relying upon 2904  
28 Building plans as those relating to the 2900 Building could not be found. MR. BRYAN of RYCON CONSTRUCTION,  
LLC, a witness to the litigation, went to the City of Henderson Building Department as he had received a telephone call  
from MS. JORDAN there was some confusion regarding the plans.

<sup>58</sup>"HAP" is the acronym for "hourly analysis program."

<sup>59</sup>"EKGs" is the acronym for "electrocardiograms."

1 should have been addressed; in this regard, MR. BIRD said it was not uncommon for a unit to have a  
2 stand-alone HVAC to specifically service such needs.

3 MR. BIRD also explained RTUs, at discharge, pushes air through the primary ducting to the  
4 medium pressure ducting, which, in turn, pushes air to the units' VAVs. A VAV will only output air  
5 being delivered to it. A VAV can decrease amount of air received, but cannot increase it. He found  
6 MR. GIFFORD at fault for not checking to see if the unit's VAVs were fully open. MR. BIRD also  
7 noted the unit's thermostat in the conference room was misplaced too high, ten (10) feet above the  
8 floor when it should be located "where the people are;" 48 inches is the standard height for  
9 thermostat placement. All in all, MR. BIRD opined the air conditioning system could be repaired  
10 without Plaintiff suffering a market loss.  
11

12 31. HORIZON HOLDINGS 2900, LLC presented the testimony of an appraisal expert,  
13 MATTHEW LUBAWY, MAI, CVA, to attest to its losses and damages. As set forth in his  
14 appraisal report,<sup>60</sup> MR. LUBAWY opined, if there were no HVAC issues, the market value of  
15 Plaintiff's 5,206 square foot office as of February 7, 2019 is \$1,800,000;<sup>61</sup> assuming the HVAC  
16 issue cannot be resolved, the value decreases to \$990,000 or is \$810,000 less. Loss in rental income  
17 and increased expenses in light of the unusable area of 2,237 square feet in the south portion of the  
18 office from August 1, 2015 through January 24, 2019 was \$225,000. In rendering his opinion, MR.  
19 LUBAWY noted: "Ideally, the 'cost to cure' would be considered in this situation with the  
20 installation of a new HVAC unit. However, given the condominium ownership of the subject office,  
21 this may not be allowed."<sup>62</sup> In this regard, MR. LUBAWY admitted he made "extraordinary  
22 assumptions the HVAC issue could never be resolved and estimated the value of the subject  
23  
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26 <sup>60</sup>See Joint Trial Exhibit 24, Appraisal Report by VALBRIDGE PROPERTY ADVISORS, stipulated by the  
27 parties as admitted into evidence.

28 <sup>61</sup>MR. LUBAWY testified he appraised the subject property in December 2017 at a value of \$1,700,000. MS. JORDAN did not tell him there were HVAC issues at that time.

<sup>62</sup>*Id.*

1 property based on the revised size of 3,850 square feet (6,087 less the 2,327 unusable square feet).

2 As set forth by MR. LUBAWY in his report:

3 The subject's HVAC issues have been ongoing for several years and have not been resolved.  
4 It would be difficult for the subject owner to install their own HVAC system due to the  
5 condominium ownership which would likely prevent installation of ground-mounted or roof-  
6 mounted units. Therefore, we have employed an extraordinary assumption the HVAC issue  
could never be resolved. Use of this assumption would have an affect (sic) on the  
conclusions herein if found to be false.<sup>63</sup>

7 MR. LUBAWY testified he considered the "cost to cure," but did not investigate whether the HVAC  
8 maladies could be repaired. He also indicated if the assumptions change, his opinion as to market  
9 value also was subject to amendment. He also testified he did not review any leases, and his opinion  
10 as to lost rents were not based upon "actual" loss, but rather, a consideration of how the market  
11 reacts. He acknowledged the entities renting space from HORIZON HOLDINGS 2900, LLC are  
12 controlled by MS. JORDAN; that is, the leases were not arms-length transactions, and they, in  
13 essence, were "pocket to pocket."  
14

### 15 CONCLUSIONS OF LAW

16 1. As noted above, HORIZON HOLDINGS 2900, LLC has sued the ASSOCIATION,  
17 asserting three causes of action: (1) breach of contract, (2) breach of covenant of good faith and fair  
18 dealing and (3) declaratory relief. NRS 30.030 specifically provides the courts shall have the power  
19 to declare rights, status and other legal relations whether or not further relief is or could be claimed.  
20

21 The court's declaration may be either affirmative or negative in form and effect; such declaration  
22 shall have the force and effect of a final judgment or decree.  
23

24 2. In this case, HORIZON HOLDINGS 2900, LLC asserts a "breach of contract" claim  
25 against the ASSOCIATION, arguing it is entitled to certain rights and privileges by way of the  
26 Declaration or CC&Rs, including but not limited to the full benefit of all common elements,  
27

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<sup>63</sup>*Id.*

1 “including the cool air provided by the HVAC.” Such is being refused by the ASSOCIATION,  
2 resulting in breach and causing Plaintiff to suffer damages.<sup>64</sup> While, by the terms of the CC&Rs,  
3 NRS Chapter 116 does not apply as the Project is a commercial or non-residential common-interest  
4 community, this chapter’s statutory scheme nevertheless is instructive in determining whether  
5 CC&Rs here impose contractual obligations between HORIZON HOLDINGS 2900, LLC and the  
6 ASSOCIATION.

7  
8 3. NRS 116.2101 permits the creation of a common-interest community “by recording a  
9 declaration executed in the same manner as a deed and, in a cooperative, by conveying the real  
10 estate subject to that declaration to the association.” A declaration must contain a number of  
11 required statements<sup>65</sup> and “may contain any other matters the declaration considers appropriate.”  
12 NRS 116.2105(2). “CC&Rs become a part of the title to property.” NRS 116.41095(2). By law, a  
13 person who buys a home subject to CC&Rs must receive as information statement warning “[b]y  
14 purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your  
15 lifestyle and freedom of choice” and the CC&Rs “bind you and every future owner of the property  
16 whether or not you have read them or had them explained to you.” *Id.* The statement must further  
17 advise the prospective home buyer “[t]he law generally provides for a 5-day period in which you  
18 have the right to cancel the purchase agreement.” NRS 116.41095(1).  
19  
20

21 4. The proposition CC&Rs create contractual obligations, in addition to imposing  
22 equitable servitudes, is widely accepted. U.S. Home Corporation v. Michael Ballesteros Trust, 134  
23 Nev. 180, 183, 415 P.3d 32, 36 (2018), *citing* Restatement (Third) of the Law of Property:  
24 Servitudes, ch. 4 intro. Note (Am. Law Inst. 2000) (“one of the basic principles underlying the  
25 Restatement is that the function of the law is to ascertain and give effect to the likely intentions and  
26

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27 <sup>64</sup>*Id.*

28 <sup>65</sup>*See* NRS 116.2105(1).

1 legitimate expectations of the parties who create servitudes, *as it does with respect to other*  
2 *contractual arrangements.*") (Emphasis added). By accepting the deed or other possessory interest  
3 in a unit, the owner manifests his or her assent to the CC&Rs.<sup>66</sup> Thus, this Court accepts the premise  
4 CC&Rs can impose contractual obligations upon both the association and unit owner.

5       5. Generally speaking, when a contract is clear on its face, it "will be construed from the  
6 written language and enforced as written." Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771,  
7 776, 121 P.3d 599, 603 (2005). The Court has no authority to alter the terms of an unambiguous  
8 contract. *Id.*, citing Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).<sup>67</sup> An  
9 ambiguity in the agreement's terms, however, shall be resolved against the contract's drafter. *See*  
10 Sullivan v. Dairyland Insurance Company, 98 Nev. 364, 366, 649 P.2d 1357, 1358 (1982).

11       6. A breach of contract occurs where a party does not perform a duty arising under the  
12 agreement, and such failure is material. *See* Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d  
13 1259, 1263 (2000), *reversed on other grounds*, Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

14       7. As pertinent to this case, the CC&Rs' Article I entitled "Definitions" specifically  
15 defines certain verbiage. Section 1.11 defined "Common Elements" as:

16       ...all portions of the Project, other than the Units, and all improvements thereon. Subject to  
17 the foregoing, Common Elements may include, without limitation: Building roof, exterior  
18 walls, and foundations, hardscape and parking area, greenbelt, all water and sewer systems,  
19 lines and connections, from the boundaries of the Project, to the boundaries of Units (but not  
20 including such internal lines and connections located inside Units); pipes, ducts, flues,  
21 chutes, conduits, wires, and other utility systems and installations (other than outlets located  
22 within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air  
23 conditioning, as installed by Declaration for common use of Units within each Building (but  
24 not including HVAC which serves a single Unit exclusively).

25       <sup>66</sup>Also see CC&Rs' Section 16.1: "The covenants and restrictions of this Declaration shall run with and bind the  
26 Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this  
27 Declaration, their respective legal representatives, successor Owners and assigns."

28       <sup>67</sup>In interpreting a contract, "the court shall effectuate the intent of the parties, which may be determined in light  
of the surrounding circumstances if not clear from the contract itself." Sheehan & Sheehan v. Nelson Malley &  
Company, 121 Nev. 481, 488, 117 P.2d 219, 224 (2005), *quoting* NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151,  
1158, 946 P.2d 163, 167 (1997), *and* Davis v. National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987).

1 “Exclusive Use Areas” is defined in Section 1.17 in pertinent part:

2 ...any portion of the Project, other than Units, and allocated exclusively to individual Units,  
3 together with such HVAC designed to serve a single Unit, but located outside of the Unit’s  
4 boundaries. Use, maintenance, repair and replacement of Exclusive Use Areas shall be as set  
5 forth in this Declaration. *If any chute, flue, duct, wire, conduit, bearing wall, bearing column*  
6 *or any other fixture lies partially within and partially outside the designated boundaries of a*  
7 *Unit, any portion respectively thereof serving only the Unit is an Exclusive Use Area*  
8 *allocated solely to that Unit, and any portion respectively thereof serving more than one Unit*  
9 *or any portion of the Common Elements is part of the Common Elements. ... (Emphasis*  
10 *added)*

11 “HVAC” is defined in Section 1.19 as:

12 ...heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on  
13 easements in Common Elements, which serve one Unit exclusively, shall constitute  
14 Exclusive Use Areas as to such Unit, pursuant to Section 2.10, ...

15 “Unit” is defined in Section 1.34 as:

16 ...each Unit space, and shall consist of a fee simple interest having the following boundaries  
17 all as originally constructed by Declarant and consisting of: (a) the exterior surface of  
18 exterior walls; (b) the exterior surface of interior walls that are not party walls; (c) the  
19 exterior surface of exterior windows and doors; (d) the interior surface of party walls; (e) the  
20 interior surface commencing with and including the finished floor; (f) the interior surface  
21 commencing with and including the finished ceiling; and (g) the airspace encompassed  
22 within the foregoing boundaries; together with the exclusive right to use, possess and occupy  
23 the Exclusive Use Areas (if any) serving such Unit exclusive; an undivided pro-rata  
24 fractional interest as tenants in common in the Common Elements (other than any Common  
25 Element conveyed in fee to the Association); easements of ingress and egress over and across  
26 all entry or access areas and of use and enjoyment of all other Common Elements; and  
27 membership and voting rights in the Association as set forth in the Governing Documents  
28 (which membership and vote shall be appurtenant to the Unit).

8. Article 2 of the CC&Rs addresses “Owners’ Property Rights; Easements.” Of  
significance here, Section 2.10 addresses easements and property rights related to HVAC; it states:

Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association,  
for the purpose or maintenance, repair and replacement of any heating, ventilation, and/or air  
conditioning and/or heating equipment and systems (“HVAC”) located in the Common  
Elements; *provided, however, that no HVAC shall be placed in any part of the Common*  
*Elements other than its original location as installed by Declarant, unless the approval of the*  
*Board is first obtained.* Notwithstanding the foregoing or any other provision in this  
Declaration, any HVAC which is physically located within the Common Elements, but  
which serves an individual Unit exclusively, shall constitute a Exclusive Use Area as to the  
Unit exclusively served by such HVAC, and the Owner of the Unit shall have the duty, at the

1 Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving  
2 the Unit, subject to the original appearance and condition thereof as originally installed by  
3 Declarant, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads  
underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common  
Elements. (Emphasis added)

4 9. Article 6, Section 6.1 provides the ASSOCIATION has the power and duty to  
5 "reasonably cause the Common Elements to be maintained in a neat and attractive condition, and  
6 kept in good repair, ..." Article 9, Section 9.1 sets forth each Owner shall, at its sole expense, keep  
7 the interior of its Unit, equipment and appurtenances in good, clean and sanitary order and condition.  
8

9 10. Article 16, "Additional Provisions," particularly Section 16.12 entitled "Limited  
10 Liability" sets forth:

11 Except to the extent, if any, expressly prohibited by applicable Nevada law, none of  
12 Declarant, Association, ARC, Declarant and/or Association, and none of their respective  
13 directors, officers, any committee representatives, employees, or agents, shall be liable to  
14 any Owner or any other Person for any action or for any failure to act with respect to any  
15 matter if the action taken or failure to act was reasonable or in good faith. The Association  
shall indemnify every present and former Officer and Director and every present and former  
committee representative against all liabilities incurred as a result of holding such office, to  
the full extent permitted by law. (Emphasis added)

16 11. In this case, HORIZON HOLDINGS 2900, LLC claims it suffered loss of rents and  
17 property value as the ASSOCIATION has refused or failed to abide by its responsibility under the  
18 CC&Rs to provide Plaintiff its *pro rata* share of the cooler air. Plaintiff's position is based upon the  
19 opinions rendered by its electrical and mechanical engineering experts, MR. GIFFORD and MR.  
20 IRBY, respectively. While these experts did opine "[t]he 6-ton shortfall we delineate...is the result  
21 of building system inadequacies in design and/or operation as substantiated by Table 1 and the  
22 succeeding analysis," and "[t]here [was] no evidence that the building HVAC system was ever  
23 properly commissioned" or balanced, they also noted the lack of cooler air was caused, in part, by  
24 Plaintiff's own failure to take measures to remedy the system for which it is responsible pursuant to  
25 the CC&Rs. For example, these experts' report dated March 2017 indicates HORIZON  
26  
27  
28



1 HOLDINGS 2900, LLC should have retained a contractor to add a twelfth (12<sup>th</sup>) VAV to the suite's  
2 northeast office, including an in-office thermostat, which all evidence showed Plaintiff never did.  
3 Further, these experts also recommended Plaintiff lower the height of the existing conference room  
4 thermostat from its current location near the ceiling to standard height, another task Plaintiff did not  
5 undertake in efforts to remedy the situation. In short, these experts opined the HVAC issues are and  
6 were caused in part by HORIZON HOLDINGS 2900, LLC'S inaction; they are and were not the  
7 solely caused by the ASSOCIATION'S refusal or failure to balance or "properly commission" the  
8 building's HVAC system.  
9

10 12. Further, while MR. GIFFORD and MR. IRBY opined Plaintiff suffered a 6-ton  
11 shortfall in air given their assessment of building system inadequacy in design and operation, the  
12 evidence showed such was based, at least in part, upon their review of the 2904 Building plans.  
13 They were not afforded the opportunity to review the 2900 Building plans and specifications and  
14 made the supposition the 2900 and 2904 Buildings were identical. Such an assumption, however,  
15 dismisses the fact the two buildings are unique, by way of, *inter alia*, grading, location and facing.  
16 Further, the evidence showed the buildings' interiors or office suites were not identical or utilized in  
17 the same way. For example, Suites 100 and 110 in the 2900 Building cover 4,052 square feet  
18 (7.43% of building), whereas Suites 100 and 110 in the 2904 Building embody 3,989 square feet  
19 (7.21% of building).<sup>68</sup> Suites 101, 111, 120 and 121 in the 2900 Building occupy 9,664 square feet  
20 (17.5% of building) and the same numbered suites in the 2904 Building comprise 9,727 square feet  
21 (17.6% of building). While the business of HORIZON HOLDINGS 2900, LLC involves the  
22 leasing to medical offices providing on-site health services and diagnostic testing to patients, the  
23 work of its neighbor, MR. BORDERS, consists of market research. As MR. BORDERS testified,  
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25  
26

27  
28 <sup>68</sup>See Joint Trial Exhibit 2, First Amendment to Declaration of Commercial Office Subdivision Covenants,  
Conditions & Restrictions and Reservation of Easements for Shea At Horizon Ridge, Bates No. TAM0352-TAM0353.

1 every build-out is different. In short, the opinions rendered by MR. GIFFORD and MR. IRBY  
2 Plaintiff suffered a 6-ton shortfall given the building's inadequacy in design and operation are  
3 somewhat flawed given their reliance upon another building's construction plans and assumptions  
4 the 2900 and 2904 Buildings were identical. Further, MR. GIFFORD'S load calculations are  
5 likewise flawed as such were based upon data Plaintiff's suite was typical office space, and ignored  
6 the demands of medical facilities.

7  
8 13. Plaintiff's experts were not the only ones to cast partial blame upon Plaintiff for its  
9 HVAC issues. Defense expert, MR. BIRD, noted it was not uncommon for office occupants to  
10 acquire a stand-alone HVAC unit to service the computer server room. While Plaintiff proposed it  
11 was precluded from installing its own separate HVAC unit within the Common Elements to service  
12 its medical suites, the evidence belied that supposition. Section 2.10 of the CC&Rs provided "no  
13 HVAC shall be placed in any part of the Common Elements other than its original location as  
14 installed by Declarant, *unless* the approval of the Board is first obtained." (Emphasis added) No  
15 evidence was presented to suggest HORIZON HOLDINGS 2900, LLC ever sought the approval of  
16 the Board to install a stand-alone HVAC unit within the Common Elements; it follows, then,  
17 Plaintiff also was never denied Board approval. Further, precedent showed the Board had never  
18 denied such approval to any of its owners; if anything, MR. BORDERS testified the  
19 ASSOCIATION Board had granted approval at least twice before. Stand-alone HVAC units did  
20 exist on the rooftops of both the 2900 and 2904 Buildings. Further, MR. KAPETANSKY also noted  
21 it appeared air shortfall had also been caused by RYCON CONSTRUCTION, LLC when it  
22 constructed the TIs in Plaintiff's office suite in 2015.

23  
24 14. While the evidence showed the lack of cool air to Plaintiff's suite was caused, in part,  
25 by HORIZON HOLDINGS 2900, LLC not installing a twelfth VAV and/or stand-alone HVAC, and  
26 physically lowering its thermostat in the conference room from ceiling height to 48 inches from the  
27  
28

1 floor, evidence was presented by way of MR. BUFORD'S recommendation the building's HVAC  
2 system be balanced. Such recommendation was not ignored by the ASSOCIATION, and the  
3 evidence showed there was an intention for balancing to take place. However, prior to incur the  
4 expenses of balancing the entire building, the ASSOCIATION'S Board decided such would take  
5 place after certain repair work and replacement of old and deficient equipment was completed. In  
6 this Court's view, a decision to balance the system after the deficient HVAC equipment by both the  
7 ASSOCIATION and owners was repaired and/or replaced is reasonable and does not constitute a  
8 breach of the CC&Rs. Liability on part of the ASSOCIATION and its Board members cannot stand  
9 where their action taken or their failure to act is reasonable and in good faith. See CC&Rs Section  
10 16.12. This Court concludes the ASSOCIATION did not breach the CC&Rs or contract with  
11 HORIZON HOLDINGS 2900, LLC.  
12

13           15. Notwithstanding its conclusion actual breach is lacking, this Court also finds  
14 HORIZON HOLDINGS 2900, LLC did not suffer damages or losses as a result of the  
15 ASSOCIATION'S action or inaction. With respect to Plaintiff's alleged loss in property value,  
16 HORIZON HOLDINGS 2900, LLC'S appraiser, MR. LUBAWY, made certain assumptions, such  
17 as the impossibility of the HVAC system being remedied to provide Plaintiff adequate cool air,  
18 when he determined Plaintiff suffered \$810,000 loss in fair market value. MR. LUBAWY'S  
19 assumptions were flawed as the evidence showed the HVAC systems within the Common Elements  
20 and Owners' exclusive use could be repaired and/or replaced. Further, it was not impossible, given  
21 the condominium restrictions, for HORIZON HOLDINGS 2900, LLC to seek Board approval to  
22 install a stand-alone HVAC system. MR. LUBAWY admitted his opinion as to fair market value  
23 would change if his assumptions were not correct. With respect to loss of rents, there was no  
24 evidence Plaintiff suffered an actual deficit. The leases between HORIZON HOLDINGS 2900,  
25 LLC and its tenants were "pocket to pocket," meaning all entities were controlled by one managing  
26  
27  
28

1 member/principal, MS. JORDAN. No evidence was presented to show the tenants were unable to  
2 pay the landlord rent; if anything, the evidence showed at least one tenant, QUALITY NURSING,  
3 LLC, had adequate cash flow to pay rent as it loaned money to its landlord on a consistent basis. To  
4 wit, notwithstanding this Court's conclusion the ASSOCIATION did not breach the CC&Rs or  
5 contract, the First Claim for Relief cannot stand as the preponderance of the evidence showed  
6 Plaintiff did not suffer damages resulting therefrom.  
7

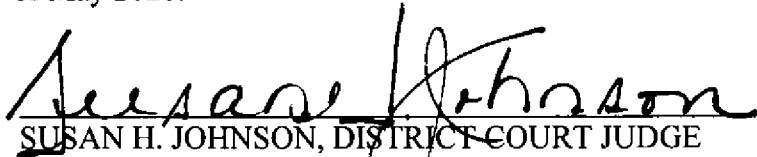
8       16. HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied  
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair  
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of  
11 America, 104 Nev. 587, 592 n.1, 763 P.2d 673, 676 n. 1 (1988). Under the implied covenant of  
12 good faith and fair dealing, each party must act in a manner that is faithful "to the purpose of the  
13 contract and the justified expectations of the other party." Morris v. Bank of America, 110 Nev.  
14 1274, 1278, 866 P.2d 454, 457 (1994), *quoting* Hilton Hotels v. Butch Lewis Productions, 107 Nev.  
15 226, 234, 808 P.2d 919, 923 (1991). Such position is true even where, ultimately, there is no breach  
16 of contract; a plaintiff "may still be able to recover damages for breach of the implied covenant of  
17 good faith and fair dealing." Hilton Hotels, 107 Nev. at 232, 808 P.2d at 922. To wit, whether a  
18 breach of the *letter* of the contract exists, the implied covenant of good faith is an obligation  
19 independent of the consensual contractual covenants. Morris, 110 Nev. at 1278, 886 P.2d at 457.  
20 Given the evidence presented in this case, this Court concludes the ASSOCIATION acted in a  
21 manner faithful to the CC&Rs' purpose and justified expectations of HORIZON HOLDINGS 2900,  
22 LLC. As noted above, the ASSOCIATION and its property manager, TAM, was responsive  
23 whenever MS. JORDAN complained about the lack of cool air in Plaintiff's medical suites. The  
24 ASSOCIATION made necessary repairs to the old and deficient equipment. Its HVAC vendors  
25 informed MS. JORDAN what needed to be done to accord Plaintiff and its tenants adequate cooling  
26  
27  
28

1 of air. Accordingly, this Court finds in favor of the ASSOCIATION as against HORIZON  
2 HOLDINGS 2900, LLC with respect to Plaintiff's Second Claim for Relief.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** judgment is rendered in  
5 favor of Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION as against Plaintiff  
6 HORIZON HOLDINGS 2900, LLC, whereby Plaintiff takes nothing by way of its Second Amended  
7 Complaint on file herein.  
8

9 DATED this 26<sup>th</sup> day of May 2020.

10   
11 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

12 **CERTIFICATE OF SERVICE**

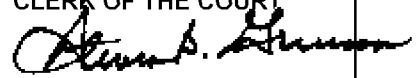
13 I hereby certify, on the 26<sup>th</sup> day of May 2020, I electronically served (E-served), placed  
14 within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true  
15 and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
16 JUDGMENT to the following counsel of record, and first-class postage was fully prepaid thereon:  
17

18 ERIC ZIMBELMAN, ESQ.  
19 PEEL BRIMLEY, LLP  
20 3333 East Serene Avenue, Suite 200  
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27 

28 Laura Banks, Judicial Executive Assistant



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Telephone: 702-892-3500  
Facsimile: 702-386-1946

*Attorneys for Plaintiff*  
*HORIZON HOLDINGS 2900, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

HORIZON HOLDINGS 2900, LLC, a Nevada  
Limited Liability Company,

Plaintiff,

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, a Domestic Non-Profit  
Corporation; TAYLOR MANAGEMENT  
ASSOCIATION, a Nevada Limited Liability  
Company;

Defendants.

CASE NO.: A-17-758435-C  
DEPT. NO.: XXII

**CASE APPEAL STATEMENT**

**1. Name of appellant filing this case appeal statement:**

Horizon Holdings 2900, LLC ("Horizon")

**2. Identify the Judge issuing the Decision, Judgment, or Order appealed from:**

Honorable Susan Johnson

///

1           **3. Identify each Appellant and the name and address of counsel for each**  
2           **Appellant:**

3           Horizon Holdings 2900, LLC (“Horizon”)  
4           Eric B. Zimbelman, Esq. (Bar No. 9407)  
5           c/o PEEL BRIMLEY LLP  
6           3333 E. Serene Ave, Suite 200  
7           Henderson, NV 89074  
8           Telephone: (702) 990-7272

9                           And

10          Matthew D. Ekins, Esq. (Bar No. 11114)  
11          Nathan E. Lawrence, Esq. (Bar No. 15060)  
12          GALLIAN WELKER & BECKSTROM, L.C.  
13          540 East St. Louis Avenue  
14          Las Vegas, Nevada 89104  
15          Telephone: 702-892-3500

16           **4. Identify each Respondent and the name and address of appellate counsel, if**  
17           **known, for each Respondent (if the name of a Respondent's appellate counsel is unknown,**  
18           **indicate as much and provide the name and address of that respondent's trial counsel):**

19           Respondent: Shea at Horizon Ridge Owners Association (“Shea”)

20           Attorneys for Respondent:

21           Robert E. Schumacher, Esq. (Bar No. 7504)  
22           Brian K. Walters, Esq. (Bar No. 9711)  
23           GORDON REES SCULLY MANSUKHANI LLP  
24           300 South Fourth Street, Suite 1550  
25           Las Vegas, NV 89101  
26           Telephone: (702) 577-930

27           **5. Indicate whether any attorney identified above in response to question 3 or 4**  
28           **is not licensed to practice law in Nevada and, if so, whether the District Court granted that**  
29           **attorney permission to appear under SCR 42 (attach a copy of any District Court order**  
30           **granting such permission):**

31           Not Applicable.

32           **6. Indicate whether Appellant was represented by appointed or retained counsel**  
33           **in the District Court:**

Horizon retained PEEL BRIMLEY LLP and GALLIAN WELKER & BECKSTROM, L.C. as counsel.

**Indicate whether Appellant is represented by appointed or retained counsel on appeal:**

Horizon retained PEEL BRIMLEY LLP and GALLIAN WELKER & BECKSTROM, L.C. as counsel.

**7. Indicate whether Appellant was granted leave to proceed in *forma pauperis*, and the date of entry of the District Court order granting such leave:**

No.

**8. Indicate the date the proceedings commenced in the District Court (e.g., date Complaint, Indictment, Information, or Petition was filed):**

The action was commenced on or about July 14, 2017 by Horizon.

**9. Provide a brief description of the nature of the action and result in the District Court, including the type of Judgment or Order being appealed and the relief granted by the District Court:**

Plaintiff alleged that Shea failed to (i) comply with its duties and obligations under the applicable commercial Declaration of Commercial Office Subdivision Covenants, Conditions & Restrictions (the “Declaration”) and (ii) ensure that Plaintiff’s Unit was allocated and receiving a pro rata share of the conditioned air produced by the building’s two 60-ton York air conditioning units (“RTUs”), which is by definition a Common Element. A trial was held in February 2020 relating to the claims against Shea,<sup>1</sup> resulting in the Findings of Fact and Conclusions of Law and Judgment that forms the basis of this appeal.

**10. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.**

No.

///

///

---

<sup>1</sup> By the time of trial, all causes of action relating to all other parties had been dismissed or otherwise withdrawn or resolved.



11. Indicate whether this appeal involves child custody or visitation:

No.

12. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Yes.

Dated this 29<sup>th</sup> day of June, 2020.

**PEEL BRIMLEY LLP**

*/s/ Eric Zimbelman*

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NATHAN E. LAWRENCE, ESQ.

Nevada Bar No. 15060

**GALLIAN WELKER & BECKSTROM, L.C.**

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Telephone: (702) 892-3500

Facsimile: (702) 386-1946

*Attorneys for Plaintiff*

*HORIZON HOLDINGS 2900, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 29<sup>th</sup> day of June, 2020, I caused the above and foregoing document, **CASE APPEAL STATEMENT**, 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/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other \_\_\_\_\_

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

**Shea at Horizon Ridge Owners Association:**

Robert E. Schumacher, Esq. ([rschumacher@grsm.com](mailto:rschumacher@grsm.com))

Cristina B. Pagaduan ([cpagaduan@grsm.com](mailto:cpagaduan@grsm.com))

Chelsey J. Holland ([cjholland@grsm.com](mailto:cjholland@grsm.com))

Sean Owens ([sowens@grsm.com](mailto:sowens@grsm.com))

Andrea C. Montero ([amontero@grsm.com](mailto:amontero@grsm.com))

Brian Walters ([bwalters@grsm.com](mailto:bwalters@grsm.com))

**Taylor Management Association:**

Brian Walters ([bwalters@grsm.com](mailto:bwalters@grsm.com))

*/s/ Amanda Armstrong*

---

An employee of **PEEL BRIMLEY, LLP**

## EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY****CASE NO. A-17-758435-C****Horizon Holdings 2900 LLC, Plaintiff(s)****vs.****Shea at Horizon Ridge Owners Association, Defendant  
(s)**§  
§  
§  
§  
§Location: **Department 22**Judicial Officer: **Johnson, Susan**Filed on: **07/14/2017**Cross-Reference Case **A758435**

Number:

**CASE INFORMATION****Statistical Closures**

05/26/2020 Judgment Reached (bench trial)

Case Type: **Other Contract**Case  
Status: **05/26/2020 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-17-758435-C  
Court Department 22  
Date Assigned 07/14/2017  
Judicial Officer Johnson, Susan**PARTY INFORMATION****Plaintiff****Horizon Holdings 2900 LLC***Lead Attorneys***Zimbelman, Eric B.**  
*Retained*  
7029907272(W)**Defendant****Aligned Group LLC**Removed: 01/02/2018  
Dismissed**First American Exchange Group LLC**Removed: 03/08/2018  
Dismissed**Shea at Horizon Ridge Owners Association****Schumacher, Robert E.**  
*Retained*  
702-577-9300(W)**Tag Horizon Ridge LLC**Removed: 01/02/2018  
Dismissed**Taylor Management Association****Schumacher, Robert E.**  
*Retained*  
702-577-9300(W)**Cross Claimant****First American Exchange Group LLC**Removed: 03/21/2018  
Dismissed**Cross Defendant****Tag Horizon Ridge LLC**Removed: 03/21/2018  
Dismissed**Third Party  
Defendant****Tag Fund I LLC**Removed: 03/21/2018  
Dismissed**Third Party  
Plaintiff****First American Exchange Group LLC**Removed: 03/21/2018  
Dismissed














**CASE SUMMARY****CASE NO. A-17-758435-C**

EVENTS &amp; ORDERS OF THE COURT

DATE

INDEX

**EVENTS**

07/14/2017	 Complaint Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Complaint</i>
07/17/2017	 Initial Appearance Fee Disclosure Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Initial Appearance Fee Disclosure</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/20/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/21/2017	 First Amended Complaint Filed By: Plaintiff Horizon Holdings 2900 LLC <i>First Amended Complaint</i>
07/21/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/21/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/21/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>
07/21/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>Summons</i>

# CASE SUMMARY

CASE NO. A-17-758435-C

07/21/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Horizon Holdings 2900 LLC <i>SUMMONS</i>
09/05/2017	 Answer and Crossclaim Filed By: Third Party Plaintiff First American Exchange Group LLC <i>First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third Party Complaint</i>
09/05/2017	 Initial Appearance Fee Disclosure Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Initial Appearance Fee Disclosure</i>
09/12/2017	 Initial Appearance Fee Disclosure Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Initial Appearance Fee Disclosure</i>
09/12/2017	 Motion to Dismiss Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
09/14/2017	 Three Day Notice Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Three Day Notice of Intent To Take Default</i>
09/15/2017	 Answer to Amended Complaint Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Defendant Shea at Horizon Ridge Owners Association's Answer to First Amended Complaint</i>
09/15/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Initial Appearance Fee Disclosure (Shea)</i>
09/15/2017	 Answer to Amended Complaint Filed By: Defendant Taylor Management Association <i>Defendant Taylor Management Association's Answer to First Amended Complaint</i>
09/15/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Taylor Management Association <i>Initial Appearance Fee Disclosure (Taylor)</i>
09/19/2017	 Acceptance of Service Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Acceptance of Service (Cross-Defendant TAG HORIZON RIDGE, LLC)</i>
09/19/2017	 Acceptance of Service Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Acceptance of Service (Third Party Defendant TAG FUND I, LLC)</i>
09/29/2017	 Opposition to Motion to Dismiss Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendant's Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>

# CASE SUMMARY

CASE NO. A-17-758435-C

10/09/2017	 Motion to Dismiss Filed By: Cross Defendant Tag Horizon Ridge LLC; Third Party Defendant Tag Fund I LLC <i>TAG Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company</i>
10/09/2017	 Initial Appearance Fee Disclosure Filed By: Third Party Defendant Tag Fund I LLC <i>Initial Appearance Fee Disclosure</i>
10/12/2017	 Opposition to Motion to Dismiss Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Opposition to Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Crossclaim and Third-Party Complaint of First American Exchange Company</i>
10/12/2017	 Reply in Support Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Reply Brief in Support of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
10/13/2017	 Amended Notice Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Amended Notice of Hearing of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
10/13/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
10/13/2017	 Notice of Hearing <i>Notice of Hearings</i>
10/26/2017	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross Claim and Third Party Complaint and Defendant's Tag Horizon Ridge and the Aligned Group's Motion to Dismiss</i>
10/30/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross Claim and Third-Party Complaint of First American Exchange Company &amp; Defendant's Tag Horizon Ridge and the Aligned Group's Motion to Dismiss</i>
11/01/2017	 Reply in Support Filed By: Cross Defendant Tag Horizon Ridge LLC; Third Party Defendant Tag Fund I LLC <i>Reply Brief in Support of Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company</i>
11/08/2017	 Motion for Leave to File Party: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss</i>

# CASE SUMMARY

CASE NO. A-17-758435-C

11/17/2017	 Opposition and Countermotion Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Defendants Tag Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike Plaintiff's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
11/20/2017	 Receipt of Copy <i>Receipt of Copy</i>
11/20/2017	 Receipt of Copy Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Receipt of Copy</i>
11/20/2017	 Receipt of Copy Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Receipt of Copy</i>
11/21/2017	 Reply to Opposition Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants TAG Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike</i>
12/01/2017	 Motion for Leave to File Party: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File An Amended Complaint</i>
12/05/2017	 Notice of Non Opposition Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Notice of Non-Opposition to Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File an Amended Complaint</i>
12/08/2017	 Order Denying Motion Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Order Denying Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company</i>
12/11/2017	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - Granted</i>
12/11/2017	 Notice of Entry of Order Filed By: Third Party Plaintiff First American Exchange Group LLC <i>Notice of Entry of Order</i>
12/14/2017	 Arbitration File <i>Arbitration File</i>
12/19/2017	 Stipulation and Order Filed by: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC; Third Party Defendant Tag Fund I LLC <i>Stipulation and Order to Vacate Hearing and Briefing on Plaintiff's Motion for Leave to File an Amended Complaint</i>
12/21/2017	 Notice of Entry of Order

# CASE SUMMARY

CASE NO. A-17-758435-C

	<p>Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC <i>Notice of Entry of Order</i></p>
01/02/2018	<p> Order Granting Motion            Filed By: Cross Defendant Tag Horizon Ridge LLC; Defendant Aligned Group LLC  <i>Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss</i></p>
01/02/2018	<p> Notice of Entry of Order            Filed By: Cross Defendant Tag Horizon Ridge LLC  <i>Notice of Entry of Order</i></p>
01/02/2018	<p> Motion to Reconsider            Filed By: Plaintiff Horizon Holdings 2900 LLC  <i>Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss</i></p>
01/04/2018	<p> Notice of Early Case Conference            Filed By: Plaintiff Horizon Holdings 2900 LLC  <i>Notice of Early Case Conference</i></p>
01/12/2018	<p> Opposition to Motion            Filed By: Cross Defendant Tag Horizon Ridge LLC  <i>Opposition to Plaintiff's Motion for Leave to File an Amended Complaint</i></p>
01/19/2018	<p> Opposition to Motion            Filed By: Cross Defendant Tag Horizon Ridge LLC  <i>Opposition to Plaintiff's Motion for Reconsideration and/or Rehearing</i></p>
01/30/2018	<p> Reply in Support            Filed By: Plaintiff Horizon Holdings 2900 LLC  <i>Horizon Holdings 2900, LLC s Reply in Support of its Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group s Motion to Dismiss</i></p>
02/16/2018	<p> Joint Case Conference Report            Filed By: Plaintiff Horizon Holdings 2900 LLC  <i>JOINT CASE CONFERENCE REPORT</i></p>
02/16/2018	<p> Amended Joint Case Conference Report            Filed By: Plaintiff Horizon Holdings 2900 LLC  <i>Amended Joint Case Conference Report</i></p>
03/08/2018	<p> Stipulation and Order for Dismissal With Prejudice            Filed By: Third Party Plaintiff First American Exchange Group LLC  <i>Stipulation and Order for Dismissal With Prejudice as to Defendant First American Exxchange Company, LLC, Only</i></p>
03/08/2018	<p> Notice of Entry of Order            Filed By: Third Party Plaintiff First American Exchange Group LLC  <i>Notice of Entry of Order</i></p>
03/21/2018	<p> Stipulation and Order for Dismissal With Prejudice            Filed By: Cross Defendant Tag Horizon Ridge LLC; Third Party Defendant Tag Fund I LLC  <i>Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with</i></p>



# CASE SUMMARY

CASE NO. A-17-758435-C

*Prejudice*

03/22/2018



Notice of Entry of Order

Filed By: Plaintiff Horizon Holdings 2900 LLC; Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association  
*Notice of Entry of Order*

04/02/2018



Order Denying Motion

*Order Denying Plaintiff's Motion for Reconsideration and/or Rehearing of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss*

04/03/2018



Notice of Entry of Order

*Notice of Entry of Order*

04/04/2018



Scheduling Order

*Scheduling Order*

04/05/2018



Order Setting Civil Bench Trial

*Order Setting Civil Bench Trial*

04/13/2018



Memorandum of Costs and Disbursements

Filed By: Defendant Shea at Horizon Ridge Owners Association  
*Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Verified Memorandum of Costs*

04/23/2018



Motion for Attorney Fees

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*(6/5/18 Withdrawn) Motion for Attorneys' Fees and Costs*

04/23/2018



Motion to Strike

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*(6/5/18 Withdrawn) Plaintiff's Motion to Strike and Retax Defendants' Memorandum of Fees and Costs*

05/24/2018



Stipulation and Order

Filed by: Plaintiff Horizon Holdings 2900 LLC  
*Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge LLC and The Aligned Group, LLC's Motion for Attorney Fees and Costs and Plaintiff Horizon Holding 2900, LLC's Motion to Strike*

05/24/2018



Notice of Entry of Order

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Notice of Entry of Order*

06/05/2018



Stipulation and Order

Filed by: Plaintiff Horizon Holdings 2900 LLC  
*Stipulation and Order to Withdraw Both: (1) Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion for Attorney's Fees and Costs; and (2) Plaintiff Horizon Holdings 2900, LLC's Motion to Strike*

06/05/2018



Notice of Entry of Order

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Notice of Entry of Order*

06/08/2018



Substitution of Attorney

**CASE SUMMARY**

**CASE NO. A-17-758435-C**

	Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Substitution of Attorney</i>
06/26/2018	 Certificate of Mailing Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Certificate of Mailing</i>
10/12/2018	 Amended Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
10/15/2018	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Extend Discovery Deadlines and Reset Trial</i>
10/16/2018	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
10/25/2018	 Motion for Leave to File Party: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File Second Amended Complaint</i>
11/05/2018	 Opposition to Motion Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Defendants Shea at Horizon Ridge Owners' Association and Defendant Taylor Management Association's Opposition to Plaintiff's Motion to Amend</i>
11/05/2018	 Declaration Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Declaration of Stephanie Freeman in Support of Defendants' Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint</i>
11/05/2018	 Reply to Opposition Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants' Opposition to Motion for Leave to File Second Amended Complaint</i>
11/09/2018	 Order <i>Order Re: Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File Second Amended Complaint</i>
11/28/2018	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Allow Second Amended Complaint</i>
11/28/2018	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
11/28/2018	 Amended Complaint Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Horizon Holdings 2900, LLC's Second Amended Complaint</i>

# CASE SUMMARY

CASE NO. A-17-758435-C

02/05/2019	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Extend Expert Disclosure Deadlines (Second Request)</i>
02/05/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
02/21/2019	 Answer Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Defendant Shea at Horizon Ridge Owners Association's Answer to Second Amended Complaint</i>
02/21/2019	 Answer Filed By: Defendant Taylor Management Association <i>Defendant Taylor Management Association's Answer to Second Amended Complaint</i>
04/15/2019	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Extend Discovery Deadlines</i>
04/15/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
06/11/2019	 Amended Order Setting Civil Non-Jury Trial <i>Second Amended Order Setting Civil Non-Jury Trial</i>
06/11/2019	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Continue Trial Date and Extend Discovery Deadlines</i>
06/11/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
08/19/2019	 Affidavit of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Affidavit/Declaration of Service of Prime HVAS, LLC Attn: Person Most Knowledgeable</i>
08/19/2019	 Affidavit of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Affidavit/Declaration of Service of Mark Kapetansky</i>
08/19/2019	 Acceptance of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Acceptance of Service of Subpoena to Steve Burford</i>
08/19/2019	 Acceptance of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Acceptance of Service of Subpoena to Corporate Air Mechanical Services, Inc.</i>
09/06/2019	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Horizon Holdings 2900 LLC

# CASE SUMMARY

CASE NO. A-17-758435-C

*Stipulation and Order to Extend Certain Deadlines (Fifth Request)*

09/06/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
09/10/2019	 Acceptance of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Acceptance of Service for Stephanie Freeman</i>
09/10/2019	 Acceptance of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Acceptance of Service for Gary Border</i>
09/10/2019	 Acceptance of Service Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Acceptance of Service for Marissa Chien</i>
09/18/2019	 Amended Order Setting Civil Non-Jury Trial <i>Third Amended Order Setting Civil Bench Trial</i>
10/02/2019	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Extend Dispositive Motions Deadline (Sixth Request)</i>
10/02/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Stipulation and Order</i>
11/12/2019	 Motion for Partial Summary Judgment Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Motion for Partial Summary Judgment</i>
11/12/2019	 Appendix Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Appendix to Plaintiff Horizon Holdings 2900, LLC's Motion for Partial Summary Judgment</i>
11/12/2019	 Notice of Motion Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Motion</i>
11/12/2019	 Motion for Summary Judgment Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Defendants' Motion for Summary Judgment</i>
11/12/2019	 Appendix Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Appendix of Exhibits to Defendants' Motion for Summary Judgment</i>
11/13/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>

# CASE SUMMARY

CASE NO. A-17-758435-C

11/13/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/14/2019	 Errata Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Errata to Appendix of Exhibits to Defendants' Motion for Summary Judgment</i>
11/27/2019	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Continue Hearings</i>
11/27/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
12/16/2019	 Pre-trial Memorandum <i>Pre-Trial Memorandum Jointly Filed By Plaintiff and Defendants</i>
12/16/2019	 Pre-trial Memorandum <i>Pre-Trial Memorandum Jointly Filed by Plaintiff and Defendants</i>
12/17/2019	 Opposition to Motion Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment</i>
12/17/2019	 Appendix Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Appendix to Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment</i>
12/17/2019	 Opposition to Motion Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
12/18/2019	 Errata Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Errata to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
12/30/2019	 Objection Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Defendants' Objection to Plaintiff's Offer of Judgment</i>
12/30/2019	 Stipulation and Order Filed by: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment</i>
12/31/2019	 Notice of Entry of Stipulation and Order Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor

# CASE SUMMARY

CASE NO. A-17-758435-C

	<p>Management Association</p> <p><i>Notice of Entry of Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment</i></p>
01/13/2020	<p> Reply to Opposition</p> <p>Filed by: Plaintiff Horizon Holdings 2900 LLC</p> <p><i>Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants' Opposition to Motion for Partial Summary Judgment</i></p>
01/13/2020	<p> Reply in Support</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Reply in Support of Motion for Partial Summary Judgment</i></p>
01/17/2020	<p> Notice</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Defendants' Notice of Trial Subpoena</i></p>
01/21/2020	<p> Notice</p> <p>Filed By: Plaintiff Horizon Holdings 2900 LLC</p> <p><i>Plaintiff's Notice of Trial Subpoenas</i></p>
01/22/2020	<p> Notice</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Defendants' Notice of Intent to Lodge Original Deposition Transcripts</i></p>
01/23/2020	<p> Notice</p> <p>Filed By: Plaintiff Horizon Holdings 2900 LLC</p> <p><i>Plaintiff's Notice of Intent to Lodge Original Deposition Transcripts</i></p>
01/23/2020	<p> Notice</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Defendants' Supplemental Notice of Trial Subpoenas</i></p>
02/04/2020	<p> Order</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Order Granting In Part and Denying In Part Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment</i></p>
02/04/2020	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association</p> <p><i>Notice of Entry of Order Granting In Party and Denying In Part Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment</i></p>
02/05/2020	<p> Order Denying Motion</p> <p>Filed By: Plaintiff Horizon Holdings 2900 LLC</p> <p><i>Order Denying Plaintiff's Motion for Partial Summary Judgment</i></p>
02/05/2020	<p> Notice of Entry of Order</p>

**CASE SUMMARY**

**CASE NO. A-17-758435-C**

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Notice of Entry of Order*

02/06/2020



**Trial Memorandum**

Filed by: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association  
*Defendants' Civil Trial Memorandum Pursuant to EDCR 7.27*

02/07/2020



**Brief**

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Horizon Holdings 2900, LLC's Trial Brief*

02/10/2020



**Memorandum of Costs and Disbursements**

Filed By: Defendant Taylor Management Association  
*Taylor Association Management's Verified Memorandum of Costs and Disbursements*

02/24/2020



**Stipulation and Order to Extend Discovery Deadlines**

*Stipulation and Order to Extend Deadlines Relating to Memorandum of Costs*

02/24/2020



**Notice of Entry of Stipulation and Order**

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Notice of Entry of Stipulation and Order*

02/25/2020



**Motion for Attorney Fees**

Filed By: Defendant Taylor Management Association  
*Taylor Association Management's Motion for Attorneys' Fees and Interest*

02/25/2020



**Appendix**

Filed By: Defendant Taylor Management Association  
*Appendix of Exhibits to Taylor Association Management's Motion for Attorneys' Fees Costs and Interest*

02/25/2020



**Declaration**

Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association  
*Declaration of Robert E. Schumacher, Esq. in Support of Taylor Association Management's Motion for Attorneys' Fees, Cost and Interest*

02/26/2020



**Clerk's Notice of Hearing**

*Notice of Hearing*

02/27/2020



**Motion to Retax**

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Motion to Re-tax Costs*

02/27/2020



**Appendix**

Filed By: Plaintiff Horizon Holdings 2900 LLC  
*Appendix to Motion to Re-Tax Costs*

02/28/2020



**Clerk's Notice of Hearing**

*Notice of Hearing*

03/05/2020















**Response**

Filed by: Defendant Taylor Management Association

**CASE SUMMARY**

**CASE NO. A-17-758435-C**

*Taylor Association Management's Response to Plaintiff's Motion to Re-Tax Costs*

03/16/2020	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Continue Hearings</i>
03/16/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order</i>
03/20/2020	 Recorders Transcript of Hearing <i>Bench Trial - Day 1 February 3, 2020</i>
03/20/2020	 Recorders Transcript of Hearing <i>Recorder's Transcript of Bench Trial - Day 3 February 5, 2020</i>
03/20/2020	 Recorders Transcript of Hearing <i>Bench Trial - Day 4 February 6, 2020</i>
03/20/2020	 Recorders Transcript of Hearing <i>Bench Trial - Day 5 February 7, 2020</i>
03/24/2020	 Opposition to Motion Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff's Opposition to Taylor Association Management's Motion for Attorneys' Fees and Interest</i>
03/24/2020	 Appendix Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Appendix to Plaintiff's Opposition to Taylor Association Management's Motion for Attorney's Fees and Interest</i>
03/24/2020	 Reply to Opposition Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Plaintiff's Reply to Taylor's Opposition to Motion to Re-Tax Costs</i>
03/26/2020	 Recorders Transcript of Hearing <i>Bench Trial - Day 6 February 11, 2020</i>
03/26/2020	 Recorders Transcript of Hearing <i>Recorders Transcript of Bench Trial - Day 7 February 12, 2020</i>
04/07/2020	 Reply to Motion Filed By: Defendant Taylor Management Association <i>Taylor Association Management's Reply in Support of Motion for Attorneys' Fees and Interest</i>
04/15/2020	 Order <i>Order Re: Plaintiff's Motion to Re-Tax Costs</i>
04/24/2020	 Notice of Entry of Order Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Notice of Entry of Order Re: Motion to Re-Tax Costs</i>



# CASE SUMMARY

CASE NO. A-17-758435-C

05/26/2020	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law and Judgment</i>
06/01/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Shea at Horizon Ridge Owners Association; Defendant Taylor Management Association <i>Notice of Entry of Findings of Fact, Conclusions of Law and Judgment</i>
06/01/2020	 Memorandum of Costs and Disbursements Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Shea at Horizon Ridge Owners Association s Verified Memorandum of Costs and Disbursements</i>
06/02/2020	 Errata Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Errata to Shea at Horizon Ridge Owners Association's Verified Memorandum of Costs and Disbursements</i>
06/12/2020	 Motion for Attorney Fees and Costs Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest</i>
06/12/2020	 Appendix Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Appendix of Exhibits to Shea at Horizon Ridge Owners Association s Motion for Attorney s Fees, Costs and Interest</i>
06/12/2020	 Declaration Filed By: Defendant Shea at Horizon Ridge Owners Association <i>Declaration of Robert E. Schumacher, Esq. in Support of Defendant Shea at Horizon Ridge Owners Association s Motion for Attorneys Fees, Costs and Interest</i>
06/15/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/22/2020	 Notice of Appearance Party: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Appearance by Gallian Welker &amp; Beckstrom, L.C.</i>
06/29/2020	 Stipulation and Order Filed by: Plaintiff Horizon Holdings 2900 LLC <i>Stipulation and Order to Extend Time to File Opposition and to Continue Hearing on Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest</i>
06/29/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Notice of Entry of Stipulation and Order to Extend Time and Continue Hearing on Motion for Attorney's Fees, Costs and Interest</i>
06/29/2020	 Case Appeal Statement Filed By: Plaintiff Horizon Holdings 2900 LLC <i>Case Appeal Statement</i>
06/29/2020	 Notice of Appeal Filed By: Plaintiff Horizon Holdings 2900 LLC

# CASE SUMMARY


CASE NO. A-17-758435-C

*Notice of Appeal*

## **DISPOSITIONS**



- 01/02/2018 **Order of Dismissal** (Judicial Officer: Johnson, Susan)  
Debtors: Horizon Holdings 2900 LLC (Plaintiff)  
Creditors: Tag Horizon Ridge LLC (Defendant), Aligned Group LLC (Defendant)  
Judgment: 01/02/2018, Docketed: 01/02/2018
- 03/08/2018 **Order of Dismissal** (Judicial Officer: Johnson, Susan)  
Debtors: Horizon Holdings 2900 LLC (Plaintiff)  
Creditors: First American Exchange Group LLC (Defendant)  
Judgment: 03/08/2018, Docketed: 03/08/2018
- 03/21/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Johnson, Susan)  
Debtors: First American Exchange Group LLC (Third Party Plaintiff)  
Creditors: Tag Fund I LLC (Third Party Defendant)  
Judgment: 03/21/2018, Docketed: 03/22/2018  
Debtors: First American Exchange Group LLC (Cross Claimant)  
Creditors: Tag Horizon Ridge LLC (Cross Defendant)  
Judgment: 03/21/2018, Docketed: 03/22/2018
- 02/04/2020 **Summary Judgment** (Judicial Officer: Johnson, Susan)  
Debtors: Horizon Holdings 2900 LLC (Plaintiff)  
Creditors: Shea at Horizon Ridge Owners Association (Defendant), Taylor Management Association (Defendant)  
Judgment: 02/04/2020, Docketed: 02/05/2020  
Comment: Certain Claim
- 04/05/2020 **Order** (Judicial Officer: Johnson, Susan)  
Debtors: Horizon Holdings 2900 LLC (Plaintiff)  
Creditors: Taylor Management Association (Defendant)  
Judgment: 04/05/2020, Docketed: 04/16/2020  
Total Judgment: 7,997.53
- 05/26/2020 **Judgment** (Judicial Officer: Johnson, Susan)  
Debtors: Horizon Holdings 2900 LLC (Plaintiff)  
Creditors: Shea at Horizon Ridge Owners Association (Defendant)  
Judgment: 05/26/2020, Docketed: 05/27/2020

## **HEARINGS**

- 10/13/2017  **Minute Order** (10:30 AM) (Judicial Officer: Johnson, Susan)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
*Pursuant to EDCR 2.20(g), the moving party shall deliver Courtesy Copies of all papers related to their Motion at least 5 judicial days before the hearing. This includes the Opposition if opposing counsel fails to deliver their own courtesy copies. As all courtesy copies have not been received, the following hearing(s) have been VACATED: Thursday, October 19, 2017: Defendants Tag Horizon Ridge and the Aligned Group's Motion to Dismiss Should the parties wish to proceed, the Hearing will need to be Re-Noticed and courtesy copies delivered to chambers accordingly. CLERK'S NOTE: This Minute Order has been e-served to all appropriate parties by the Judicial Executive Assistant. hvp/10/13/17;*
- 10/19/2017 **CANCELED Motion to Dismiss** (10:30 AM) (Judicial Officer: Johnson, Susan)  
*Vacated*  
*Defendant's Tag Horizon Ridge and The Aligned Groups' Motion to Dismiss*
- 11/28/2017 **Motion to Dismiss** (10:30 AM) (Judicial Officer: Johnson, Susan)  
*TAG Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company*  
Denied Without Prejudice; TAG Horizon Ridge, LLC and Tag Fund I, LLC's Motion to

# CASE SUMMARY

CASE NO. A-17-758435-C

	Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company
11/28/2017	<p><b>Motion to Dismiss</b> (10:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Amended Notice of Hearing of Defendants TAG Horizon Ridge and the Aligned Group's Motion to Dismiss</i></p> <p>Granted in Part;</p>
11/28/2017	<p><b>Opposition and Countermotion</b> (10:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Defendants Tag Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike Plaintiff's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i></p>
11/28/2017	<p> <b>All Pending Motions</b> (10:30 AM) (Judicial Officer: Johnson, Susan)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Catherine Jordan, Representative of Horizon Holdings 2900 LLC, also present. Court noted that it signed an Order Shortening Time on Plaintiff's Motion for Leave to File a Supplemental Memorandum however it was never filed and therefore it is not on calendar today.</i></p> <p><b>DEFENDANTS TAG HORIZON RIDGE AND THE ALIGNED GROUP'S MOTION TO DISMISS</b> Argument by Mr. Cavanaugh that plaintiff was aware of the HVAC performance issues as evidenced by the invoicing for repairs and therefore the TAG two year post dissolution limitations period under NRS 86.505 bars the claims as to TAG and the Aligned Group. Argument by Mr. Van that plaintiff will need to file a Motion to Amend the Complaint to allege fraudulent concealment and forgery; that it was not until plaintiff received expert Gifford's report was when the learned of the improper design and the complaint was filed timely; and requested 56(f) relief to discover the factual issues. Further argument by Mr. Cavanaugh, including that plaintiff is attempting to impute liability to Aligned as its role as a member without any separate and distinct allegations as to Aligned. <b>COURT ORDERED, Motion to Dismiss GRANTED</b> as to Aligned Group LLC as they are the manager of TAG Horizon Ridge LLC and <b>FINDS</b> there are no causes of action against Aligned Group LLC; As for the Motion to Dismiss by TAG Horizon Ridge LLC, the Court will take a closer look and <b>MATTER TAKEN UNDER ADVISEMENT. TAG HORIZON RIDGE, LLC and TAG FUND I, LLC'S MOTION TO DISMISS THE CROSS-CLAIM AND THIRD-PARTY COMPLAINT OF FIRST AMERICAN EXCHANGE</b> Following arguments by Mr. Cavanaugh and Ms. Wood, <b>COURT ORDERED, Motion DENIED WITHOUT PREJUDICE.;</b></p>
12/18/2017	<p> <b>Minute Order</b> (3:00 AM) (Judicial Officer: Johnson, Susan)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>Defendants TAG Horizon Ridge, LLC's and Aligned Group, LLC's Motion to Dismiss filed September 12, 2017 was heard Tuesday, November 28, 2017 at 10:30 a.m. This Court granted the motion as it applied to the managing member of TAG Horizon Ridge, LLC (i.e. Aligned Group, LLC) in its entirety, but took the matter under advisement regarding the claims brought against TAG Horizon Ridge, LLC (the seller of the subject property). Having reviewed the matter given the oral arguments of the parties, and found good cause therefore, IT IS ORDERED Defendants' Motion to Dismiss as it relates to the First Cause of Action (Breach of Contract) against TAG Horizon Ridge, LLC is GRANTED. Pursuant to Purchase and Sale Agreement &amp; Escrow Instructions (hereinafter referred to as the "Agreement") entered into by Plaintiff Horizon Holdings 2900, LLC and TAG Horizon Ridge, LLC on November 14, 2014, Plaintiff agreed to buy the subject property "as is," with a closing date of February 22, 2015. See Section 5 of the Agreement. Given its as is condition, Plaintiff and Defendant understood and agreed the purchase priced had been adjusted by prior negotiations; the parties further noted, in capitalized wording, it was "not contemplated that the purchase price will be increased if costs to buyer associated with the assets prove to be less than expected or will the purchase price be reduced if buyer s plan for the assets leads to higher cost projections. The sole and exclusive remedy of buyer will be to terminate this agreement as provided herein prior to the closing date." See Section 6 of the Agreement. Plaintiff was accorded a 30-day investigation period in which "to review all aspects of the Property." See Section 7 of the Agreement. If there was a failure of any condition, Plaintiff had the opportunity to waive them, or have its entire deposit from Defendant (via the title company) refunded. Id.; also see Section 14(a) [buyer s sole and exclusive remedies in the event of seller's default is to (1) enforce specific performance of the agreement or (2) terminate the agreement and receive a refund of the deposit.] While Plaintiff now claims the HVAC system is not satisfactory in that it is too</i></p>

# CASE SUMMARY

CASE NO. A-17-758435-C

*small to cool or heat the particular space and such could not have been found by due diligence inspection, Plaintiff agreed to the as is purchase and there would be no adjustment as to price. Notably, Plaintiff also agreed to release Defendant (again, the Seller) from any claims it may have for constructional defects, errors, omissions or other conditions, latent or otherwise affecting the property. See Section 6(b) of the Agreement. IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Second Cause of Action (Breach of Warranty of Suitability) against TAG Horizon Ridge, LLC is GRANTED. This Court not only incorporates its discussion above concerning the First Cause of Action, but notes Plaintiff, as Buyer, agreed and acknowledge it was purchasing the property "as is," and "that Seller shall not be deemed to have made any representations or warranties," except as provided in Section 5 of the Agreement. None of these exceptions relate to constructional deficiencies, errors or other conditions, including the HVAC s capacity or ability to adequately cool or heat the space. IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Third (Breach of Covenant of Good Faith and Fair Dealing), second Third (Non-Disclosure) and Fourth (Negligence) is GRANTED for the reasons set forth above. In addition, outside of the parties' Agreement, Defendant TAG Horizon Ridge, LLC owed no further duties to Plaintiff under a negligence theory or otherwise. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Van, Esq. (Shumway Van) and Colin Cavanaugh, Esq. (Keating Law Group). //ev 12/18/17;*

12/19/2017



**Motion for Leave** (10:30 AM) (Judicial Officer: Johnson, Susan)

*Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss*

Off Calendar;

Journal Entry Details:

*Court noted a decision was issued via minute order yesterday as to the Motion to Dismiss which was previously taken under advisement. Mr. Huntley advised based on the Court's decision this motion is moot. COURT ORDERED, Motion OFF CALENDAR. Mr. Cavanaugh advised parties have submitted a stipulation and order to extend briefing as to the Leave to File an Amended Complaint. Colloquy regarding scheduling. Court instructed parties to reach out to her Law Clerk regarding dates for the briefing schedule.;*

01/09/2018

**CANCELED Motion for Leave** (10:30 AM) (Judicial Officer: Johnson, Susan)

*Vacated - per Stipulation and Order*

*Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File An Amended Complaint*

02/06/2018



**Motion For Reconsideration** (10:30 AM) (Judicial Officer: Johnson, Susan)

*Plaintiff's Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss*

Motion Denied;

Journal Entry Details:

*Arguments by Mr. Van and Mr. Cavanaugh regarding the merits of the Motion. Court advised it wanted to review the original Motion, Opposition, and Reply and ORDERED, matter taken UNDER ADVISEMENT.;*

06/26/2018

**CANCELED Motion for Attorney Fees and Costs** (10:30 AM) (Judicial Officer: Johnson, Susan)

*Vacated - per Stipulation and Order*

*Tag Horizon Ridge, LLC and the Aligned Group, LLC's Motion for Attorneys Fees and Costs*

*05/29/2018*

*Continued to 06/26/2018 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association*

06/26/2018

**CANCELED Motion to Strike** (10:30 AM) (Judicial Officer: Johnson, Susan)

*Vacated - per Stipulation and Order*

*Plaintiff's Motion to Strike and Retax Defendants' Memorandum of Fees and Costs*

*05/24/2018*



*Continued to 06/26/2018 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association*

11/06/2018



**Motion for Leave** (8:30 AM) (Judicial Officer: Johnson, Susan)

**CASE SUMMARY****CASE NO. A-17-758435-C**

	<p><i>Plaintiff Horizon Holdings 2900 LLC's Motion for Leave to File Second Amended Complaint Granted in Part;</i></p> <p><b>Journal Entry Details:</b></p> <p><i>Court noted Plaintiff wanted to bring in board members as defendants as well as a claim for conversion. Mr. Zimbelman reviewed the facts of the case. Colloquy regarding statute of limitation on conversion claim. Arguments by counsel regarding the merits of the Motion. COURT ORDERED, matter taken UNDER ADVISEMENT. Colloquy regarding other remedies.;</i></p>
01/30/2019	<p><b>CANCELED Status Check: Trial Readiness</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p>
05/08/2019	<p><b>CANCELED Pretrial/Calendar Call</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p>
05/20/2019	<p><b>CANCELED Bench Trial</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p>
07/10/2019	<p><b>CANCELED Status Check: Trial Readiness</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p> <p>05/08/2019 <i>Continued to 07/10/2019 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association</i></p>
08/21/2019	<p><b>CANCELED Pretrial/Calendar Call</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p>
09/03/2019	<p><b>CANCELED Bench Trial</b> (1:00 PM) (Judicial Officer: Johnson, Susan)</p> <p><i>Vacated - per Stipulation and Order</i></p>
09/18/2019	<p> <b>Status Check: Trial Readiness</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p>Matter Heard;</p> <p><b>Journal Entry Details:</b></p> <p><i>Court advised counsel of their place on the trial stack. Mr. Zimbelman stated that he and Mr. Walters discussed moving the trial. Upon inquiry of the Court, Mr. Zimbelman stated that there were expert depositions left to be scheduled and both sides had pre-trial motions to file. Mr. Walters confirmed Mr. Zimbelman's representations. Counsel further confirmed that trial would take approximately one week to complete. COURT ORDERED, trial CONTINUED and advised that it would be the last continuance. 12/18/19 8:30 AM PRETRIAL/CALENDAR CALL 1/6/20 8:30 AM BENCH TRIAL;</i></p>
12/18/2019	<p> <b>Pretrial/Calendar Call</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p>Trial Date Set;</p> <p><b>Journal Entry Details:</b></p> <p><i>Court advised counsel of their place on the trial stack and that the Court did not receive the Joint Pre-Trial Memo but that it should be provided with tabs and in binders. Colloquy regarding trial schedule. Counsel stated that they would need 5-8 days for trial. COURT ORDERED, MATTER SET FOR TRIAL. 2/3/20 8:30 AM BENCH TRIAL - FIRM SETTING;</i></p>
01/21/2020	<p><b>Motion for Partial Summary Judgment</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Plaintiff Horizon Holdings 2900 LLC Motion for Partial Summary Judgment</i></p> <p>01/07/2020 <i>Continued to 01/21/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association</i></p> <p>Denied;</p>
01/21/2020	<p><b>Motion for Summary Judgment</b> (8:30 AM) (Judicial Officer: Johnson, Susan)</p> <p><i>Defendant's Motion for Summary Judgment</i></p> <p>01/07/2020 <i>Continued to 01/21/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association</i></p>

# CASE SUMMARY

CASE NO. A-17-758435-C

Granted;

01/21/2020



**All Pending Motions** (8:30 AM) (Judicial Officer: Johnson, Susan)

Matter Heard;

Journal Entry Details:

*PLTF'S MOTION FOR PARTIAL SUMMARY JUDGMENT...DEFT'S MOTION FOR SUMMARY JUDGMENT* Argument by counsel regarding defendant's motion. Court noted that its understanding was that the fourth and fifth causes of action, negligence and negligent undertaking, were the only remaining causes. Mr. Zimbelman confirmed that the plaintiff was abandoning those claims. Mr. Walters stated there was no opposition in dismissing the negligence claims the association also. **COURT ORDERED, MOTION GRANTED** as to the fourth and fifth causes of action and dismissed those against the association. Argument by counsel as to the remaining claims. Court advised counsel that it would like to hear testimony during trial and **ORDERED** remaining claims **DENIED**. Argument as to plaintiff's motion. **COURT ORDERED, MOTION DENIED** and directed counsel to draft their own orders. ;

02/03/2020



**Bench Trial** (8:30 AM) (Judicial Officer: Johnson, Susan)

**02/03/2020-02/07/2020, 02/11/2020-02/12/2020**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Pending;

Journal Entry Details:

*Colloquy regarding admitted exhibits. Both sides rested and completed their closing arguments. Court advised counsel that a decision will issue via minute order. ;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Pending;

Journal Entry Details:

*Testimony and exhibits presented. (See worksheets) COURT ORDERED, TRIAL CONTINUED. CONTINUED TO: 2/12/20 10:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Pending;

Journal Entry Details:

*Mr. Schumacher advised that Ms. Chien was not available until 02/10/20. Discussion regarding scheduling issues. Testimony and Exhibits presented. (See worksheets). Evening recess. 02/11/2020 1:00 PM BENCH TRIAL;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Decision Pending;



Journal Entry Details:

*JURY PRESENT* Testimony and exhibits presented. (See worksheets) Plaintiff rested. Court admonished and excused the Jury for the evening recess. **OUTSIDE THE PRESENCE OF THE JURY** Mt. Schumacher moved for a verdict in favor of the defendant and argued the rule 52 Motion. **COURT ORDERED, MOTION DENIED. COURT ORDERED, TRIAL CONTINUED. CONTINUED TO: 2/7/20 8:30 AM ;**



# CASE SUMMARY

CASE NO. A-17-758435-C

	<p>Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Decision Pending;  Journal Entry Details:  <i>Mr. Zimbelman stated that the witness went down to the City of Henderson and got the plans for what would be considered building one. Argument by counsel. Court TRAILED matter to consider counsel's request. MATTER RECALLED Court advised counsel that it would like to have a rule 37 hearing on the matter and directed counsel to notify witnesses. MATTER TRAILED MATTER RECALLED Further testimony heard and exhibits presented as to the rule 37 hearing. COURT ORDERED, any reference to the plans for building one EXCLUDED as they were not produced in discovery. Trial testimony and presentation of exhibits continued. COURT ORDERED, TRIAL CONTINUED. CONTINUED TO: 2/7/20 8:30 AM ;</i></p>
	<p>Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Decision Pending;  Journal Entry Details:  <i>Testimony and exhibits presented. (See worksheets) Argument regarding the plaintiff having two experts opining on the same issues. COURT ORDERED, TRIAL CONTINUED. CONTINUED TO: 2/5/20 9:30 AM;</i></p>
	<p>Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Trial Continues;  Decision Pending;  Journal Entry Details:  <i>Parties discussed their agreed upon joint exhibits. Openings by counsel. Testimony and exhibits presented. (See worksheets) COURT ORDERED, TRIAL CONTINUED. CONTINUED TO: 2/4/20 1:00 PM;</i></p>
02/11/2020	<p><b>CANCELED Bench Trial</b> (1:00 PM) (Judicial Officer: Johnson, Susan)  <i>Vacated - Duplicate Entry</i></p>
04/14/2020	<p><b>Motion for Attorney Fees</b> (8:30 AM) (Judicial Officer: Johnson, Susan)  <i>Taylor Association Management's Motion for Attorneys' Fees and Interest</i></p> <p><b>MINUTES</b>  Denied;</p> <p><b>SCHEDULED HEARINGS</b>   <b>All Pending Motions</b> (04/14/2020 at 8:30 AM) (Judicial Officer: Johnson, Susan)</p>
04/14/2020	<p><b>Motion to Retax</b> (8:30 AM) (Judicial Officer: Johnson, Susan)  <i>Plaintiff's Motion to Re-tax Costs</i>  Under Advisement;</p>
04/14/2020	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Johnson, Susan)  Matter Heard;  Journal Entry Details:  <i>TAYLOR ASSOCIATION MANAGEMENT'S MOTION FOR ATTORNEYS' FEES AND INTEREST...PLAINTIFF'S MOTION TO RE-TAX COSTS. Argument by counsel as to the Motion for Attorneys' Fees and Interest. COURT ORDERED, MOTION FOR ATTORNEYS' FEES and INTEREST, DENIED. Argument by counsel as to the Motion to Re-tax Costs. Court</i></p>

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-17-758435-C**

08/11/2020	<p><i>took MATTER UNDER ADVISEMENT to look at the costs. ;</i></p> <p><b>Motion for Attorney Fees and Costs (8:30 AM)</b> (Judicial Officer: Johnson, Susan)  <i>Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest 07/14/2020 Continued to 08/11/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association</i></p>
------------	--

DATE	FINANCIAL INFORMATION
	<p><b>Third Party Plaintiff</b> First American Exchange Group LLC</p> <p>Total Charges 358.00</p> <p>Total Payments and Credits 358.00</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p> <p><b>Third Party Defendant</b> Tag Fund I LLC</p> <p>Total Charges 223.00</p> <p>Total Payments and Credits 223.00</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p> <p><b>Cross Defendant</b> Tag Horizon Ridge LLC</p> <p>Total Charges 253.00</p> <p>Total Payments and Credits 253.00</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p> <p><b>Defendant</b> Shea at Horizon Ridge Owners Association</p> <p>Total Charges 712.50</p> <p>Total Payments and Credits 712.50</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p> <p><b>Defendant</b> Taylor Management Association</p> <p>Total Charges 28.00</p> <p>Total Payments and Credits 28.00</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p> <p><b>Plaintiff</b> Horizon Holdings 2900 LLC</p> <p>Total Charges 494.00</p> <p>Total Payments and Credits 494.00</p> <p><b>Balance Due as of 6/30/2020 0.00</b></p>



## DISTRICT COURT CIVIL COVER SHEET

A-17-758435-C

County, Nevada

Case No.

Department 22

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Horizon Holdings 2900, LLC	Shea at Horizon Ridge Owners Association, et al.
2900 W. Horizon Ridge Pkwy, Suite 101	259 N. Pecos Road, Suite 100
Henderson, Nevada 89052	Henderson, Nevada 89074
702-630-0895	
Attorney (name/address/phone):	Attorney (name/address/phone):
Shumway Van - Michael C. Van, Esq.	William Paul Wright, Esq.
8985 S. Eastern Ave., Suite 100	7065 West Ann Road, Suite 130-663
Las Vegas, Nevada 89123	Las Vegas, Nevada 89130
702-478-7770	702-776-7257

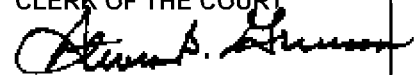
**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

7/14/17  
Date
  
 Signature of initiating party or representative

See other side for family-related case filings.



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a  
Nevada Limited Liability Company,

Plaintiff,

Vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, a Domestic Non-Profit  
Corporation; TAYLOR MANAGEMENT  
ASSOCIATION, a Nevada Limited  
Liability Company,<sup>1</sup>

Defendants.

Case No. A-17-758435-C  
Dept. No. XXII

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

This matter came on for non-jury trial on the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> days of February 2020 before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON presiding; Plaintiff HORIZON HOLDINGS 2900, LLC appeared by and through its attorney, ERIC ZIMBELMAN, ESQ. of the law firm, PEEL BRIMLEY; and Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION appeared by and through its attorneys, ROBERT E. SCHUMACHER, ESQ. and BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and pleadings on file herein, including the exhibits admitted as evidence at trial,<sup>2</sup> heard the testimonies

<sup>1</sup>As noted more fully, *infra*, this Court granted partial summary judgment in favor of Defendant TAYLOR MANAGEMENT ASSOCIATION, which resulted in dismissal of the remaining claims against this defendant. *Also see* this Court's Order filed February 4, 2020.

<sup>2</sup>The exhibits admitted into evidence were Joint Trial Exhibits 1-10, 12-18, 21-24, 26-31, 34-44 and 46-50; Plaintiff's Trial Exhibits 101, 103, 108, 115-117, 124, 127, 131, 133-134, 145, 157 and 170-176; and Defendant's Trial Exhibits 547-548, 587-588, 606-607 and 645.

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 of the witnesses, DON L. GIFFORD, MATT LUBAWY, STEPHEN BURFORD, HARVEY IRBY,  
2 STACY RIVERA, WITHOLD IGLIKOWSKI, ROXANNA NORRIS, LAURA WAALKS,  
3 MARVIN BRYAN, MARK KAPETANSKY, CATHERINE JORDAN, NATHAN HILL,<sup>3</sup>  
4 WILLIAM BIRD, GARY BORDERS and MARISSA CHIEN, as well as the oral statements and  
5 arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:

6 **FINDINGS OF FACT**

7  
8 1. This case arises as a result of alleged deficiencies Plaintiff HORIZON HOLDINGS  
9 2900, LLC has experienced with the heating, ventilation and air conditioning (also referred to as  
10 "HVAC" herein) system within its approximate 5,200 square-foot condominium office space  
11 purchased in 2015 and located within Defendant SHEA AT HORIZON RIDGE OWNERS'  
12 ASSOCIATION'S (also referred to as the "ASSOCIATION" herein) common-interest community.  
13 Specifically, Plaintiff claims the building's HVAC system does not direct sufficient air to its unit,  
14 whereby 2,500 square feet of its office space is unbearably hot and unusable in the warmer months.  
15 More specifically, Plaintiff alleges the office suite suffers a massive six-ton shortfall of cool air as  
16 the ASSOCIATION'S HVAC system is not properly balanced. Stating the issue differently,  
17 Plaintiff avers its office suite is not receiving its *pro rata* share of the cooler air. As a consequence,  
18 HORIZON HOLDINGS 2900, LLC alleges it has endured over \$225,000.00 in lost rents and  
19 approximately \$800,000.00 decrease in the property's fair market value. By way of its Second  
20 Amended Complaint filed November 28, 2018, Plaintiff HORIZON HOLDINGS 2900, LLC  
21 asserted the following causes of action against Defendants SHEA AT HORIZON RIDGE  
22 OWNERS' ASSOCIATION and TAYLOR MANAGEMENT ASSOCIATION:  
23  
24  
25 ...  
26

27  
28 <sup>3</sup>MR. HILL testified only in the hearing held pursuant to Rule 37 of the Nevada Rules of Civil Procedure (NRCPP). MR. BRYAN testified at both the NRCPP 37 hearing and the non-jury trial.

1 (1) Breach of contract against the ASSOCIATION;

2 (2) Breach of covenant of good faith and fair dealing against the ASSOCIATION;

3 (3) Declaratory relief against the ASSOCIATION;

4 (4) Negligence against both the ASSOCIATION and TAYLOR ASSOCIATION  
5 MANAGEMENT (also referred to as "TAM" herein); and

6 (5) Negligent undertaking against TAM.  
7

8 The Fourth and Fifth Causes of Action asserting negligence and negligent undertaking against the  
9 ASSOCIATION and TAM were dismissed by way of summary judgment issued February 4, 2020  
10 which was unopposed by HORIZON HOLDINGS 2900, LLC. The causes of action addressed in  
11 the trial before the Court were solely the first three lodged against the ASSOCIATION. The  
12 following facts were adduced at trial:

13  
14 2. The commercial office subdivision, SHEA AT HORIZON RIDGE, was constructed  
15 in approximately May 2005. The subdivision consists of two two-story office buildings,<sup>4</sup> as well as  
16 certain other improvements on the property. The property is a common-interest community  
17 governed by the Declaration of Commercial Office Subdivision Covenants, Conditions &  
18 Restrictions and Reservation of Easements for SHEA AT HORIZON RIDGE (also referred to herein  
19 as "CC&Rs").<sup>5</sup>  
20

21 3. The CC&Rs set forth the Declarant's intention to develop and convey commercial  
22 office subdivision units within the Project pursuant to the general plan. The Project was restricted

23 ...

24 ...  
25

26  
27 <sup>4</sup>The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge  
28 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will  
be identified as 2900 and 2904 herein. It is noted here, however, at the trial, the parties did refer to the 2900 Building as  
"Building 1" and the 2904 Building as "Building 2."

<sup>5</sup>See Joint Trial Exhibit 1 admitted into evidence.

1 exclusively to non-residential use, and, according to the CC&Rs and pursuant to NRS  
2 116.1201(2)(b), the Declaration and Project was not subject to NRS Chapter 116.<sup>6</sup>

3 4. At all times pertinent herein, DON GREIG, GARY BORDERS and MARISSA  
4 CHIEN<sup>7</sup> were owners of commercial suites within the common-interest community and members of  
5 the ASSOCIATION'S Board of Directors with the latter two filling the offices of President and  
6 Secretary/Treasurer,<sup>8</sup> respectively. MR. BORDERS testified at trial he was the first owner to build  
7 out his approximate 7,500 square-foot commercial space located on the second floor or Suite 200 of  
8 the 2900 Building in 2005.<sup>9</sup> When doing so, he retained a designer who created the place for work  
9 in terms of space planning and placement of offices. Of note, MR. BORDERS testified, at the time  
10 of his build-out, he had to change the HVAC ducting as it did not meet what he was constructing.  
11 He sought and acquired Board approval to change the ducts pursuant to the CC&Rs' Section 2.10,  
12 and further, to install a stand-alone HVAC unit on the roof to cool the 140 square-foot room housing  
13 his computer server.<sup>10</sup> This stand-alone HVAC unit exclusively services Suite 200 and is MR.  
14 BORDER'S sole responsibility to maintain, unlike the ASSOCIATION'S concern for two 60-ton  
15 roof-top units (also referred to as "RTUs" herein) serving the entire building's common elements  
16 and owners' suites.  
17

18  
19 5. Sometime between 2005 and 2014, Suite 101 within the 2900 Building was  
20 purchased and presumably built out by TAG HORIZON RIDGE, LLC. In late 2014, TAG  
21 HORIZON RIDGE, LLC sold Suite 101 "as is" to HORIZON HOLDINGS 2900, LLC and the  
22  
23

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24 <sup>6</sup>*Id.*

25 <sup>7</sup>MS. CHIEN testified she owed her office suite located in the 2900 Building from September 2014 to July  
26 2019.

27 <sup>8</sup>The records identify MS. CHIEN as the "Secretary," but MR. BORDERS testified she oversaw the accounting.

28 <sup>9</sup>MR. BORDERS testified, of the 7,500 square feet, 6,300 were usable.

<sup>10</sup>During the course of the ASSOCIATION'S history, other than MR. BORDER, only one owner has sought  
and received approval to install a stand-alone HVAC to service his unit exclusively and that was in the 2904 Building.  
MR. BORDERS testified no owner has ever been denied permission to install a stand-alone HVAC to exclusively  
service his own unit.

1 purchase/sale closed in February 2015.<sup>11</sup> CATHERINE JORDAN is the managing member and  
2 principal of HORIZON HOLDINGS 2900, LLC. The offices were leased by Plaintiff, as the holding  
3 company, to QUALITY NURSING, LLC, PHYSICIANS TO HOME and JORDAN MEDICAL,<sup>12</sup>  
4 all three limited liability companies of which MS. JORDAN is and was the principal and managing  
5 member. At or near time of purchase, MS. JORDAN entered into a Fixed Price Agreement with  
6 RYCON CONSTRUCTION, LLC to convert the then existing offices to medical suites at a total  
7 cost of \$177,679.00.<sup>13</sup> Such conversion or “tenant improvements” (also referred to as “TIs” herein)  
8 involved the removal of walls existing between two and three smaller offices to create larger offices  
9 and medical suites. MARVIN BRYAN of RYCON CONSTRUCTION, LLC testified he also  
10 arranged the installation of a dryer vent and exhaust fan, the replacement of a damaged thermostat  
11 and addition of a 220 volt for washer/dryer and plumbing as the anticipated medical suites needed  
12 running water and drainage.<sup>14</sup> The general contractor’s scope of work also included painting and  
13 installing other aesthetics such as flooring.<sup>15</sup> MR. BRYAN testified, while the build-out involved  
14 new framing, he did not raise or lower the ceiling. Other than the repair of the damaged thermostat,  
15 MR. BRYAN testified RYCON CONSTRUCTION, LLC performed no HVAC work.  
16  
17

18 6. As the weather changed from cool to warm and hot, HORIZON HOLDINGS 2900,  
19 LLC and its tenants’ employees, notably STACY RIVERA, WITHOLD IGLIKOWSKI,  
20 ROXANNA NORRIS and LAURA WAALKS, began to experience uncomfortably warm conditions  
21  
22

---

23 <sup>11</sup>See Joint Trial Exhibit 4, E-mail from CATHERINE JORDAN to STEPHANIE FREEMAN, Community  
24 Manager, TAYLOR ASSOCIATION MANAGEMENT, dated June 30, 2015, admitted into evidence.

25 <sup>12</sup>See Joint Trial Exhibit 23, Commercial Lease Agreement between HORIZON HOLDINGS 2900, LLC and  
26 JORDAN MEDICAL AESTHETICS, LLC, admitted into evidence. The parties identified JORDAN MEDICAL  
27 AESTHETICS, LLC as “JORDAN MEDICAL” throughout the course of the trial. Of note, MR. BORDERS testified  
28 HORIZON HOLDINGS 2900, LLC never provided the ASSOCIATION copies of its leases with its tenants as required  
by Section 7.1(m) of the CCRs.

<sup>13</sup>See Defendant’s Trial Exhibit 547, Fixed Price Agreement along with Scope of Work, admitted into evidence.

<sup>14</sup>See Joint Trial Exhibit 3, SPARKS ENGINEERING, LLC’S Dryer Vent Calculations, admitted into evidence.

<sup>15</sup>See Defendant’s Trial Exhibits 547 and 548, RYCON CONSTRUCTION, LLC’S drawings, admitted into  
evidence.

1 in the south and west-facing offices. MS. JORDAN testified she complained to the ASSOCIATION  
2 and its property manager, TAM, on numerous occasions regarding the lack of cool air coming into  
3 Plaintiff's office suite.

4 7. In March 2015, the ASSOCIATION arranged for its then preferred HVAC vendor,  
5 STEVE BURFORD of CORPORATE AIR MECHANICAL SYSTEMS, INC. (also referred to as  
6 "CAMS" herein), to repair leaks and duct separation within the common elements. The York  
7 communication board on the RTU was repaired and interconnected with the computerized Building  
8 Management System (also referred to as "BMS" herein). As reported by MR. BURFORD in e-mail:  
9 "Schneider<sup>16</sup> was able to re-add the unit to the BMS and it is working again."<sup>17</sup> While it was  
10 completing its TI improvements within Plaintiff's office suite in May 2015, RYCON  
11 CONSTRUCTION, LLC contracted with CAMS to install four (4) Schneider Electric wall sensors at  
12 a cost of \$760.00.<sup>18</sup> According to MR. BURFORD, the work was performed and everything was  
13 working correctly. MR. BURFORD also testified he did look at some of the VAVs in Plaintiff's  
14 unit, but he did not inspect all. He noted, by this time, the ASSOCIATION had upgraded its  
15 buildings' air control system software and the owners needed to upgrade their VAVs to  
16 communicate with the new system.  
17  
18

19 8. In May and July 2015, HORIZON HOLDINGS 2900, LLC borrowed funds from its  
20 tenant, QUALITY NURSING, LLC, to purchase window blinds for the office suites to reduce or  
21

22 ...  
23  
24

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25 <sup>16</sup>"Scheider" was the ASSOCIATION'S prior preferred HVAC vendor replaced by CAMS.

26 <sup>17</sup>See Joint Trial Exhibit 27, E-mail communications between STEVE BURFORD and LORAIN CONTI,  
27 Community Manager, TERRAWEST (the ASSOCIATION'S former property manager) on March 25, 2015, admitted  
28 into evidence. Property management changed in or about April 2015 to TAYLOR ASSOCIATION MANAGEMENT  
(TAM). See Joint Trial Exhibit 28, E-mail from DON GREIG; also see Joint Trial Exhibit 44, Community Management  
Agreement between the ASSOCIATION and TAM for period May 1, 2015 to April 30, 2016, admitted into evidence.

<sup>18</sup>See Joint Trial Exhibit 25, CAMS' Proposal dated May 13, 2015, admitted into evidence.

1 mitigate the heat coming into the offices. Such blinds were described by MS. JORDAN in her  
2 testimony as that company's "best sun filtration" at a total cost of \$8,385.89.<sup>19</sup>

3 9. On June 30, 2015, MS. JORDAN sent MS. FREEMAN of TAM an e-mail directed to  
4 "To whom it May Concern" (sic), requesting "a ledger that consists of all charges and credits that  
5 have occurred since I purchased the property Feb (sic) 12, 2015."<sup>20</sup> MS. JORDAN also alerted MS.  
6 FREEMAN she had had no air conditioning in half of her unit since purchase. She had been "back  
7 and forth" between MR. BURFORD and "Nicholas [ANGELL] at the software company who had  
8 been hired to do the revamp." She stated she was informed by MR. ANGELL that day the "air  
9 problem is a break in the duct work before the VAV which according to the CCR's that this is the  
10 responsibility of the Association Management to handle."<sup>21</sup> I will need a monthly breakdown of the  
11 charges sent to suite so I can pay them. Please let me know immediately when the duct work will be  
12 fixed so I can stop having my business obstructed." This e-mail was directed to MS. CHIEN who  
13 forwarded it to MR. BURFORD. MR. BURFORD replied: "Nick did mention to us that he thought  
14 one of the VAV's didn't have air coming to it. So we went out shortly after this and inspected the  
15 VAV he said didn't have any air coming to it and found that it did have air, and the damper was  
16 opening and closing properly. If she's having additional issues with other VAVs, I have not been  
17 made aware of it. We can check all of her VAVs if she would like us to."<sup>22</sup>

18 10. In late July 2015, MS. JORDAN contacted MR. BURFORD regarding HVAC issues  
19 relating to Plaintiff's office unit. According to MS. JORDAN, MR. BURFORD related three  
20 controller units "were out," and such could be replaced at a cost of \$3,800.00. Given what she  
21

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22 <sup>19</sup>See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted  
23 into evidence.

24 <sup>20</sup>See Joint Trial Exhibit 4.

25 <sup>21</sup>A duct located next to a VAV suggests it is servicing a unit and not the common elements, and if that be the  
26 case, it is the owner's responsibility to repair a break in the duct "before the VAV." See CC&Rs, Sections 1.17., 1.19  
27 and 2.10.

28 <sup>22</sup>See Joint Trial Exhibit 5, E-mail between MS. CHIEN and MR. BURFORD dated August 5, 2015, admitted  
into evidence.



1 perceived to be a high price quote, MS. JORDAN acquired bids from two other HVAC vendors, one  
2 of which was from PRIME HVAC, LLC for \$2,587.00 to install three (3) ct. Spyder Lon  
3 Programmable VAV Controller and 3 ct. Zio LCD/Syk Bus Wall Modules.<sup>23</sup>

4 11. On August 18, 2015, MARK KAPETANSKY of PRIME HVAC, LLC, wrote MS.  
5 JORDAN an e-mail with a courtesy copy sent to MR. ANGELL;<sup>24</sup> it read as follows in salient part:

6 Hi Catherine,

7  
8 Nice to meet you in person, thanks for getting me in late in the afternoon to try and sort  
9 through the comfort issues you are having in your suite. Just to recap what was noted during  
10 the analysis:

11 1. Space temperature was displayed between 78 and 81 degrees throughout the  
12 office space in question. While not ideal this temperature does indicate some  
13 performance from the equipment providing space climate control.

14 2. The zone sensors displaying space temperature are providing command  
15 instruction to variable air volume (VAV) equipment in the ceiling space, and these  
16 devices are in fact fully providing supply air from the central air handling system.

17 3. My specific analysis of cooling performance throughout the space found  
18 normal supply air temperatures (upper 50's on my thermometer) from supply  
19 diffusers in the north half of the office space. as (sic) I moved south the air  
20 temperature measured at supply diffusers rose significantly indicating at some point  
21 in the air distribution system there is a split in the ductwork between rooftop air  
22 conditioning equipment that is working normally and other equipment not operating  
23 at sufficient capacity.

24 4. At some point in the past your south hallway diffuser was disconnected from  
25 the supply duct system and capped, likely to provide increased airflow to other end  
26 points in that circuit. You would like that duct work re-attached.

27 5. Analysis of rooftop air conditioning equipment is required to specifically  
28 itemize deficiencies.

I spoke with Nick on the phone and cc'd him on this email, we discussed the findings today  
and I also inquired about follow up. He mentioned speaking with Marissa [CHIEN] about a  
suitable course of action regarding provision of rooftop access. Once the required  
acknowledgement and authorization have been provided by building management we can  
move forward and follow up on today's findings.

12. On August 25, 2015, MS. JORDAN wrote a "To Whom It May Concern" letter,  
presumably to the ASSOCIATION and/or TAM, which read:

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<sup>23</sup>See Defendant's Trial Exhibit 587, PRIME HVAC, LLC's Service Proposal 15-103, admitted into evidence.

<sup>24</sup>See Joint Trial Exhibit 13, MR. KAPETANSKY'S e-mail to MS. JORDAN dated August 18, 2015, admitted  
into evidence.

1 My name is Catherine Jordan. I am the owner of 2900 W. Horizon Ridge Pkwy (sic)  
2 #101, Henderson, NV 89052. I took occupancy at the end of May 2015. I am writing this  
letter in regards to the fact that half of my suite cannot get below 80 degrees and is  
obstructing my ability to do business.

3 It is my understanding that as the owner I am responsible for the VAV's (which  
4 includes the controller) down to the registers that enter my unit.

5 I was told that the association hired a company named CAMS to perform some  
revamping of software and compressor replacements that are on the roof.

6 It took CAMS over two months to get the software and replace the compressors on  
the roof.

7 I was then told by CAMS that I had three controller units out and they gave me a bid  
of \$3800.00 to fix those units. I got two other bids for \$2400.00 to do the same work. I went  
8 with one of the lower bids rather than CAMS.

9 Now that my controls are fixed, half of my unit is still 80 degrees during the day. I  
had the company evaluate the air temp that was blowing out of my registers on the half of my  
unit that remains 80 degrees. They found the air to be blowing out at 75 degrees when it  
10 should be blowing out at between 55-59 degrees. This would lead one to believe that the  
compressors are not cycling or working correctly. I am requesting immediately (at my  
11 expense) that the compressors and roof units be evaluated by someone other than CAMS.  
Given the fact of CAMS' excessive costs and taking months to repair issues in the past. (sic)

12 As I stated earlier, I cannot conduct business and this issue is hindering my ability to  
bring in revenue. I have forwarded a copy of this to my attorney and requesting a list of who  
13 is on the board for my association and when the board meetings are scheduled.

14 Please let me know if there is anyone else I should contact or notify of this matter.

15 Also, there is a leak on the west exterior wall that occurs every time it rains and water  
enters one of my exam rooms where there is 100K piece of equipment. The leak comes from  
16 up above my unit. This is the second time I have reported this.<sup>25</sup>

17 13. On August 27, 2015, MS. JORDAN wrote MR. BURFORD and MS. FREEMAN  
18 another "To whom it may concern" e-mail. It reads as follows:

19 My name is Catherine Jordan. I am the owner of 2900 West Horizon Ridge #101, Henderson  
20 NV. I have been without complete air conditioning in my unit for 90 days. This is  
obstructing my business. I just spoke with Steve at CAMS who the board contracted to fix  
21 the units. He stated that at this time there is a circuit breaker and a TXV power head valve  
that needs to be replaced on the northern unit which requires being ordered from out of state.  
22 I am authorizing Steve at CAMS to order the parts immediately and if the board has issues I  
will pay for it and I can have my attorney seek after them for reimbursement.<sup>26</sup>

23 ...  
24  
25

26  
27 <sup>25</sup>See Joint Trial Exhibit 42, Letter from MS. JORDAN dated August 25, 2015, admitted into evidence; *also see*  
Plaintiff's Trial Exhibit 133, p. 2, MS. JORDAN'S August 26, 2015 e-mail to MS. FREEMAN.

28 <sup>26</sup>See Joint Trial Exhibit 6, E-mails between MS. JORDAN, MR. BURFORD, MS. FREEMAN and MS.  
CHIEN, admitted into evidence.

1 Upon receiving word from MR. BURFORD he would "order the circuit breaker now," MS. CHIEN  
2 instructed he not directly communicate with MS. JORDAN regarding common element business as  
3 work on the common elements was to be performed when the ASSOCIATION Board or its  
4 management company gave him authorization "—not Catherine Jordan."<sup>27</sup>

5 14. In late August/early September 2015, MS. JORDAN retained PRIME HVAC, LLC to  
6 perform work in Plaintiff's office suite for the bid of \$2,587.00. As indicated within an Invoice sent  
7 to MS. JORDAN on September 9, 2015,<sup>28</sup> the following work took place:

9 Work to complete removal of 3 existing/malfunctioning invinsys VAV actuators and provide  
10 replacement with Honeywell Spyder programmable logic controllers. VAV actuators  
11 retrofitted to south office space service. Work included installation of required VAV wall  
12 mounted thermostat modules and necessary programming to front end. Work performed per  
13 Prime Proposal 15.103. Noted disconnected and capped duct feed to hallway diffuser during  
14 actuator installation and notified Catherine. Per ongoing suite cooling performance concerns  
15 from state and management of Quality Nursing, follow-up analysis work was performed to  
16 confirm and evaluate VAV operation. Airflow analysis throughout space in question was  
17 performed on entire diffuser inventory with data subsequently uploaded and emailed. During  
18 regular device testing on 8/28, found # 3 actuator (feed to center administrative office space)  
19 recently replaced was unresponsive to normal zone sensor/space temp command, follow up  
20 repair on 9/1 provided programming flash and re-installation to device. Commencement of  
21 normal operation was then immediately verified. Space temperature evaluation on 8/28/15  
22 found significant discrepancy between supply air temperatures in the north and south ends of  
23 suite, with north diffusers providing normal air conditioning supply air temperatures and  
24 southern most diffusers providing poor cooling. Follow up work to provide verification of  
25 central mechanical (rooftop) cooling equipment is required to ensure availability of adequate  
26 cooling capacity. All duct connections throughout suite were verified as structurally intact,  
27 all VAV equipment was operationally verified 9/9/15.

28 15. On September 2, 2015 and in response to MS. JORDAN'S August 26, 2015 e-mail  
where she indicated she was forwarding documentation to her attorney and "instruct him to go with  
legal actions to cure this situation," WILLIAM PAUL WRIGHT, ESQ., counsel for the  
ASSOCIATION wrote MS. JORDAN requesting her lawyer's contact information.<sup>29</sup>

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<sup>27</sup>*Id.*

<sup>28</sup>See Joint Trial Exhibit 14, PRIME HVAC, LLC'S Invoice ESH-0805 dated September 9, 2015, admitted into evidence; *also see* Defendant's Trial Exhibit 587 and Plaintiff's Trial Exhibit 115, both admitted into evidence.

<sup>29</sup>See Joint Trial Exhibit 7, E-mail string between MR. WRIGHT, MS. JORDAN and MATTHEW EKINS,

1           16.     On September 3, 2015, MR. BURFORD wrote MS. JORDAN an e-mail, which was  
2 copied to ASSOCIATION Board members and MS. FREEMAN of TAM.<sup>30</sup> This e-mail reads in  
3 part:

4           Hi Catherine,

5           I stopped by on Tuesday to take a look at your offices and take some temperature readings of  
6 the air coming out of the supply registers. I found you had between 59 and 63 degree air  
7 coming out of all the registers I checked. The two Southern offices specifically had 63  
8 degree air coming out. I noticed the smaller office facing the South had one supply register  
9 and no return registers. The larger office on the Southwest corner had two supply registers  
10 and one return register. In my opinion this is not a supply air temperature problem but rather  
11 a (sic) air volume problem. I would recommend you hire an AC company to come in and  
12 take actual air flow readings (Cubic Feet per Minute, not temperature) to see what volume of  
13 air you have coming from the supply registers in those offices. Once you know that  
14 information you will be able to balance the air flow so those perimeter offices get more air to  
15 them since they have a greater heat load from the windows. This may require the AC  
16 company to install dampers in your duct work to regulate the air flow to the different  
17 registers. I would also recommend you install additional return air grilles (sic) in all of the  
18 perimeter offices. Removing the warm air from the offices is equally as important as  
19 supplying cold air to the offices.<sup>31</sup>

20           17.     MATTHEW EKINS, ESQ. responded to MR. WRIGHT'S September 2, 2015 e-mail  
21 on September 8, 2015, indicating "[t]oday my client asked me to become involved and facilitate a  
22 timely resolution. I will be calling you this afternoon to see what can be done to resolve the 90 plus  
23 days without sufficient air conditioning for my client's office."<sup>32</sup> Apparently, MR. WRIGHT missed  
24 MR. EKINS' telephone call, and noted he (WRIGHT) would contact MR. EKINS' "tomorrow."

25           MR. EKINS responded by e-mail the following day, noting he was leaving town for a funeral  
26 and available only by e-mail. His September 9, 2015 e-mail further read:

27           The primary concern is having the AC system fixed in a timely fashion. Also, it would be  
28 helpful to have the Taylor and Associates and my client to be able to speak directly on

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ESQ., Plaintiff's lawyer, admitted into evidence.

<sup>30</sup>See Joint Trial Exhibit 8, E-mail from MR. BURFORD of CAM dated September 3, 2015, admitted into evidence.

<sup>31</sup>MR. BURFORD testified at trial he had been contracted by the ASSOCIATION and TAM to complete a duct survey on the 2904 Building. He was not contracted to conduct work on the 2900 Building, but did look at HORIZON HOLDINGS 2900, LLC'S offices. He did not know if the layout for the two buildings, 2900 and 2904, were the same.

<sup>32</sup>See Joint Trial Exhibit 7.

1 resolution of the problem. My client informs me that she has had her space inspected by a  
2 different HVAC company and it verified all her systems are working properly. There is  
3 simply no cold air coming in from the compressors. I am working on getting a letter from  
4 that HVAC company to confirm this. Can you let me know where Taylor & Assoc (sic) is at  
5 on working with CAMS or another HVAC company to get this problem solved?<sup>33</sup>

6  
7 18. On September 10, 2015, MR. WRIGHT wrote MR. EKINS an e-mail which reads:  
8 Matt:

9 Attached are invoices for HVAC repairs done in 2014 to the tune of nearly \$15K. The  
10 compressors that were causing issues this year were installed last year in another repair.  
11 Why they failed again in (sic) being looked into. However, any claim that the Board is not  
12 performing its duties and taking care of the portions of the building that it is responsible for,  
13 in (sic) simply not accurate.

14 Another e-mail was sent by MR. WRIGHT, indicating once the lawyers had an opportunity to speak,  
15 they needed to address MS. JORDAN'S interference with the ASSOCIATION'S vendors and her  
16 directives towards TAM and the ASSOCIATION.<sup>34</sup> MR. EKINS responded four days later,  
17 providing an invoice for the work MS. JORDAN had completed for the system for which Plaintiff  
18 was responsible. He also inquired whether "management" had verified the compressors were  
19 supplying cool air to all of his client's space, and could inspect and verify "today" cold air was being  
20 supplied and all compressors were functional. On September 16, 2015, MR. WRIGHT indicated the  
21 ASSOCIATION would like to coordinate with MS. JORDAN to have the respective HVAC vendors  
22 meet on site to review the situation and one or two Board members would be present.<sup>35</sup> No evidence  
23 was provided to indicate whether such a site visit ever took place.

24 19. In mid-September 2015, MR. GREIG of the Board discussed prospects of balancing  
25 "the whole building at the same time" with MR. BURFORD.<sup>36</sup> MR. BURFORD discussed the  
26 reasoning in his communication to the Board:

27 <sup>33</sup>Id.

28 <sup>34</sup>Id.

<sup>35</sup>Id.

<sup>36</sup>See Joint Trial Exhibit 30, E-mail communication between MR. GREIG, MR. BORDERS, MS. CHIEN and  
MR. BURFORD dated September 11, 2015, admitted into evidence.

1 ...there's a duct status pressure set point and sensor that make sure the correct volume of air  
2 is going through the main duct work to all of the suites, so that should be a constant (unless  
3 there's a break in the duct work somewhere). All we really need to do is balance each  
4 VAV's supply registers so we can push an equal amount of air to each register (or push more  
5 air to higher heat load areas such as East, South and West facing window offices).

6 MR. BORDERS testified, prior to incur the expenses of balancing the entire building, it was decided  
7 certain repair work and replacement of deficient equipment would be completed. Further, before the  
8 ASSOCIATION incurred such expenses for balancing, the owners of suites in the 2900 Building,  
9 including HORIZON HOLDINGS 2900, LLC, needed to repair the deficiencies for which they were  
10 responsible.

11 20. In mid-October 2015, MR. BURFORD of CAMS installed a new condenser fan  
12 motor to resolve the problems in Plaintiff's office suite at the ASSOCIATION'S expense. Further,  
13 new control boards were needed for the four (4) RTUs so they could "speak with the software," as  
14 the old ones were ten (10) years old and no longer compatible.<sup>37</sup>

15 21. MS. JORDAN sent a certified letter, return receipt requested to the ASSOCIATION  
16 on October 28, 2015, relaying: "This is the fourth time in 2 months I have issued this complaint.  
17 Our back offices stay at 77 degrees during the day."<sup>38</sup> It was about the time MS. JORDAN sent her  
18 letter, the ASSOCIATION was arranging repairs to the RTU #2 located on the 2900 Building's  
19 rooftop. As noted by MR. KAPETANSKY in his e-mail to both ASSOCIATION Board members  
20 and TAM dated October 29, 2015:

21 Good morning all,

22  
23 Wanted to send out one quick follow up from the conversations I had with both Don  
24 [GREIG] and Marissa [CHIEN] yesterday. We are replacing (and upgrading) unit  
25 communication and control on rooftop AC # 2 at 2900 W Horizon Ridge Pkwy (sic) due to a

26 <sup>37</sup>See Joint Trial Exhibit 31, E-mail communication between MR. GRIEG and MR. BURFORD dated October  
27 23, 2015, admitted into evidence.

28 <sup>38</sup>MS. JORDAN wrote MS. FREEMAN an e-mail on November 12, 2015: "The temperature in my entire office  
is 62 degrees today. Please let me know you received this email and what is being done to render the issue." See Joint  
Trial Exhibit 34, p. J34-3, admitted into evidence.

1 board level failure with communication. This board was previously repaired and is now not  
2 communicating with the computer control system, preventing the equipment from following  
3 an occupancy schedule and promotion excessive electrical consumption. While this upgrade  
4 is desirable from an enhanced control capability (as well as the obvious restoration of  
communication) the cost of this upgrade outweighs the benefits of an immediate overhaul of  
the remaining (still communicating) rooftop equipment.

5 In summary, if/when we see the remaining rooftop equipment at Shea exhibit board level  
6 malfunction we can continue with this upgrade to that equipment at that time. ...

7 22. A few days later, on or about November 4, 2015, MS. JORDAN acquired a bid from  
8 PRIME VAC, LLC to replace six VAVs at a cost of \$4,500.00.<sup>39</sup> On November 26, 2015, MR.  
9 KAPETANSKY of PRIME HVAC, LLC wrote MS. JORDAN with courtesy copies to MR. GREIG,  
10 MR. ANGELL and MS. CHIEN:

11 Hi Catherine,

12 Happy Thanksgiving. I was able to make some corrective action in your suite and  
13 increase total heating available, however I was surprised to see no less than 2 VAVs in your  
14 suite with no zone sensor control. No zone sensor likely equals very little cooling capability  
15 and no heating capability whatsoever. Whoever was responsible for your T.I. work was  
16 derelict in their placement of some of the zone sensors for space climate control. I would say  
the actual articulation of the supply diffusers was typical of what I've found throughout the  
Shea campus providing the not uncommon aspect of zone sensors feeding input to VAV  
terminal units that supply air to two or even three different locations in the suite.

17 I started with the VAV marked "9", not sure of the device ID (Nick [ANGELL] looks  
18 at those on the computer and some of them are correct anyway). This unit has zone sensor  
19 wiring ran to a junction box in the wall with no sensor...I include a picture, attached and  
20 labeled "VAV 9". When we replace the actuator in VAV 9 I can install the new zone sensor  
21 at the existing junction box and there should be no issues. Worst case scenario is pulling  
some sensor wire through the existing conduit and then wiring in the new sensor, so this  
won't be a large additional cost even if we have to re-work the wire as the infrastructure is in  
place.

22 Moved on to VAV "8", device ID marked "11". This unit had the heat locked out on  
23 airflow proving. I adjusted the manual supply damper upstream of the VAV unit and had no  
24 effect on air flow sampling through the pitot tube. I moved the pitot tube around in its  
25 insertion window until I found a satisfactory position for it that seemed to keep the heat  
enabled. I may have to come back and completely relocate the pitot tube but for now the  
heat on this unit is fairly reliable.

26  
27 <sup>39</sup>See Defendant's Trial Exhibit 588, PRIME HVAC, LLC'S Service Proposal 15-108 dated November 4, 2015,  
28 admitted into evidence; also see Plaintiff's Trial Exhibit 115 showing \$4,500.00 payment to PRIME HVAC, LLC from  
QUALITY NURSING, LLC.

1 VAV "2", device ID labeled "25" is the terminal unit supplied from the zone sensor  
2 with the "ABN: diagnostic on the display, we can expect no function from this unit until the  
3 actuator and zone sensor are replaced. I found the unit with the high voltage temperature  
4 limit safety tripped and I reset the safety to examine operation, again locked out through the  
5 loss of the zone sensor.

6 VAV labeled "1", remarked "3", supplies your office as well as the northern most  
7 office space and seemed to be working well. Not sure if the supply to your office is choked  
8 off through a physical duct connection or not. I will investigate it when we're there  
9 replacing actuators.

10 The last unit I looked at is also labeled VAV "1", remarked "6", and I have pictures  
11 attached of the zone sensor wiring ran loose to the ceiling cavity approximately 10 feet west  
12 of the VAV itself. They didn't even try to hook up a zone sensor for this unit, and the wire  
13 will likely have to be re-ran to an appropriate location to allow for normal VAV operation.  
14 Expect some additional cost for this repair and to allow normal operation from your unit.

15 I stopped my inspection at that point as most of the units have now been examined  
16 and serious deficiencies of the VAV terminal units in your suite had already been noted.  
17 Any further repair work required can be performed as needed during the actuator retrofit and  
18 other repair requirements listed here. ...<sup>40</sup>

19 23. On May 20, 2016, TAM provided notice to CAMS the ASSOCIATION was  
20 cancelling its contract for services as of June 30, 2016.<sup>41</sup> PRIME HVAC, LLC, who MS. JORDAN  
21 initially hired as her HVAC contractor, was retained by the ASSOCIATION as one of its preferred  
22 vendors.

23 24. The evidence presented indicates there were no complaints by MS. JORDAN,  
24 HORIZON HOLDINGS 2900, LLC, its tenants or employees from December 2015 until early June  
25 2016.<sup>42</sup> On June 8, 2016, MS. JORDAN wrote MS. FREEMAN, the e-mail of which was copied  
26 and sent to ASSOCIATION Board members: "The temperature in my office is 76 today and was 78  
27 all evening yesterday. I am still waiting on the AC schedule I requested yesterday. Can you tell me  
28 when these issues will be addressed?"<sup>43</sup> MS. FREEMAN responded the following day:

...

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<sup>40</sup>See Defendant's Trial Exhibit 606, E-mail from MR. KAPETANSKY to MS. JORDAN dated November 26, 2015, admitted into evidence.

<sup>41</sup>See Joint Trial Exhibit 9, Letter from TAM to CAMS dated May 20, 2016, admitted into evidence.

<sup>42</sup>See, for example, Plaintiff's Trial Exhibit 103, E-mail communication between MS. JORDAN, MS. FREEMAN, LORI PUGH, Maintenance Coordinator for TAM, MR. BORDERS and MS. CHIEN from November 12, 2015 to July 27, 2016, admitted into evidence.

<sup>43</sup>Id.



1 Hi Catherine,

2 Please note that the A/C schedule is Monday thru Friday from 4:00 a.m. – 6:00 p.m. The  
3 scheduling of the A/C is at the discretion of the Board. You are the only owner in the front  
4 building that has made the request to have the A/C run on nights and weekends. The other  
5 owners shouldn't have to subsidize your sole usage. If you want to pay for the entire cost of  
6 providing A/C to the building on weekends, we can come up with a charge for that.<sup>44</sup>

7 MS. JORDAN replied to MS. FREEMAN'S response: "[C]orrection to last email[.] It needs to read  
8 that I have medical equipment and computers that should not be exposed to high temperatures."<sup>45</sup>

9 At that point, MR. BORDERS noted in his responsive e-mail:

10 Folks,

11 Each owner operates a unique business with varying needs.

12 For example, my computer server room requires constant air conditioning. For this reason  
13 we installed a separate unit to manage. I paid for the unit and continually pay and for the  
14 energy required to power it. As I read the CC&R's this is my problem and not an association  
15 problem.<sup>46</sup>

16 The evidence presented at trial showed HORIZON HOLDINGS 2900, LLC never sought approval  
17 from the ASSOCIATION'S Board to install a stand-alone air conditioning to exclusively service its  
18 office suite, including the cooling of its medical equipment and computers as MR. BORDERS had  
19 done when he built out his space in or about 2005.

20 25. On June 23, 2016, MS. JORDAN wrote MS. FREEMAN again: "Please note that it is  
21 79 in all my office today." MS. FREEMAN responded within the hour: "Thank you Catherine—we  
22 will contact Prime to go out and adjust." On June 29, 2016, MS. JORDAN wrote MS. FREEMAN:

23 Stephanie

24 I am giving you an update regarding the AC status in our unit. I contacted Mark at Prime  
25 and told him that the AC was to come on at 4am and wasn't coming on until 6am as I am  
26 there at 5am several mornings a week. He said he would check with Nick Angel who does  
27 the programming. Also my unit is at 78-80 every day. He said he adjusted some airflow and

28 <sup>44</sup>*Id.*: also see Joint Trial Exhibit 34, E-mail exchange between MS. JORDAN, MS. FREEMAN, MR.  
BORDERS and MS. CHIEN from November 12, 2015 to June 9, 2016, admitted into evidence.

<sup>45</sup>See Joint Trial Exhibit 34.

<sup>46</sup>*Id.*

1 had to wait to talk to York because he was unsure how to adjust it. We go to the unit above  
2 us every day and their unit is at 72. So this doesn't make any sense as heat travels upward  
3 and it should be harder to cool the upstairs unit. Mark acknowledged in a text the other day  
4 for some reason the airflow is having trouble getting down to my unit. When do you think it  
5 is reasonable to have an answer to this problem as its (sic) been going on for a year now?

6 MS. FREEMAN responded that day:

7 Hi Catherine,  
8 I was told that the back unit is running at half capacity and Mark is working on finding out  
9 what is wrong. I will keep you apprised of any updates I receive.<sup>47</sup>

10 On July 27, 2016, MS. JORDAN wrote MS. FREEMAN again:

11 Dear Stephanie  
12 It is 81 degrees in all of my office today. I need to know what we are going to do to come up  
13 with a permanent solution to this issue. This is the constant temp in my office everyday (sic)  
14 after noon time. The last I heard from you On (sic) June 29<sup>th</sup> was that one unit was working  
15 at 50 percent and Mark was working on it and would you "keep me apprised". I have not  
16 heard anything from you or Mark and now it has been a solid year that I haven't had proper  
17 airconditioning (sic). Please let me know what is going to be done.

18 MS. FREEMAN responded that day: "Lori [PUGH] will contact Mark to get status on repairs."

19 MS. PUGH responded to MS. FREEMAN and the Board members: "I have left him a voicemail and  
20 will advise once I hear back from him." MR. BORDERS replied to all on the e-mail chain: "The  
21 AC in 200-2900 has been malfunctioning for 3 days now. Mark was out yesterday but I never  
22 received the cause/cure download."<sup>48</sup> MS. PUGH responded she would inquire "on this one as well  
23 when I hear back from him." Shortly thereafter, MS. PUGH relayed to all MS. CHIEN'S reply:

24 Ok everyone,

25 I just got of (sic) the phone with Mark just at this very moment. First of all Catherine is  
26 misinformed as usual. The issue from June 29<sup>th</sup> was on the North Unit and it has been  
27 resolved and is working normally.

28 Our current problem is with the South unit which services Gary's [BORDERS] unit and  
Catherine's south end.

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<sup>47</sup>See Plaintiff's Trial Exhibit 103.

<sup>48</sup>*Id.*

1 There is a condenser coil refrigerant leak and it is currently operating at 50% capacity.  
2 Unfortunately the condenser coil is an extremely complicated and intricate bar of the A/C  
3 rooftop unit. To take it apart you would have to take the entire unit offline as in 0% capacity.  
4 Assuming you find the cause of the leak there is no guarantee that one will up later or that  
5 you found them all. Mark is strongly advising that we evaluate replacing the coil (which  
6 requires a crane) in the fall when it cools down.

7 We have 2 options: 1) Do nothing and operate at 50% capacity because that is the best we  
8 can do. You don't want to have zero A/C capacity in 115 degree heat.

9 2) We could dump refrigerant into the system and hoping it is a slow leak so we could have  
10 100% capacity for awhile (sic). It's kind of like when your car has an oil leak and instead of  
11 fixing it you just keep on putting more oil into it. The cost of putting a load of refrigerant is  
12 going to be \$2,000. The problem is that you don't know how long that it will last. It might  
13 last a day, a week, or a month or two. I think we should do it and see how bad of a leak we  
14 have.<sup>49</sup>

15 26. MS. JORDAN'S next communication concerning HVAC issues was October 20,  
16 2015.<sup>50</sup>

17 Dear Stephanie

18 This is Catherine Jordan with Horizon Holdings in 2900 West Horizon Ridge 101. Our air  
19 conditioning has not work (sic) correctly in over the year I have been here. I have written  
20 several emails. I would like to schedule an afternoon appt (sic) when someone from your  
21 company who can come walk with me on my issues. This problem is interrupting my  
22 business and has for the past year. Please let me know you received this e-mail.

23 This e-mail was forwarded to MS. CHIEN, who, in turn, sent it to MR. KAPETANSKY. MR.  
24 KAPETANSKY responded on October 24, 2016:

25 Hi all,

26 I spoke with Catherine and followed up with marissa (sic) last week. Catherine is still  
27 complaining her perimeter office space being insufficiently cooled, although I've been in the  
28 suite on different occasions and the problems are more intermittent than she is  
acknowledging. Her employees are usually happy when I check with them the times I  
happen to see someone in the halls.<sup>51</sup> Hopefully when the repairs are complete to RTU 2 and  
the capacity is restored we can quiet her concerns again.

<sup>49</sup>*Id.*

<sup>50</sup>See Joint Trial Exhibit 48, E-mail exchange between MS. JORDAN, MS. FREEMAN, MS. CHIEN and MR. KAPETANSKY between November 12, 2015 and October 24, 2016, admitted into evidence.

<sup>51</sup>MR. KAPETANSKY testified he had told the ASSOCIATION'S Board his belief MS. JORDAN was exaggerating the conditions in Plaintiff's unit.

1 My intention was to perform the repairs on RTU 2 today but the weather is challenging.  
2 Tomorrows (sic) forecast is clear skies. I'll update you when repairs are complete and we'll  
3 see how it goes.<sup>52</sup>

4 27. The evidence presented shows there were no further HVAC complaints made by MS.  
5 JORDAN, HORIZON HOLDINGS 2900, LLC, its tenants and employees between October 20,  
6 2016 and January 12, 2017 when MS. JORDAN wrote the following e-mail to MS. PUGH.<sup>53</sup>

7 Lori

8 ...Also I want to confirm that he (sic) A/C and heating issues I have had for the past year are  
9 unresolved. As per Brandon yesterday he said that he and Mark agree that I have flow issues  
10 getting through to my ducts. He stated that the owners of the other units would not let them  
11 in. I own the bottom half of the building so its (sic) not me. I spoke with the other two  
12 owners down here and they stated it wasn't them not letting them in. I went to Ameriprise  
13 financial and they stated of course they would let them in if they were approached. That  
14 leaves two owners that need to be contacted and the (sic) would be western Medical  
15 associates and the Marketing firm upstairs. Would you please contact both of those to  
16 facilitate Mark entry into their units if need be. It should not be hard as I understand both of  
17 them are board members. I need follow up on all these issues I have addressed.

18 28. On January 17, 2017, MR. KAPETANSKY wrote MS. JORDAN a report of the  
19 findings and recommendations:

20 Good morning,

21 Based on our findings from 1/11 we note that temps in the office space are within normal  
22 guidelines for space comfort. Temperature set points are in-line with facility energy  
23 conservation goals. Please see the attached service invoice.

24 Attached are the photos that Brandon took on Wednesday, January 11 at about 12:45  
25 in the afternoon. He verified normal temps in the afternoon after his first trip in earlier the  
26 same morning. The attached photos also include tag info showing date and geo location.  
27 Also attached is a photo I took from December 2015 which clearly shows one of your VAV  
28 thermostats at ceiling height, that is the stat serving the center conference room area. This  
situation was never corrected. I've instructed a number of times in the past that the stat has  
to be moved to a normal temperature sensing heat to prove normal space temp comfort, if the  
unit is still operating it's going to steal capacity from elsewhere in your suite to try and  
satisfy the temperature set point from 10 feet off the floor. Needless to say, that's a tall order  
that would be inhibiting performance elsewhere in your suite.

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<sup>52</sup>*Id.*

<sup>53</sup>See Joint Trial Exhibit 46, E-mail exchange between MS. JORDAN and MS. PUGH, admitted into evidence.

1 You still have this unit and one other (photo of zone sensor also attached) that require  
2 replacement of the VAV actuator to ensure control and calibration capability. Without a  
3 complete retrofit of all the VAV actuators in your suite, you cannot achieve full control and  
4 maximize targeted comfort to the space. We cannot guarantee any operation at all from  
5 original VAV actuators, not heating, not cooling. Further, your suite is fully ¼ of the  
6 building at 2900 W. Horizon Ridge Pkwy. The suites elsewhere on the property campus are  
7 all designed to operate with 12 total VAV terminal units for that square footage, you have 11.  
8 Your north office space, where you reside as well as the ladies in the accounting area is  
9 served inadequately with one VAV providing air to 5 separate diffusers spread out across 4  
10 separate rooms (your original corner office, Laura's [WAALK] office, your new office and  
11 your new office restroom). The 12<sup>th</sup> VAV was likely removed during your T.I. where (along  
12 with the legacy of the thermostat 10 feet off the floor) we previously corrected one VAV that  
13 did not have a zone sensor installed at all (where we provided both the sensor and  
14 termination of wiring we found simply laying in the ceiling) and another that had zone sensor  
15 wire ran to a box in the wall and left there, unterminated. We have worked to correct duct  
16 work runs, air flow sensing faults and failed heating assemblies in your suite along with  
17 providing only a partial retrofit of VAV actuators.<sup>54</sup>

11 The pricing to complete the remaining 2 actuators and zone sensors (including installation  
12 and programming) would be \$2300.00.

13 Pricing to install a 12<sup>th</sup> VAV serving north office space (requiring updated drawings, high  
14 and low volt wiring infrastructure, duct work modification and space termination, terminal  
15 unit installation, actuator installation and programming as well as modification of existing  
16 duct runs to properly balance load) would be \$7800.00.

16 Detailed quotations are available should you decide to perform these strongly recommended  
17 improvements, pricing is included here so you can shop around if you like. Let us know if  
18 you'd like to proceed.

18 The evidence adduced at trial showed HORIZON HOLDINGS 2900, LLC never arranged for the  
19 installation of the twelfth VAV to serve the north office space.

20  
21 29. MS. JORDAN retained the services of an electrical contractor, DON L. GIFFORD of  
22 GIFFORD CONSULTING GROUP (also referred to as "GCG" within the evidence), and HARVEY  
23 H. IRBY, P.E. in or about March 2017 to evaluate and analyze the HVAC system in the 2900  
24 Building and particularly Suite 101. Both MR. GIFFORD and MR. IRBY eventually were retained  
25 as Plaintiff's electrical and mechanical engineering experts in this litigation. The parties stipulated  
26

27  
28 <sup>54</sup>See Defendant's Trial Exhibit 607, MR. KAPETANSKY'S e-mail to MS. JORDAN dated January 18, 2017,  
admitted into evidence.

1 to the admission of these gentlemen's "Preliminary HVAC Building Analysis, Suite 101" dated  
2 March 27, 2017 into evidence.<sup>55</sup> Both MR. GIFFORD and MR. IRBY concluded the available cubic  
3 foot per minute (also referred to as "CFM") within Suite 101 is inadequate "based not only on the  
4 results of our calculations, but are substantiated by [MS. JORDAN'S] descriptions of the inadequacy  
5 of the system to provide a reasonable environment in which to work and to serve ...clientele."  
6 They recommended HORIZON HOLDINGS 2900, LLC retain a contractor to add a twelfth (12<sup>th</sup>)  
7 VAV to the suite's northeast office, including an in-office thermostat, both of which would be  
8 Plaintiff's responsibility as the unit's owner pursuant to the CC&Rs. "This will require a  
9 modification to the existing medium-pressure ductwork. VAV 12 and the appropriate interfacing  
10 thermostat will need to be attached to System 2." MR. GIFFORD and MR. IRBY also  
11 recommended Plaintiff lower the height of the existing conference room thermostat to standard  
12 height, which, again, would be Plaintiff's responsibility.<sup>56</sup> In addition, MR. GIFFORD and MR.  
13 IRBY opined: "The 6-ton shortfall we delineate above is the result of building system inadequacies  
14 in design and/or operation as substantiated by Table 1 and the succeeding analysis. There is no  
15 evidence that the building HVAC system was ever properly commissioned, an industry standard for  
16 this quality and size of building. Hence, it is essential that property management commission and  
17 balance the system. Based on this assumption, it is our opinion that the system, once properly  
18 commissioned and balanced is capable of meeting the standard demands imposed by your office  
19 square footage." In rendering their opinions, MR. GIFFORD and MR. IRBY reviewed and relied  
20 upon mechanical drawings and construction plans for the 2904 Building, but not the 2900 Building  
21 where Plaintiff's office suite is located.<sup>57</sup> In this regard, MR. GIFFORD noted he saw nothing to  
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23  
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25

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26  
27 <sup>55</sup>See Joint Trial Exhibit 17 stipulated as admitted into evidence.

28 <sup>56</sup>*Id.*, p. 4.

<sup>57</sup>Only building plans for the 2904 Building were offered for admission into evidence. This Court understands MS. JORDAN went to the City of Henderson Building Department to acquire a copy of the Master Plan, and she

1 suggest the 2904 and 2900 Buildings were constructed differently. MR. IRBY admitted he had no  
2 intimate knowledge of the air conditioning systems in the 2900 Building and each building should  
3 have their individual or separate plans. He also noted the office in question was typical space that  
4 did not generate a lot of heat. He saw no obvious problems with installation.

5           30. WILLIAM BIRD, an expert in HVAC and plumbing, testified on behalf of the  
6 ASSOCIATION. He was retained to review the report authored by MR. GIFFORD and MR. IRBY.  
7 He was not provided any documents, such as mechanical engineering and other building plans, for  
8 the 2900 Building. He testified there had to be existing plans as one could not acquire a permit  
9 without the submission of plans. He would not have rendered an opinion using plans of a different  
10 building. Further, he did not know how MR. GIFFORD reached the conclusion there was a 6-ton  
11 shortfall when neither he nor MR. IRBY did a design. MR. BIRD also was critical of MR. IRBY'S  
12 position Plaintiff's suite was a "standard office," and the fact MR. GIFFORD inputted information  
13 for standard office space when conducting load calculations using a HAP<sup>58</sup> software program, a tool  
14 used by engineers to estimate loads and design HVAC systems. In MR. BIRD'S view, Plaintiff's  
15 unit is not a standard office; it houses several employees and patients, and consist of medical suites  
16 with examination rooms and equipment, such as EKGs, all of which generate heat.<sup>59</sup> In short,  
17 Plaintiff's suite has different loads than a typical office. MR. BIRD further opined the existing duct  
18 work should have been moved during the TI renovation if Plaintiff had intended to change the  
19 previous office space to medical suites. In addition, the server room housing Plaintiff's computers  
20  
21  
22  
23

24 received only that for the 2904 Building, although some mechanical engineering drawings for the 2900 Building were  
25 contained in the city's file for 2904. No other efforts were made during the course of discovery by the Plaintiff to  
26 acquire plans for the 2900 Building. Defense counsel subpoenaed the 2900 Building plans and received those for the  
27 2904 Building. During the course of the trial, it became apparent Plaintiff and its experts were relying upon 2904  
28 Building plans as those relating to the 2900 Building could not be found. MR. BRYAN of RYCON CONSTRUCTION,  
LLC, a witness to the litigation, went to the City of Henderson Building Department as he had received a telephone call  
from MS. JORDAN there was some confusion regarding the plans.

<sup>58</sup>"HAP" is the acronym for "hourly analysis program."

<sup>59</sup>"EKGs" is the acronym for "electrocardiograms."

1 should have been addressed; in this regard, MR. BIRD said it was not uncommon for a unit to have a  
2 stand-alone HVAC to specifically service such needs.

3 MR. BIRD also explained RTUs, at discharge, pushes air through the primary ducting to the  
4 medium pressure ducting, which, in turn, pushes air to the units' VAVs. A VAV will only output air  
5 being delivered to it. A VAV can decrease amount of air received, but cannot increase it. He found  
6 MR. GIFFORD at fault for not checking to see if the unit's VAVs were fully open. MR. BIRD also  
7 noted the unit's thermostat in the conference room was misplaced too high, ten (10) feet above the  
8 floor when it should be located "where the people are;" 48 inches is the standard height for  
9 thermostat placement. All in all, MR. BIRD opined the air conditioning system could be repaired  
10 without Plaintiff suffering a market loss.  
11

12 31. HORIZON HOLDINGS 2900, LLC presented the testimony of an appraisal expert,  
13 MATTHEW LUBAWY, MAI, CVA, to attest to its losses and damages. As set forth in his  
14 appraisal report,<sup>60</sup> MR. LUBAWY opined, if there were no HVAC issues, the market value of  
15 Plaintiff's 5,206 square foot office as of February 7, 2019 is \$1,800,000;<sup>61</sup> assuming the HVAC  
16 issue cannot be resolved, the value decreases to \$990,000 or is \$810,000 less. Loss in rental income  
17 and increased expenses in light of the unusable area of 2,237 square feet in the south portion of the  
18 office from August 1, 2015 through January 24, 2019 was \$225,000. In rendering his opinion, MR.  
19 LUBAWY noted: "Ideally, the 'cost to cure' would be considered in this situation with the  
20 installation of a new HVAC unit. However, given the condominium ownership of the subject office,  
21 this may not be allowed."<sup>62</sup> In this regard, MR. LUBAWY admitted he made "extraordinary  
22 assumptions the HVAC issue could never be resolved and estimated the value of the subject  
23  
24  
25

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26 <sup>60</sup>See Joint Trial Exhibit 24, Appraisal Report by VALBRIDGE PROPERTY ADVISORS, stipulated by the  
27 parties as admitted into evidence.

28 <sup>61</sup>MR. LUBAWY testified he appraised the subject property in December 2017 at a value of \$1,700,000. MS. JORDAN did not tell him there were HVAC issues at that time.

<sup>62</sup>*Id.*



1 property based on the revised size of 3,850 square feet (6,087 less the 2,327 unusable square feet).

2 As set forth by MR. LUBAWY in his report:

3 The subject's HVAC issues have been ongoing for several years and have not been resolved.  
4 It would be difficult for the subject owner to install their own HVAC system due to the  
5 condominium ownership which would likely prevent installation of ground-mounted or roof-  
6 mounted units. Therefore, we have employed an extraordinary assumption the HVAC issue  
could never be resolved. Use of this assumption would have an affect (sic) on the  
conclusions herein if found to be false.<sup>63</sup>

7 MR. LUBAWY testified he considered the "cost to cure," but did not investigate whether the HVAC  
8 maladies could be repaired. He also indicated if the assumptions change, his opinion as to market  
9 value also was subject to amendment. He also testified he did not review any leases, and his opinion  
10 as to lost rents were not based upon "actual" loss, but rather, a consideration of how the market  
11 reacts. He acknowledged the entities renting space from HORIZON HOLDINGS 2900, LLC are  
12 controlled by MS. JORDAN; that is, the leases were not arms-length transactions, and they, in  
13 essence, were "pocket to pocket."  
14

### 15 CONCLUSIONS OF LAW

16 1. As noted above, HORIZON HOLDINGS 2900, LLC has sued the ASSOCIATION,  
17 asserting three causes of action: (1) breach of contract, (2) breach of covenant of good faith and fair  
18 dealing and (3) declaratory relief. NRS 30.030 specifically provides the courts shall have the power  
19 to declare rights, status and other legal relations whether or not further relief is or could be claimed.  
20

21 The court's declaration may be either affirmative or negative in form and effect; such declaration  
22 shall have the force and effect of a final judgment or decree.  
23

24 2. In this case, HORIZON HOLDINGS 2900, LLC asserts a "breach of contract" claim  
25 against the ASSOCIATION, arguing it is entitled to certain rights and privileges by way of the  
26 Declaration or CC&Rs, including but not limited to the full benefit of all common elements,  
27

28 

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<sup>63</sup>*Id.*

1 “including the cool air provided by the HVAC.” Such is being refused by the ASSOCIATION,  
2 resulting in breach and causing Plaintiff to suffer damages.<sup>64</sup> While, by the terms of the CC&Rs,  
3 NRS Chapter 116 does not apply as the Project is a commercial or non-residential common-interest  
4 community, this chapter’s statutory scheme nevertheless is instructive in determining whether  
5 CC&Rs here impose contractual obligations between HORIZON HOLDINGS 2900, LLC and the  
6 ASSOCIATION.

7  
8 3. NRS 116.2101 permits the creation of a common-interest community “by recording a  
9 declaration executed in the same manner as a deed and, in a cooperative, by conveying the real  
10 estate subject to that declaration to the association.” A declaration must contain a number of  
11 required statements<sup>65</sup> and “may contain any other matters the declaration considers appropriate.”  
12 NRS 116.2105(2). “CC&Rs become a part of the title to property.” NRS 116.41095(2). By law, a  
13 person who buys a home subject to CC&Rs must receive as information statement warning “[b]y  
14 purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your  
15 lifestyle and freedom of choice” and the CC&Rs “bind you and every future owner of the property  
16 whether or not you have read them or had them explained to you.” *Id.* The statement must further  
17 advise the prospective home buyer “[t]he law generally provides for a 5-day period in which you  
18 have the right to cancel the purchase agreement.” NRS 116.41095(1).  
19  
20

21 4. The proposition CC&Rs create contractual obligations, in addition to imposing  
22 equitable servitudes, is widely accepted. U.S. Home Corporation v. Michael Ballesteros Trust, 134  
23 Nev. 180, 183, 415 P.3d 32, 36 (2018), *citing* Restatement (Third) of the Law of Property:  
24 Servitudes, ch. 4 intro. Note (Am. Law Inst. 2000) (“one of the basic principles underlying the  
25 Restatement is that the function of the law is to ascertain and give effect to the likely intentions and  
26

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27 <sup>64</sup>*Id.*

28 <sup>65</sup>*See* NRS 116.2105(1).

1 legitimate expectations of the parties who create servitudes, *as it does with respect to other*  
2 *contractual arrangements.*") (Emphasis added). By accepting the deed or other possessory interest  
3 in a unit, the owner manifests his or her assent to the CC&Rs.<sup>66</sup> Thus, this Court accepts the premise  
4 CC&Rs can impose contractual obligations upon both the association and unit owner.

5 5. Generally speaking, when a contract is clear on its face, it "will be construed from the  
6 written language and enforced as written." Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771,  
7 776, 121 P.3d 599, 603 (2005). The Court has no authority to alter the terms of an unambiguous  
8 contract. *Id.*, citing Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).<sup>67</sup> An  
9 ambiguity in the agreement's terms, however, shall be resolved against the contract's drafter. *See*  
10 Sullivan v. Dairyland Insurance Company, 98 Nev. 364, 366, 649 P.2d 1357, 1358 (1982).

11 6. A breach of contract occurs where a party does not perform a duty arising under the  
12 agreement, and such failure is material. *See* Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d  
13 1259, 1263 (2000), *reversed on other grounds*, Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

14 7. As pertinent to this case, the CC&Rs' Article I entitled "Definitions" specifically  
15 defines certain verbiage. Section 1.11 defined "Common Elements" as:

16 ...all portions of the Project, other than the Units, and all improvements thereon. Subject to  
17 the foregoing, Common Elements may include, without limitation: Building roof, exterior  
18 walls, and foundations, hardscape and parking area, greenbelt, all water and sewer systems,  
19 lines and connections, from the boundaries of the Project, to the boundaries of Units (but not  
20 including such internal lines and connections located inside Units); pipes, ducts, flues,  
21 chutes, conduits, wires, and other utility systems and installations (other than outlets located  
22 within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air  
23 conditioning, as installed by Declaration for common use of Units within each Building (but  
24 not including HVAC which serves a single Unit exclusively).

25 <sup>66</sup>Also see CC&Rs' Section 16.1: "The covenants and restrictions of this Declaration shall run with and bind the  
26 Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this  
27 Declaration, their respective legal representatives, successor Owners and assigns."

28 <sup>67</sup>In interpreting a contract, "the court shall effectuate the intent of the parties, which may be determined in light  
of the surrounding circumstances if not clear from the contract itself." Sheehan & Sheehan v. Nelson Malley &  
Company, 121 Nev. 481, 488, 117 P.2d 219, 224 (2005), *quoting* NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151,  
1158, 946 P.2d 163, 167 (1997), *and* Davis v. National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987).

1 “Exclusive Use Areas” is defined in Section 1.17 in pertinent part:

2 ...any portion of the Project, other than Units, and allocated exclusively to individual Units,  
3 together with such HVAC designed to serve a single Unit, but located outside of the Unit’s  
4 boundaries. Use, maintenance, repair and replacement of Exclusive Use Areas shall be as set  
5 forth in this Declaration. *If any chute, flue, duct, wire, conduit, bearing wall, bearing column*  
6 *or any other fixture lies partially within and partially outside the designated boundaries of a*  
7 *Unit, any portion respectively thereof serving only the Unit is an Exclusive Use Area*  
8 *allocated solely to that Unit, and any portion respectively thereof serving more than one Unit*  
9 *or any portion of the Common Elements is part of the Common Elements. ... (Emphasis*  
10 *added)*

11 “HVAC” is defined in Section 1.19 as:

12 ...heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on  
13 easements in Common Elements, which serve one Unit exclusively, shall constitute  
14 Exclusive Use Areas as to such Unit, pursuant to Section 2.10, ...

15 “Unit” is defined in Section 1.34 as:

16 ...each Unit space, and shall consist of a fee simple interest having the following boundaries  
17 all as originally constructed by Declarant and consisting of: (a) the exterior surface of  
18 exterior walls; (b) the exterior surface of interior walls that are not party walls; (c) the  
19 exterior surface of exterior windows and doors; (d) the interior surface of party walls; (e) the  
20 interior surface commencing with and including the finished floor; (f) the interior surface  
21 commencing with and including the finished ceiling; and (g) the airspace encompassed  
22 within the foregoing boundaries; together with the exclusive right to use, possess and occupy  
23 the Exclusive Use Areas (if any) serving such Unit exclusive; an undivided pro-rata  
24 fractional interest as tenants in common in the Common Elements (other than any Common  
25 Element conveyed in fee to the Association); easements of ingress and egress over and across  
26 all entry or access areas and of use and enjoyment of all other Common Elements; and  
27 membership and voting rights in the Association as set forth in the Governing Documents  
28 (which membership and vote shall be appurtenant to the Unit).

8. Article 2 of the CC&Rs addresses “Owners’ Property Rights; Easements.” Of  
significance here, Section 2.10 addresses easements and property rights related to HVAC; it states:

Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association,  
for the purpose or maintenance, repair and replacement of any heating, ventilation, and/or air  
conditioning and/or heating equipment and systems (“HVAC”) located in the Common  
Elements; *provided, however, that no HVAC shall be placed in any part of the Common*  
*Elements other than its original location as installed by Declarant, unless the approval of the*  
*Board is first obtained.* Notwithstanding the foregoing or any other provision in this  
Declaration, any HVAC which is physically located within the Common Elements, but  
which serves an individual Unit exclusively, shall constitute a Exclusive Use Area as to the  
Unit exclusively served by such HVAC, and the Owner of the Unit shall have the duty, at the

1 Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving  
2 the Unit, subject to the original appearance and condition thereof as originally installed by  
3 Declarant, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads  
underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common  
Elements. (Emphasis added)

4 9. Article 6, Section 6.1 provides the ASSOCIATION has the power and duty to  
5 "reasonably cause the Common Elements to be maintained in a neat and attractive condition, and  
6 kept in good repair, ..." Article 9, Section 9.1 sets forth each Owner shall, at its sole expense, keep  
7 the interior of its Unit, equipment and appurtenances in good, clean and sanitary order and condition.  
8

9 10. Article 16, "Additional Provisions," particularly Section 16.12 entitled "Limited  
10 Liability" sets forth:

11 Except to the extent, if any, expressly prohibited by applicable Nevada law, none of  
12 Declarant, Association, ARC, Declarant and/or Association, and none of their respective  
13 directors, officers, any committee representatives, employees, or agents, shall be liable to  
14 any Owner or any other Person for any action or for any failure to act with respect to any  
15 matter if the action taken or failure to act was reasonable or in good faith. The Association  
16 shall indemnify every present and former Officer and Director and every present and former  
committee representative against all liabilities incurred as a result of holding such office, to  
the full extent permitted by law. (Emphasis added)

17 11. In this case, HORIZON HOLDINGS 2900, LLC claims it suffered loss of rents and  
18 property value as the ASSOCIATION has refused or failed to abide by its responsibility under the  
19 CC&Rs to provide Plaintiff its *pro rata* share of the cooler air. Plaintiff's position is based upon the  
20 opinions rendered by its electrical and mechanical engineering experts, MR. GIFFORD and MR.  
21 IRBY, respectively. While these experts did opine "[t]he 6-ton shortfall we delineate...is the result  
22 of building system inadequacies in design and/or operation as substantiated by Table 1 and the  
23 succeeding analysis," and "[t]here [was] no evidence that the building HVAC system was ever  
24 properly commissioned" or balanced, they also noted the lack of cooler air was caused, in part, by  
25 Plaintiff's own failure to take measures to remedy the system for which it is responsible pursuant to  
26 the CC&Rs. For example, these experts' report dated March 2017 indicates HORIZON  
27  
28

1 HOLDINGS 2900, LLC should have retained a contractor to add a twelfth (12<sup>th</sup>) VAV to the suite's  
2 northeast office, including an in-office thermostat, which all evidence showed Plaintiff never did.  
3 Further, these experts also recommended Plaintiff lower the height of the existing conference room  
4 thermostat from its current location near the ceiling to standard height, another task Plaintiff did not  
5 undertake in efforts to remedy the situation. In short, these experts opined the HVAC issues are and  
6 were caused in part by HORIZON HOLDINGS 2900, LLC'S inaction; they are and were not the  
7 solely caused by the ASSOCIATION'S refusal or failure to balance or "properly commission" the  
8 building's HVAC system.  
9

10 12. Further, while MR. GIFFORD and MR. IRBY opined Plaintiff suffered a 6-ton  
11 shortfall in air given their assessment of building system inadequacy in design and operation, the  
12 evidence showed such was based, at least in part, upon their review of the 2904 Building plans.  
13 They were not afforded the opportunity to review the 2900 Building plans and specifications and  
14 made the supposition the 2900 and 2904 Buildings were identical. Such an assumption, however,  
15 dismisses the fact the two buildings are unique, by way of, *inter alia*, grading, location and facing.  
16 Further, the evidence showed the buildings' interiors or office suites were not identical or utilized in  
17 the same way. For example, Suites 100 and 110 in the 2900 Building cover 4,052 square feet  
18 (7.43% of building), whereas Suites 100 and 110 in the 2904 Building embody 3,989 square feet  
19 (7.21% of building).<sup>68</sup> Suites 101, 111, 120 and 121 in the 2900 Building occupy 9,664 square feet  
20 (17.5% of building) and the same numbered suites in the 2904 Building comprise 9,727 square feet  
21 (17.6% of building). While the business of HORIZON HOLDINGS 2900, LLC involves the  
22 leasing to medical offices providing on-site health services and diagnostic testing to patients, the  
23 work of its neighbor, MR. BORDERS, consists of market research. As MR. BORDERS testified,  
24  
25  
26

27  
28 <sup>68</sup>See Joint Trial Exhibit 2, First Amendment to Declaration of Commercial Office Subdivision Covenants,  
Conditions & Restrictions and Reservation of Easements for Shea At Horizon Ridge, Bates No. TAM0352-TAM0353.

1 every build-out is different. In short, the opinions rendered by MR. GIFFORD and MR. IRBY  
2 Plaintiff suffered a 6-ton shortfall given the building's inadequacy in design and operation are  
3 somewhat flawed given their reliance upon another building's construction plans and assumptions  
4 the 2900 and 2904 Buildings were identical. Further, MR. GIFFORD'S load calculations are  
5 likewise flawed as such were based upon data Plaintiff's suite was typical office space, and ignored  
6 the demands of medical facilities.

7  
8 13. Plaintiff's experts were not the only ones to cast partial blame upon Plaintiff for its  
9 HVAC issues. Defense expert, MR. BIRD, noted it was not uncommon for office occupants to  
10 acquire a stand-alone HVAC unit to service the computer server room. While Plaintiff proposed it  
11 was precluded from installing its own separate HVAC unit within the Common Elements to service  
12 its medical suites, the evidence belied that supposition. Section 2.10 of the CC&Rs provided "no  
13 HVAC shall be placed in any part of the Common Elements other than its original location as  
14 installed by Declarant, *unless* the approval of the Board is first obtained." (Emphasis added) No  
15 evidence was presented to suggest HORIZON HOLDINGS 2900, LLC ever sought the approval of  
16 the Board to install a stand-alone HVAC unit within the Common Elements; it follows, then,  
17 Plaintiff also was never denied Board approval. Further, precedent showed the Board had never  
18 denied such approval to any of its owners; if anything, MR. BORDERS testified the  
19 ASSOCIATION Board had granted approval at least twice before. Stand-alone HVAC units did  
20 exist on the rooftops of both the 2900 and 2904 Buildings. Further, MR. KAPETANSKY also noted  
21 it appeared air shortfall had also been caused by RYCON CONSTRUCTION, LLC when it  
22 constructed the TIs in Plaintiff's office suite in 2015.

23  
24 14. While the evidence showed the lack of cool air to Plaintiff's suite was caused, in part,  
25 by HORIZON HOLDINGS 2900, LLC not installing a twelfth VAV and/or stand-alone HVAC, and  
26 physically lowering its thermostat in the conference room from ceiling height to 48 inches from the  
27  
28

1 floor, evidence was presented by way of MR. BUFORD'S recommendation the building's HVAC  
2 system be balanced. Such recommendation was not ignored by the ASSOCIATION, and the  
3 evidence showed there was an intention for balancing to take place. However, prior to incur the  
4 expenses of balancing the entire building, the ASSOCIATION'S Board decided such would take  
5 place after certain repair work and replacement of old and deficient equipment was completed. In  
6 this Court's view, a decision to balance the system after the deficient HVAC equipment by both the  
7 ASSOCIATION and owners was repaired and/or replaced is reasonable and does not constitute a  
8 breach of the CC&Rs. Liability on part of the ASSOCIATION and its Board members cannot stand  
9 where their action taken or their failure to act is reasonable and in good faith. *See* CC&Rs Section  
10 16.12. This Court concludes the ASSOCIATION did not breach the CC&Rs or contract with  
11 HORIZON HOLDINGS 2900, LLC.  
12

13       **15.** Notwithstanding its conclusion actual breach is lacking, this Court also finds  
14 HORIZON HOLDINGS 2900, LLC did not suffer damages or losses as a result of the  
15 ASSOCIATION'S action or inaction. With respect to Plaintiff's alleged loss in property value,  
16 HORIZON HOLDINGS 2900, LLC'S appraiser, MR. LUBAWY, made certain assumptions, such  
17 as the impossibility of the HVAC system being remedied to provide Plaintiff adequate cool air,  
18 when he determined Plaintiff suffered \$810,000 loss in fair market value. MR. LUBAWY'S  
19 assumptions were flawed as the evidence showed the HVAC systems within the Common Elements  
20 and Owners' exclusive use could be repaired and/or replaced. Further, it was not impossible, given  
21 the condominium restrictions, for HORIZON HOLDINGS 2900, LLC to seek Board approval to  
22 install a stand-alone HVAC system. MR. LUBAWY admitted his opinion as to fair market value  
23 would change if his assumptions were not correct. With respect to loss of rents, there was no  
24 evidence Plaintiff suffered an actual deficit. The leases between HORIZON HOLDINGS 2900,  
25 LLC and its tenants were "pocket to pocket," meaning all entities were controlled by one managing  
26  
27  
28



1 member/principal, MS. JORDAN. No evidence was presented to show the tenants were unable to  
2 pay the landlord rent; if anything, the evidence showed at least one tenant, QUALITY NURSING,  
3 LLC, had adequate cash flow to pay rent as it loaned money to its landlord on a consistent basis. To  
4 wit, notwithstanding this Court's conclusion the ASSOCIATION did not breach the CC&Rs or  
5 contract, the First Claim for Relief cannot stand as the preponderance of the evidence showed  
6 Plaintiff did not suffer damages resulting therefrom.  
7

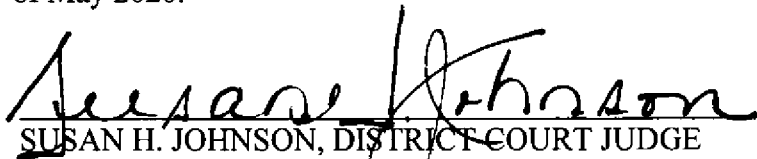
8       16. HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied  
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair  
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of  
11 America, 104 Nev. 587, 592 n.1, 763 P.2d 673, 676 n. 1 (1988). Under the implied covenant of  
12 good faith and fair dealing, each party must act in a manner that is faithful "to the purpose of the  
13 contract and the justified expectations of the other party." Morris v. Bank of America, 110 Nev.  
14 1274, 1278, 866 P.2d 454, 457 (1994), *quoting* Hilton Hotels v. Butch Lewis Productions, 107 Nev.  
15 226, 234, 808 P.2d 919, 923 (1991). Such position is true even where, ultimately, there is no breach  
16 of contract; a plaintiff "may still be able to recover damages for breach of the implied covenant of  
17 good faith and fair dealing." Hilton Hotels, 107 Nev. at 232, 808 P.2d at 922. To wit, whether a  
18 breach of the *letter* of the contract exists, the implied covenant of good faith is an obligation  
19 independent of the consensual contractual covenants. Morris, 110 Nev. at 1278, 886 P.2d at 457.  
20 Given the evidence presented in this case, this Court concludes the ASSOCIATION acted in a  
21 manner faithful to the CC&Rs' purpose and justified expectations of HORIZON HOLDINGS 2900,  
22 LLC. As noted above, the ASSOCIATION and its property manager, TAM, was responsive  
23 whenever MS. JORDAN complained about the lack of cool air in Plaintiff's medical suites. The  
24 ASSOCIATION made necessary repairs to the old and deficient equipment. Its HVAC vendors  
25 informed MS. JORDAN what needed to be done to accord Plaintiff and its tenants adequate cooling  
26  
27  
28

1 of air. Accordingly, this Court finds in favor of the ASSOCIATION as against HORIZON  
2 HOLDINGS 2900, LLC with respect to Plaintiff's Second Claim for Relief.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** judgment is rendered in  
5 favor of Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION as against Plaintiff  
6 HORIZON HOLDINGS 2900, LLC, whereby Plaintiff takes nothing by way of its Second Amended  
7 Complaint on file herein.  
8

9 DATED this 26<sup>th</sup> day of May 2020.

10   
11 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

12 **CERTIFICATE OF SERVICE**

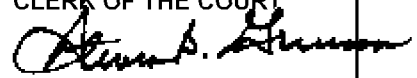
13 I hereby certify, on the 26<sup>th</sup> day of May 2020, I electronically served (E-served), placed  
14 within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true  
15 and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
16 JUDGMENT to the following counsel of record, and first-class postage was fully prepaid thereon:  
17

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28 Laura Banks, Judicial Executive Assistant



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*Shea at Horizon Ridge Owners Association and*  
*Taylor Management Association*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

HORIZON HOLDINGS 2900, LLC, a Nevada  
limited liability company;

Plaintiff,

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, a Domestic Non-Profit  
Corporation, TAYLOR MANAGEMENT  
ASSOCIATION, a Nevada Limited-Liability  
Company, FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company, TAG HORIZON RIDGE, LLC, a Nevada  
Limited-Liability Company, and THE ALIGNED  
GROUP LLC, a Nevada Limited Liability Company;

Defendants.

CASE NO. A-17-758435-C  
DEPT. NO.: XXII

**NOTICE OF ENTRY OF  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT**

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///

Gordon Rees Scully Mansukhani, LLP  
300 S. 4th Street, Suite 1550  
Las Vegas, NV 89101

**NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT**

PLEASE TAKE NOTICE that on May 26, 2020 a **FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT** was entered in the above-entitled matter, a copy of which is attached hereto as **Exhibit “1.”**

DATED this 1<sup>st</sup> day of June 2020.

**GORDON REES SCULLY  
MANSUKHANI, LLP**

*/s/ Robert E. Schumacher*

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300 South 4<sup>th</sup> Street, Suite 1550  
Las Vegas, NV 89101

*Attorneys for Defendants  
Shea at Horizon Ridge Owners Association  
and Taylor Management Association*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of June, 2020 I served a true and correct copy of  
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT** via the Court's Electronic Filing/Service system upon all parties on the E-Service  
Master List as follows:

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*Attorneys for Plaintiff*  
*Horizon Holdings 2900, LLC*

/s/ Andrea Montero

An employee of GORDON REES SCULLY  
MANSUKHANI LLP

**EXHIBIT 1**

**EXHIBIT 1**

1 FFCL

2  
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 HORIZON HOLDINGS 2900, LLC, a  
6 Nevada Limited Liability Company,

7 Plaintiff,

8 Vs.

9 SHEA AT HORIZON RIDGE OWNERS  
10 ASSOCIATION, a Domestic Non-Profit  
11 Corporation; TAYLOR MANAGEMENT  
12 ASSOCIATION, a Nevada Limited  
13 Liability Company,<sup>1</sup>

14 Defendants.

Case No. A-17-758435-C  
Dept. No. XXII

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

16 This matter came on for non-jury trial on the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> days of  
17 February 2020 before Department XXII of the Eighth Judicial District Court, in and for Clark  
18 County, Nevada, with JUDGE SUSAN JOHNSON presiding; Plaintiff HORIZON HOLDINGS  
19 2900, LLC appeared by and through its attorney, ERIC ZIMBELMAN, ESQ. of the law firm, PEEL  
20 BRIMLEY; and Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION appeared by  
21 and through its attorneys, ROBERT E. SCHUMACHER, ESQ. and BRIAN K. WALTERS, ESQ. of  
22 the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and  
23 pleadings on file herein, including the exhibits admitted as evidence at trial,<sup>2</sup> heard the testimonies  
24

25  
26 <sup>1</sup>As noted more fully, *infra*, this Court granted partial summary judgment in favor of Defendant TAYLOR  
27 MANAGEMENT ASSOCIATION, which resulted in dismissal of the remaining claims against this defendant. *Also see*  
this Court's Order filed February 4, 2020.

28 <sup>2</sup>The exhibits admitted into evidence were Joint Trial Exhibits 1-10, 12-18, 21-24, 26-31, 34-44 and 46-50;  
Plaintiff's Trial Exhibits 101, 103, 108, 115-117, 124, 127, 131, 133-134, 145, 157 and 170-176; and Defendant's Trial  
Exhibits 547-548, 587-588, 606-607 and 645.

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 of the witnesses, DON L. GIFFORD, MATT LUBAWY, STEPHEN BURFORD, HARVEY IRBY,  
2 STACY RIVERA, WITHOLD IGLIKOWSKI, ROXANNA NORRIS, LAURA WAALKS,  
3 MARVIN BRYAN, MARK KAPETANSKY, CATHERINE JORDAN, NATHAN HILL,<sup>3</sup>  
4 WILLIAM BIRD, GARY BORDERS and MARISSA CHIEN, as well as the oral statements and  
5 arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:

6 **FINDINGS OF FACT**

7  
8 1. This case arises as a result of alleged deficiencies Plaintiff HORIZON HOLDINGS  
9 2900, LLC has experienced with the heating, ventilation and air conditioning (also referred to as  
10 "HVAC" herein) system within its approximate 5,200 square-foot condominium office space  
11 purchased in 2015 and located within Defendant SHEA AT HORIZON RIDGE OWNERS'  
12 ASSOCIATION'S (also referred to as the "ASSOCIATION" herein) common-interest community.  
13 Specifically, Plaintiff claims the building's HVAC system does not direct sufficient air to its unit,  
14 whereby 2,500 square feet of its office space is unbearably hot and unusable in the warmer months.  
15 More specifically, Plaintiff alleges the office suite suffers a massive six-ton shortfall of cool air as  
16 the ASSOCIATION'S HVAC system is not properly balanced. Stating the issue differently,  
17 Plaintiff avers its office suite is not receiving its *pro rata* share of the cooler air. As a consequence,  
18 HORIZON HOLDINGS 2900, LLC alleges it has endured over \$225,000.00 in lost rents and  
19 approximately \$800,000.00 decrease in the property's fair market value. By way of its Second  
20 Amended Complaint filed November 28, 2018, Plaintiff HORIZON HOLDINGS 2900, LLC  
21 asserted the following causes of action against Defendants SHEA AT HORIZON RIDGE  
22 OWNERS' ASSOCIATION and TAYLOR MANAGEMENT ASSOCIATION:  
23  
24  
25 ...  
26

27  
28 <sup>3</sup>MR. HILL testified only in the hearing held pursuant to Rule 37 of the Nevada Rules of Civil Procedure (NRCPP). MR. BRYAN testified at both the NRCPP 37 hearing and the non-jury trial.



1 (1) Breach of contract against the ASSOCIATION;

2 (2) Breach of covenant of good faith and fair dealing against the ASSOCIATION;

3 (3) Declaratory relief against the ASSOCIATION;

4 (4) Negligence against both the ASSOCIATION and TAYLOR ASSOCIATION  
5 MANAGEMENT (also referred to as "TAM" herein); and

6 (5) Negligent undertaking against TAM.  
7

8 The Fourth and Fifth Causes of Action asserting negligence and negligent undertaking against the  
9 ASSOCIATION and TAM were dismissed by way of summary judgment issued February 4, 2020  
10 which was unopposed by HORIZON HOLDINGS 2900, LLC. The causes of action addressed in  
11 the trial before the Court were solely the first three lodged against the ASSOCIATION. The  
12 following facts were adduced at trial:

13  
14 2. The commercial office subdivision, SHEA AT HORIZON RIDGE, was constructed  
15 in approximately May 2005. The subdivision consists of two two-story office buildings,<sup>4</sup> as well as  
16 certain other improvements on the property. The property is a common-interest community  
17 governed by the Declaration of Commercial Office Subdivision Covenants, Conditions &  
18 Restrictions and Reservation of Easements for SHEA AT HORIZON RIDGE (also referred to herein  
19 as "CC&Rs").<sup>5</sup>  
20

21 3. The CC&Rs set forth the Declarant's intention to develop and convey commercial  
22 office subdivision units within the Project pursuant to the general plan. The Project was restricted

23 ...

24 ...  
25

26  
27 <sup>4</sup>The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge  
28 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will  
be identified as 2900 and 2904 herein. It is noted here, however, at the trial, the parties did refer to the 2900 Building as  
"Building 1" and the 2904 Building as "Building 2."

<sup>5</sup>See Joint Trial Exhibit 1 admitted into evidence.

1 exclusively to non-residential use, and, according to the CC&Rs and pursuant to NRS  
2 116.1201(2)(b), the Declaration and Project was not subject to NRS Chapter 116.<sup>6</sup>

3 4. At all times pertinent herein, DON GREIG, GARY BORDERS and MARISSA  
4 CHIEN<sup>7</sup> were owners of commercial suites within the common-interest community and members of  
5 the ASSOCIATION'S Board of Directors with the latter two filling the offices of President and  
6 Secretary/Treasurer,<sup>8</sup> respectively. MR. BORDERS testified at trial he was the first owner to build  
7 out his approximate 7,500 square-foot commercial space located on the second floor or Suite 200 of  
8 the 2900 Building in 2005.<sup>9</sup> When doing so, he retained a designer who created the place for work  
9 in terms of space planning and placement of offices. Of note, MR. BORDERS testified, at the time  
10 of his build-out, he had to change the HVAC ducting as it did not meet what he was constructing.  
11 He sought and acquired Board approval to change the ducts pursuant to the CC&Rs' Section 2.10,  
12 and further, to install a stand-alone HVAC unit on the roof to cool the 140 square-foot room housing  
13 his computer server.<sup>10</sup> This stand-alone HVAC unit exclusively services Suite 200 and is MR.  
14 BORDER'S sole responsibility to maintain, unlike the ASSOCIATION'S concern for two 60-ton  
15 roof-top units (also referred to as "RTUs" herein) serving the entire building's common elements  
16 and owners' suites.  
17

18  
19 5. Sometime between 2005 and 2014, Suite 101 within the 2900 Building was  
20 purchased and presumably built out by TAG HORIZON RIDGE, LLC. In late 2014, TAG  
21 HORIZON RIDGE, LLC sold Suite 101 "as is" to HORIZON HOLDINGS 2900, LLC and the  
22  
23

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24 <sup>6</sup>*Id.*

25 <sup>7</sup>MS. CHIEN testified she owed her office suite located in the 2900 Building from September 2014 to July  
26 2019.

27 <sup>8</sup>The records identify MS. CHIEN as the "Secretary," but MR. BORDERS testified she oversaw the accounting.

28 <sup>9</sup>MR. BORDERS testified, of the 7,500 square feet, 6,300 were usable.

<sup>10</sup>During the course of the ASSOCIATION'S history, other than MR. BORDER, only one owner has sought  
and received approval to install a stand-alone HVAC to service his unit exclusively and that was in the 2904 Building.  
MR. BORDERS testified no owner has ever been denied permission to install a stand-alone HVAC to exclusively  
service his own unit.

1 purchase/sale closed in February 2015.<sup>11</sup> CATHERINE JORDAN is the managing member and  
2 principal of HORIZON HOLDINGS 2900, LLC. The offices were leased by Plaintiff, as the holding  
3 company, to QUALITY NURSING, LLC, PHYSICIANS TO HOME and JORDAN MEDICAL,<sup>12</sup>  
4 all three limited liability companies of which MS. JORDAN is and was the principal and managing  
5 member. At or near time of purchase, MS. JORDAN entered into a Fixed Price Agreement with  
6 RYCON CONSTRUCTION, LLC to convert the then existing offices to medical suites at a total  
7 cost of \$177,679.00.<sup>13</sup> Such conversion or “tenant improvements” (also referred to as “TIs” herein)  
8 involved the removal of walls existing between two and three smaller offices to create larger offices  
9 and medical suites. MARVIN BRYAN of RYCON CONSTRUCTION, LLC testified he also  
10 arranged the installation of a dryer vent and exhaust fan, the replacement of a damaged thermostat  
11 and addition of a 220 volt for washer/dryer and plumbing as the anticipated medical suites needed  
12 running water and drainage.<sup>14</sup> The general contractor’s scope of work also included painting and  
13 installing other aesthetics such as flooring.<sup>15</sup> MR. BRYAN testified, while the build-out involved  
14 new framing, he did not raise or lower the ceiling. Other than the repair of the damaged thermostat,  
15 MR. BRYAN testified RYCON CONSTRUCTION, LLC performed no HVAC work.  
16  
17

18 6. As the weather changed from cool to warm and hot, HORIZON HOLDINGS 2900,  
19 LLC and its tenants’ employees, notably STACY RIVERA, WITHOLD IGLIKOWSKI,  
20 ROXANNA NORRIS and LAURA WAALKS, began to experience uncomfortably warm conditions  
21  
22

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23 <sup>11</sup>See Joint Trial Exhibit 4, E-mail from CATHERINE JORDAN to STEPHANIE FREEMAN, Community  
24 Manager, TAYLOR ASSOCIATION MANAGEMENT, dated June 30, 2015, admitted into evidence.

25 <sup>12</sup>See Joint Trial Exhibit 23, Commercial Lease Agreement between HORIZON HOLDINGS 2900, LLC and  
26 JORDAN MEDICAL AESTHETICS, LLC, admitted into evidence. The parties identified JORDAN MEDICAL  
27 AESTHETICS, LLC as “JORDAN MEDICAL” throughout the course of the trial. Of note, MR. BORDERS testified  
28 HORIZON HOLDINGS 2900, LLC never provided the ASSOCIATION copies of its leases with its tenants as required  
by Section 7.1(m) of the CCRs.

<sup>13</sup>See Defendant’s Trial Exhibit 547, Fixed Price Agreement along with Scope of Work, admitted into evidence.

<sup>14</sup>See Joint Trial Exhibit 3, SPARKS ENGINEERING, LLC’S Dryer Vent Calculations, admitted into evidence.

<sup>15</sup>See Defendant’s Trial Exhibits 547 and 548, RYCON CONSTRUCTION, LLC’S drawings, admitted into  
evidence.

1 in the south and west-facing offices. MS. JORDAN testified she complained to the ASSOCIATION  
2 and its property manager, TAM, on numerous occasions regarding the lack of cool air coming into  
3 Plaintiff's office suite.

4 7. In March 2015, the ASSOCIATION arranged for its then preferred HVAC vendor,  
5 STEVE BURFORD of CORPORATE AIR MECHANICAL SYSTEMS, INC. (also referred to as  
6 "CAMS" herein), to repair leaks and duct separation within the common elements. The York  
7 communication board on the RTU was repaired and interconnected with the computerized Building  
8 Management System (also referred to as "BMS" herein). As reported by MR. BURFORD in e-mail:  
9 "Schneider<sup>16</sup> was able to re-add the unit to the BMS and it is working again."<sup>17</sup> While it was  
10 completing its TI improvements within Plaintiff's office suite in May 2015, RYCON  
11 CONSTRUCTION, LLC contracted with CAMS to install four (4) Schneider Electric wall sensors at  
12 a cost of \$760.00.<sup>18</sup> According to MR. BURFORD, the work was performed and everything was  
13 working correctly. MR. BURFORD also testified he did look at some of the VAVs in Plaintiff's  
14 unit, but he did not inspect all. He noted, by this time, the ASSOCIATION had upgraded its  
15 buildings' air control system software and the owners needed to upgrade their VAVs to  
16 communicate with the new system.  
17  
18

19 8. In May and July 2015, HORIZON HOLDINGS 2900, LLC borrowed funds from its  
20 tenant, QUALITY NURSING, LLC, to purchase window blinds for the office suites to reduce or  
21 ...  
22  
23  
24

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25 <sup>16</sup>"Scheider" was the ASSOCIATION'S prior preferred HVAC vendor replaced by CAMS.

26 <sup>17</sup>See Joint Trial Exhibit 27, E-mail communications between STEVE BURFORD and LORAIN CONTI,  
27 Community Manager, TERRAWEST (the ASSOCIATION'S former property manager) on March 25, 2015, admitted  
28 into evidence. Property management changed in or about April 2015 to TAYLOR ASSOCIATION MANAGEMENT  
(TAM). See Joint Trial Exhibit 28, E-mail from DON GREIG; also see Joint Trial Exhibit 44, Community Management  
Agreement between the ASSOCIATION and TAM for period May 1, 2015 to April 30, 2016, admitted into evidence.

<sup>18</sup>See Joint Trial Exhibit 25, CAMS' Proposal dated May 13, 2015, admitted into evidence.

1 mitigate the heat coming into the offices. Such blinds were described by MS. JORDAN in her  
2 testimony as that company's "best sun filtration" at a total cost of \$8,385.89.<sup>19</sup>

3 9. On June 30, 2015, MS. JORDAN sent MS. FREEMAN of TAM an e-mail directed to  
4 "To whom it May Concern" (sic), requesting "a ledger that consists of all charges and credits that  
5 have occurred since I purchased the property Feb (sic) 12, 2015."<sup>20</sup> MS. JORDAN also alerted MS.  
6 FREEMAN she had had no air conditioning in half of her unit since purchase. She had been "back  
7 and forth" between MR. BURFORD and "Nicholas [ANGELL] at the software company who had  
8 been hired to do the revamp." She stated she was informed by MR. ANGELL that day the "air  
9 problem is a break in the duct work before the VAV which according to the CCR's that this is the  
10 responsibility of the Association Management to handle."<sup>21</sup> I will need a monthly breakdown of the  
11 charges sent to suite so I can pay them. Please let me know immediately when the duct work will be  
12 fixed so I can stop having my business obstructed." This e-mail was directed to MS. CHIEN who  
13 forwarded it to MR. BURFORD. MR. BURFORD replied: "Nick did mention to us that he thought  
14 one of the VAV's didn't have air coming to it. So we went out shortly after this and inspected the  
15 VAV he said didn't have any air coming to it and found that it did have air, and the damper was  
16 opening and closing properly. If she's having additional issues with other VAVs, I have not been  
17 made aware of it. We can check all of her VAVs if she would like us to."<sup>22</sup>

18 10. In late July 2015, MS. JORDAN contacted MR. BURFORD regarding HVAC issues  
19 relating to Plaintiff's office unit. According to MS. JORDAN, MR. BURFORD related three  
20 controller units "were out," and such could be replaced at a cost of \$3,800.00. Given what she  
21

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22 <sup>19</sup>See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted  
23 into evidence.

24 <sup>20</sup>See Joint Trial Exhibit 4.

25 <sup>21</sup>A duct located next to a VAV suggests it is servicing a unit and not the common elements, and if that be the  
26 case, it is the owner's responsibility to repair a break in the duct "before the VAV." See CC&Rs, Sections 1.17., 1.19  
27 and 2.10.

28 <sup>22</sup>See Joint Trial Exhibit 5, E-mail between MS. CHIEN and MR. BURFORD dated August 5, 2015, admitted  
into evidence.

1 perceived to be a high price quote, MS. JORDAN acquired bids from two other HVAC vendors, one  
2 of which was from PRIME HVAC, LLC for \$2,587.00 to install three (3) ct. Spyder Lon  
3 Programmable VAV Controller and 3 ct. Zio LCD/Syk Bus Wall Modules.<sup>23</sup>

4 11. On August 18, 2015, MARK KAPETANSKY of PRIME HVAC, LLC, wrote MS.  
5 JORDAN an e-mail with a courtesy copy sent to MR. ANGELL;<sup>24</sup> it read as follows in salient part:

6 Hi Catherine,

7  
8 Nice to meet you in person, thanks for getting me in late in the afternoon to try and sort  
9 through the comfort issues you are having in your suite. Just to recap what was noted during  
10 the analysis:

11 1. Space temperature was displayed between 78 and 81 degrees throughout the  
12 office space in question. While not ideal this temperature does indicate some  
13 performance from the equipment providing space climate control.

14 2. The zone sensors displaying space temperature are providing command  
15 instruction to variable air volume (VAV) equipment in the ceiling space, and these  
16 devices are in fact fully providing supply air from the central air handling system.

17 3. My specific analysis of cooling performance throughout the space found  
18 normal supply air temperatures (upper 50's on my thermometer) from supply  
19 diffusers in the north half of the office space. as (sic) I moved south the air  
20 temperature measured at supply diffusers rose significantly indicating at some point  
21 in the air distribution system there is a split in the ductwork between rooftop air  
22 conditioning equipment that is working normally and other equipment not operating  
23 at sufficient capacity.

24 4. At some point in the past your south hallway diffuser was disconnected from  
25 the supply duct system and capped, likely to provide increased airflow to other end  
26 points in that circuit. You would like that duct work re-attached.

27 5. Analysis of rooftop air conditioning equipment is required to specifically  
28 itemize deficiencies.

I spoke with Nick on the phone and cc'd him on this email, we discussed the findings today  
and I also inquired about follow up. He mentioned speaking with Marissa [CHIEN] about a  
suitable course of action regarding provision of rooftop access. Once the required  
acknowledgement and authorization have been provided by building management we can  
move forward and follow up on today's findings.

12. On August 25, 2015, MS. JORDAN wrote a "To Whom It May Concern" letter,  
presumably to the ASSOCIATION and/or TAM, which read:

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<sup>23</sup>See Defendant's Trial Exhibit 587, PRIME HVAC, LLC's Service Proposal 15-103, admitted into evidence.

<sup>24</sup>See Joint Trial Exhibit 13, MR. KAPETANSKY'S e-mail to MS. JORDAN dated August 18, 2015, admitted  
into evidence.

1 My name is Catherine Jordan. I am the owner of 2900 W. Horizon Ridge Pkwy (sic)  
2 #101, Henderson, NV 89052. I took occupancy at the end of May 2015. I am writing this  
3 letter in regards to the fact that half of my suite cannot get below 80 degrees and is  
4 obstructing my ability to do business.

5 It is my understanding that as the owner I am responsible for the VAV's (which  
6 includes the controller) down to the registers that enter my unit.

7 I was told that the association hired a company named CAMS to perform some  
8 revamping of software and compressor replacements that are on the roof.

9 It took CAMS over two months to get the software and replace the compressors on  
10 the roof.

11 I was then told by CAMS that I had three controller units out and they gave me a bid  
12 of \$3800.00 to fix those units. I got two other bids for \$2400.00 to do the same work. I went  
13 with one of the lower bids rather than CAMS.

14 Now that my controls are fixed, half of my unit is still 80 degrees during the day. I  
15 had the company evaluate the air temp that was blowing out of my registers on the half of my  
16 unit that remains 80 degrees. They found the air to be blowing out at 75 degrees when it  
17 should be blowing out at between 55-59 degrees. This would lead one to believe that the  
18 compressors are not cycling or working correctly. I am requesting immediately (at my  
19 expense) that the compressors and roof units be evaluated by someone other than CAMS.  
20 Given the fact of CAMS' excessive costs and taking months to repair issues in the past. (sic)

21 As I stated earlier, I cannot conduct business and this issue is hindering my ability to  
22 bring in revenue. I have forwarded a copy of this to my attorney and requesting a list of who  
23 is on the board for my association and when the board meetings are scheduled.

24 Please let me know if there is anyone else I should contact or notify of this matter.

25 Also, there is a leak on the west exterior wall that occurs every time it rains and water  
26 enters one of my exam rooms where there is 100K piece of equipment. The leak comes from  
27 up above my unit. This is the second time I have reported this.<sup>25</sup>

28 13. On August 27, 2015, MS. JORDAN wrote MR. BURFORD and MS. FREEMAN  
another "To whom it may concern" e-mail. It reads as follows:

My name is Catherine Jordan. I am the owner of 2900 West Horizon Ridge #101, Henderson  
NV. I have been without complete air conditioning in my unit for 90 days. This is  
obstructing my business. I just spoke with Steve at CAMS who the board contracted to fix  
the units. He stated that at this time there is a circuit breaker and a TXV power head valve  
that needs to be replaced on the northern unit which requires being ordered from out of state.  
I am authorizing Steve at CAMS to order the parts immediately and if the board has issues I  
will pay for it and I can have my attorney seek after them for reimbursement.<sup>26</sup>

...

<sup>25</sup>See Joint Trial Exhibit 42, Letter from MS. JORDAN dated August 25, 2015, admitted into evidence; *also see* Plaintiff's Trial Exhibit 133, p. 2, MS. JORDAN'S August 26, 2015 e-mail to MS. FREEMAN.

<sup>26</sup>See Joint Trial Exhibit 6, E-mails between MS. JORDAN, MR. BURFORD, MS. FREEMAN and MS. CHIEN, admitted into evidence.

1 Upon receiving word from MR. BURFORD he would "order the circuit breaker now," MS. CHIEN  
2 instructed he not directly communicate with MS. JORDAN regarding common element business as  
3 work on the common elements was to be performed when the ASSOCIATION Board or its  
4 management company gave him authorization "—not Catherine Jordan."<sup>27</sup>

5 14. In late August/early September 2015, MS. JORDAN retained PRIME HVAC, LLC to  
6 perform work in Plaintiff's office suite for the bid of \$2,587.00. As indicated within an Invoice sent  
7 to MS. JORDAN on September 9, 2015,<sup>28</sup> the following work took place:

9 Work to complete removal of 3 existing/malfunctioning invinsys VAV actuators and provide  
10 replacement with Honeywell Spyder programmable logic controllers. VAV actuators  
11 retrofitted to south office space service. Work included installation of required VAV wall  
12 mounted thermostat modules and necessary programming to front end. Work performed per  
13 Prime Proposal 15.103. Noted disconnected and capped duct feed to hallway diffuser during  
14 actuator installation and notified Catherine. Per ongoing suite cooling performance concerns  
15 from state and management of Quality Nursing, follow-up analysis work was performed to  
16 confirm and evaluate VAV operation. Airflow analysis throughout space in question was  
17 performed on entire diffuser inventory with data subsequently uploaded and emailed. During  
18 regular device testing on 8/28, found # 3 actuator (feed to center administrative office space)  
19 recently replaced was unresponsive to normal zone sensor/space temp command, follow up  
20 repair on 9/1 provided programming flash and re-installation to device. Commencement of  
21 normal operation was then immediately verified. Space temperature evaluation on 8/28/15  
22 found significant discrepancy between supply air temperatures in the north and south ends of  
23 suite, with north diffusers providing normal air conditioning supply air temperatures and  
24 southern most diffusers providing poor cooling. Follow up work to provide verification of  
25 central mechanical (rooftop) cooling equipment is required to ensure availability of adequate  
26 cooling capacity. All duct connections throughout suite were verified as structurally intact,  
27 all VAV equipment was operationally verified 9/9/15.

28 15. On September 2, 2015 and in response to MS. JORDAN'S August 26, 2015 e-mail  
where she indicated she was forwarding documentation to her attorney and "instruct him to go with  
legal actions to cure this situation," WILLIAM PAUL WRIGHT, ESQ., counsel for the  
ASSOCIATION wrote MS. JORDAN requesting her lawyer's contact information.<sup>29</sup>

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<sup>27</sup>*Id.*

<sup>28</sup>See Joint Trial Exhibit 14, PRIME HVAC, LLC'S Invoice ESH-0805 dated September 9, 2015, admitted into evidence; *also see* Defendant's Trial Exhibit 587 and Plaintiff's Trial Exhibit 115, both admitted into evidence.

<sup>29</sup>See Joint Trial Exhibit 7, E-mail string between MR. WRIGHT, MS. JORDAN and MATTHEW EKINS,



1           16.     On September 3, 2015, MR. BURFORD wrote MS. JORDAN an e-mail, which was  
2 copied to ASSOCIATION Board members and MS. FREEMAN of TAM.<sup>30</sup> This e-mail reads in  
3 part:

4           Hi Catherine,

5           I stopped by on Tuesday to take a look at your offices and take some temperature readings of  
6 the air coming out of the supply registers. I found you had between 59 and 63 degree air  
7 coming out of all the registers I checked. The two Southern offices specifically had 63  
8 degree air coming out. I noticed the smaller office facing the South had one supply register  
9 and no return registers. The larger office on the Southwest corner had two supply registers  
10 and one return register. In my opinion this is not a supply air temperature problem but rather  
11 a (sic) air volume problem. I would recommend you hire an AC company to come in and  
12 take actual air flow readings (Cubic Feet per Minute, not temperature) to see what volume of  
13 air you have coming from the supply registers in those offices. Once you know that  
14 information you will be able to balance the air flow so those perimeter offices get more air to  
15 them since they have a greater heat load from the windows. This may require the AC  
16 company to install dampers in your duct work to regulate the air flow to the different  
17 registers. I would also recommend you install additional return air grilles (sic) in all of the  
18 perimeter offices. Removing the warm air from the offices is equally as important as  
19 supplying cold air to the offices.<sup>31</sup>

20           17.     MATTHEW EKINS, ESQ. responded to MR. WRIGHT'S September 2, 2015 e-mail  
21 on September 8, 2015, indicating "[t]oday my client asked me to become involved and facilitate a  
22 timely resolution. I will be calling you this afternoon to see what can be done to resolve the 90 plus  
23 days without sufficient air conditioning for my client's office."<sup>32</sup> Apparently, MR. WRIGHT missed  
24 MR. EKINS' telephone call, and noted he (WRIGHT) would contact MR. EKINS' "tomorrow."

25           MR. EKINS responded by e-mail the following day, noting he was leaving town for a funeral  
26 and available only by e-mail. His September 9, 2015 e-mail further read:

27           The primary concern is having the AC system fixed in a timely fashion. Also, it would be  
28 helpful to have the Taylor and Associates and my client to be able to speak directly on

---

ESQ., Plaintiff's lawyer, admitted into evidence.

<sup>30</sup>See Joint Trial Exhibit 8, E-mail from MR. BURFORD of CAM dated September 3, 2015, admitted into evidence.

<sup>31</sup>MR. BURFORD testified at trial he had been contracted by the ASSOCIATION and TAM to complete a duct survey on the 2904 Building. He was not contracted to conduct work on the 2900 Building, but did look at HORIZON HOLDINGS 2900, LLC'S offices. He did not know if the layout for the two buildings, 2900 and 2904, were the same.

<sup>32</sup>See Joint Trial Exhibit 7.

1 resolution of the problem. My client informs me that she has had her space inspected by a  
2 different HVAC company and it verified all her systems are working properly. There is  
3 simply no cold air coming in from the compressors. I am working on getting a letter from  
4 that HVAC company to confirm this. Can you let me know where Taylor & Assoc (sic) is at  
5 on working with CAMS or another HVAC company to get this problem solved?<sup>33</sup>

6  
7 18. On September 10, 2015, MR. WRIGHT wrote MR. EKINS an e-mail which reads:  
8 Matt:

9 Attached are invoices for HVAC repairs done in 2014 to the tune of nearly \$15K. The  
10 compressors that were causing issues this year were installed last year in another repair.  
11 Why they failed again in (sic) being looked into. However, any claim that the Board is not  
12 performing its duties and taking care of the portions of the building that it is responsible for,  
13 in (sic) simply not accurate.

14 Another e-mail was sent by MR. WRIGHT, indicating once the lawyers had an opportunity to speak,  
15 they needed to address MS. JORDAN'S interference with the ASSOCIATION'S vendors and her  
16 directives towards TAM and the ASSOCIATION.<sup>34</sup> MR. EKINS responded four days later,  
17 providing an invoice for the work MS. JORDAN had completed for the system for which Plaintiff  
18 was responsible. He also inquired whether "management" had verified the compressors were  
19 supplying cool air to all of his client's space, and could inspect and verify "today" cold air was being  
20 supplied and all compressors were functional. On September 16, 2015, MR. WRIGHT indicated the  
21 ASSOCIATION would like to coordinate with MS. JORDAN to have the respective HVAC vendors  
22 meet on site to review the situation and one or two Board members would be present.<sup>35</sup> No evidence  
23 was provided to indicate whether such a site visit ever took place.

24 19. In mid-September 2015, MR. GREIG of the Board discussed prospects of balancing  
25 "the whole building at the same time" with MR. BURFORD.<sup>36</sup> MR. BURFORD discussed the  
26 reasoning in his communication to the Board:

27 <sup>33</sup>Id.

28 <sup>34</sup>Id.

<sup>35</sup>Id.

<sup>36</sup>See Joint Trial Exhibit 30, E-mail communication between MR. GREIG, MR. BORDERS, MS. CHIEN and  
MR. BURFORD dated September 11, 2015, admitted into evidence.

1 ...there's a duct status pressure set point and sensor that make sure the correct volume of air  
2 is going through the main duct work to all of the suites, so that should be a constant (unless  
3 there's a break in the duct work somewhere). All we really need to do is balance each  
4 VAV's supply registers so we can push an equal amount of air to each register (or push more  
5 air to higher heat load areas such as East, South and West facing window offices).

6 MR. BORDERS testified, prior to incur the expenses of balancing the entire building, it was decided  
7 certain repair work and replacement of deficient equipment would be completed. Further, before the  
8 ASSOCIATION incurred such expenses for balancing, the owners of suites in the 2900 Building,  
9 including HORIZON HOLDINGS 2900, LLC, needed to repair the deficiencies for which they were  
10 responsible.

11 20. In mid-October 2015, MR. BURFORD of CAMS installed a new condenser fan  
12 motor to resolve the problems in Plaintiff's office suite at the ASSOCIATION'S expense. Further,  
13 new control boards were needed for the four (4) RTUs so they could "speak with the software," as  
14 the old ones were ten (10) years old and no longer compatible.<sup>37</sup>

15 21. MS. JORDAN sent a certified letter, return receipt requested to the ASSOCIATION  
16 on October 28, 2015, relaying: "This is the fourth time in 2 months I have issued this complaint.  
17 Our back offices stay at 77 degrees during the day."<sup>38</sup> It was about the time MS. JORDAN sent her  
18 letter, the ASSOCIATION was arranging repairs to the RTU #2 located on the 2900 Building's  
19 rooftop. As noted by MR. KAPETANSKY in his e-mail to both ASSOCIATION Board members  
20 and TAM dated October 29, 2015:

21 Good morning all,

22  
23 Wanted to send out one quick follow up from the conversations I had with both Don  
24 [GREIG] and Marissa [CHIEN] yesterday. We are replacing (and upgrading) unit  
25 communication and control on rooftop AC # 2 at 2900 W Horizon Ridge Pkwy (sic) due to a

26 <sup>37</sup>See Joint Trial Exhibit 31, E-mail communication between MR. GRIEG and MR. BURFORD dated October  
27 23, 2015, admitted into evidence.

28 <sup>38</sup>MS. JORDAN wrote MS. FREEMAN an e-mail on November 12, 2015: "The temperature in my entire office  
is 62 degrees today. Please let me know you received this email and what is being done to render the issue." See Joint  
Trial Exhibit 34, p. J34-3, admitted into evidence.

1 board level failure with communication. This board was previously repaired and is now not  
2 communicating with the computer control system, preventing the equipment from following  
3 an occupancy schedule and promotion excessive electrical consumption. While this upgrade  
4 is desirable from an enhanced control capability (as well as the obvious restoration of  
communication) the cost of this upgrade outweighs the benefits of an immediate overhaul of  
the remaining (still communicating) rooftop equipment.

5 In summary, if/when we see the remaining rooftop equipment at Shea exhibit board level  
6 malfunction we can continue with this upgrade to that equipment at that time. ...

7 22. A few days later, on or about November 4, 2015, MS. JORDAN acquired a bid from  
8 PRIME VAC, LLC to replace six VAVs at a cost of \$4,500.00.<sup>39</sup> On November 26, 2015, MR.  
9 KAPETANSKY of PRIME HVAC, LLC wrote MS. JORDAN with courtesy copies to MR. GREIG,  
10 MR. ANGELL and MS. CHIEN:

11 Hi Catherine,

12 Happy Thanksgiving. I was able to make some corrective action in your suite and  
13 increase total heating available, however I was surprised to see no less than 2 VAVs in your  
14 suite with no zone sensor control. No zone sensor likely equals very little cooling capability  
15 and no heating capability whatsoever. Whoever was responsible for your T.I. work was  
16 derelict in their placement of some of the zone sensors for space climate control. I would say  
the actual articulation of the supply diffusers was typical of what I've found throughout the  
Shea campus providing the not uncommon aspect of zone sensors feeding input to VAV  
terminal units that supply air to two or even three different locations in the suite.

17 • I started with the VAV marked "9", not sure of the device ID (Nick [ANGELL] looks  
18 at those on the computer and some of them are correct anyway). This unit has zone sensor  
19 wiring ran to a junction box in the wall with no sensor...I include a picture, attached and  
20 labeled "VAV 9". When we replace the actuator in VAV 9 I can install the new zone sensor  
21 at the existing junction box and there should be no issues. Worst case scenario is pulling  
some sensor wire through the existing conduit and then wiring in the new sensor, so this  
won't be a large additional cost even if we have to re-work the wire as the infrastructure is in  
place.

22 • Moved on to VAV "8", device ID marked "11". This unit had the heat locked out on  
23 airflow proving. I adjusted the manual supply damper upstream of the VAV unit and had no  
24 effect on air flow sampling through the pitot tube. I moved the pitot tube around in its  
25 insertion window until I found a satisfactory position for it that seemed to keep the heat  
enabled. I may have to come back and completely relocate the pitot tube but for now the  
heat on this unit is fairly reliable.

26  
27 <sup>39</sup>See Defendant's Trial Exhibit 588, PRIME HVAC, LLC'S Service Proposal 15-108 dated November 4, 2015,  
28 admitted into evidence; also see Plaintiff's Trial Exhibit 115 showing \$4,500.00 payment to PRIME HVAC, LLC from  
QUALITY NURSING, LLC.

1 VAV "2", device ID labeled "25" is the terminal unit supplied from the zone sensor  
2 with the "ABN: diagnostic on the display, we can expect no function from this unit until the  
3 actuator and zone sensor are replaced. I found the unit with the high voltage temperature  
4 limit safety tripped and I reset the safety to examine operation, again locked out through the  
5 loss of the zone sensor.

6 VAV labeled "1", remarked "3", supplies your office as well as the northern most  
7 office space and seemed to be working well. Not sure if the supply to your office is choked  
8 off through a physical duct connection or not. I will investigate it when we're there  
9 replacing actuators.

10 The last unit I looked at is also labeled VAV "1", remarked "6", and I have pictures  
11 attached of the zone sensor wiring ran loose to the ceiling cavity approximately 10 feet west  
12 of the VAV itself. They didn't even try to hook up a zone sensor for this unit, and the wire  
13 will likely have to be re-ran to an appropriate location to allow for normal VAV operation.  
14 Expect some additional cost for this repair and to allow normal operation from your unit.

15 I stopped my inspection at that point as most of the units have now been examined  
16 and serious deficiencies of the VAV terminal units in your suite had already been noted.  
17 Any further repair work required can be performed as needed during the actuator retrofit and  
18 other repair requirements listed here. ...<sup>40</sup>

19 23. On May 20, 2016, TAM provided notice to CAMS the ASSOCIATION was  
20 cancelling its contract for services as of June 30, 2016.<sup>41</sup> PRIME HVAC, LLC, who MS. JORDAN  
21 initially hired as her HVAC contractor, was retained by the ASSOCIATION as one of its preferred  
22 vendors.

23 24. The evidence presented indicates there were no complaints by MS. JORDAN,  
24 HORIZON HOLDINGS 2900, LLC, its tenants or employees from December 2015 until early June  
25 2016.<sup>42</sup> On June 8, 2016, MS. JORDAN wrote MS. FREEMAN, the e-mail of which was copied  
26 and sent to ASSOCIATION Board members: "The temperature in my office is 76 today and was 78  
27 all evening yesterday. I am still waiting on the AC schedule I requested yesterday. Can you tell me  
28 when these issues will be addressed?"<sup>43</sup> MS. FREEMAN responded the following day:

...

<sup>40</sup>See Defendant's Trial Exhibit 606, E-mail from MR. KAPETANSKY to MS. JORDAN dated November 26, 2015, admitted into evidence.

<sup>41</sup>See Joint Trial Exhibit 9, Letter from TAM to CAMS dated May 20, 2016, admitted into evidence.

<sup>42</sup>See, for example, Plaintiff's Trial Exhibit 103, E-mail communication between MS. JORDAN, MS. FREEMAN, LORI PUGH, Maintenance Coordinator for TAM, MR. BORDERS and MS. CHIEN from November 12, 2015 to July 27, 2016, admitted into evidence.

<sup>43</sup>Id.

1 Hi Catherine,

2 Please note that the A/C schedule is Monday thru Friday from 4:00 a.m. – 6:00 p.m. The  
3 scheduling of the A/C is at the discretion of the Board. You are the only owner in the front  
4 building that has made the request to have the A/C run on nights and weekends. The other  
5 owners shouldn't have to subsidize your sole usage. If you want to pay for the entire cost of  
6 providing A/C to the building on weekends, we can come up with a charge for that.<sup>44</sup>

7 MS. JORDAN replied to MS. FREEMAN'S response: "[C]orrection to last email[.] It needs to read  
8 that I have medical equipment and computers that should not be exposed to high temperatures."<sup>45</sup>

9 At that point, MR. BORDERS noted in his responsive e-mail:

10 Folks,

11 Each owner operates a unique business with varying needs.

12 For example, my computer server room requires constant air conditioning. For this reason  
13 we installed a separate unit to manage. I paid for the unit and continually pay and for the  
14 energy required to power it. As I read the CC&R's this is my problem and not an association  
15 problem.<sup>46</sup>

16 The evidence presented at trial showed HORIZON HOLDINGS 2900, LLC never sought approval  
17 from the ASSOCIATION'S Board to install a stand-alone air conditioning to exclusively service its  
18 office suite, including the cooling of its medical equipment and computers as MR. BORDERS had  
19 done when he built out his space in or about 2005.

20 25. On June 23, 2016, MS. JORDAN wrote MS. FREEMAN again: "Please note that it is  
21 79 in all my office today." MS. FREEMAN responded within the hour: "Thank you Catherine—we  
22 will contact Prime to go out and adjust." On June 29, 2016, MS. JORDAN wrote MS. FREEMAN:

23 Stephanie

24 I am giving you an update regarding the AC status in our unit. I contacted Mark at Prime  
25 and told him that the AC was to come on at 4am and wasn't coming on until 6am as I am  
26 there at 5am several mornings a week. He said he would check with Nick Angel who does  
27 the programming. Also my unit is at 78-80 every day. He said he adjusted some airflow and

28 <sup>44</sup>*Id.*: also see Joint Trial Exhibit 34, E-mail exchange between MS. JORDAN, MS. FREEMAN, MR.  
BORDERS and MS. CHIEN from November 12, 2015 to June 9, 2016, admitted into evidence.

<sup>45</sup>See Joint Trial Exhibit 34.

<sup>46</sup>*Id.*

1 had to wait to talk to York because he was unsure how to adjust it. We go to the unit above  
2 us every day and their unit is at 72. So this doesn't make any sense as heat travels upward  
3 and it should be harder to cool the upstairs unit. Mark acknowledged in a text the other day  
4 for some reason the airflow is having trouble getting down to my unit. When do you think it  
5 is reasonable to have an answer to this problem as its (sic) been going on for a year now?

6 MS. FREEMAN responded that day:

7 Hi Catherine,  
8 I was told that the back unit is running at half capacity and Mark is working on finding out  
9 what is wrong. I will keep you apprised of any updates I receive.<sup>47</sup>

10 On July 27, 2016, MS. JORDAN wrote MS. FREEMAN again:

11 Dear Stephanie  
12 It is 81 degrees in all of my office today. I need to know what we are going to do to come up  
13 with a permanent solution to this issue. This is the constant temp in my office everyday (sic)  
14 after noon time. The last I heard from you On (sic) June 29<sup>th</sup> was that one unit was working  
15 at 50 percent and Mark was working on it and would you "keep me apprised". I have not  
16 heard anything from you or Mark and now it has been a solid year that I haven't had proper  
17 airconditioning (sic). Please let me know what is going to be done.

18 MS. FREEMAN responded that day: "Lori [PUGH] will contact Mark to get status on repairs."

19 MS. PUGH responded to MS. FREEMAN and the Board members: "I have left him a voicemail and  
20 will advise once I hear back from him." MR. BORDERS replied to all on the e-mail chain: "The  
21 AC in 200-2900 has been malfunctioning for 3 days now. Mark was out yesterday but I never  
22 received the cause/cure download."<sup>48</sup> MS. PUGH responded she would inquire "on this one as well  
23 when I hear back from him." Shortly thereafter, MS. PUGH relayed to all MS. CHIEN'S reply:

24 Ok everyone,

25 I just got of (sic) the phone with Mark just at this very moment. First of all Catherine is  
26 misinformed as usual. The issue from June 29<sup>th</sup> was on the North Unit and it has been  
27 resolved and is working normally.

28 Our current problem is with the South unit which services Gary's [BORDERS] unit and  
Catherine's south end.

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<sup>47</sup>See Plaintiff's Trial Exhibit 103.

<sup>48</sup>*Id.*

1 There is a condenser coil refrigerant leak and it is currently operating at 50% capacity.  
2 Unfortunately the condenser coil is an extremely complicated and intricate bar of the A/C  
3 rooftop unit. To take it apart you would have to take the entire unit offline as in 0% capacity.  
4 Assuming you find the cause of the leak there is no guarantee that one will up later or that  
5 you found them all. Mark is strongly advising that we evaluate replacing the coil (which  
6 requires a crane) in the fall when it cools down.

7 We have 2 options: 1) Do nothing and operate at 50% capacity because that is the best we  
8 can do. You don't want to have zero A/C capacity in 115 degree heat.

9 2) We could dump refrigerant into the system and hoping it is a slow leak so we could have  
10 100% capacity for awhile (sic). It's kind of like when your car has an oil leak and instead of  
11 fixing it you just keep on putting more oil into it. The cost of putting a load of refrigerant is  
12 going to be \$2,000. The problem is that you don't know how long that it will last. It might  
13 last a day, a week, or a month or two. I think we should do it and see how bad of a leak we  
14 have.<sup>49</sup>

15 26. MS. JORDAN'S next communication concerning HVAC issues was October 20,  
16 2015.<sup>50</sup>

17 Dear Stephanie

18 This is Catherine Jordan with Horizon Holdings in 2900 West Horizon Ridge 101. Our air  
19 conditioning has not work (sic) correctly in over the year I have been here. I have written  
20 several emails. I would like to schedule an afternoon appt (sic) when someone from your  
21 company who can come walk with me on my issues. This problem is interrupting my  
22 business and has for the past year. Please let me know you received this e-mail.

23 This e-mail was forwarded to MS. CHIEN, who, in turn, sent it to MR. KAPETANSKY. MR.  
24 KAPETANSKY responded on October 24, 2016:

25 Hi all,

26 I spoke with Catherine and followed up with marissa (sic) last week. Catherine is still  
27 complaining her perimeter office space being insufficiently cooled, although I've been in the  
28 suite on different occasions and the problems are more intermittent than she is  
acknowledging. Her employees are usually happy when I check with them the times I  
happen to see someone in the halls.<sup>51</sup> Hopefully when the repairs are complete to RTU 2 and  
the capacity is restored we can quiet her concerns again.

<sup>49</sup>*Id.*

<sup>50</sup>See Joint Trial Exhibit 48, E-mail exchange between MS. JORDAN, MS. FREEMAN, MS. CHIEN and MR. KAPETANSKY between November 12, 2015 and October 24, 2016, admitted into evidence.

<sup>51</sup>MR. KAPETANSKY testified he had told the ASSOCIATION'S Board his belief MS. JORDAN was exaggerating the conditions in Plaintiff's unit.



1 My intention was to perform the repairs on RTU 2 today but the weather is challenging.  
2 Tomorrows (sic) forecast is clear skies. I'll update you when repairs are complete and we'll  
3 see how it goes.<sup>52</sup>

4 27. The evidence presented shows there were no further HVAC complaints made by MS.  
5 JORDAN, HORIZON HOLDINGS 2900, LLC, its tenants and employees between October 20,  
6 2016 and January 12, 2017 when MS. JORDAN wrote the following e-mail to MS. PUGH.<sup>53</sup>

7 Lori

8 ...Also I want to confirm that he (sic) A/C and heating issues I have had for the past year are  
9 unresolved. As per Brandon yesterday he said that he and Mark agree that I have flow issues  
10 getting through to my ducts. He stated that the owners of the other units would not let them  
11 in. I own the bottom half of the building so its (sic) not me. I spoke with the other two  
12 owners down here and they stated it wasn't them not letting them in. I went to Ameriprise  
13 financial and they stated of course they would let them in if they were approached. That  
14 leaves two owners that need to be contacted and the (sic) would be western Medical  
15 associates and the Marketing firm upstairs. Would you please contact both of those to  
16 facilitate Mark entry into their units if need be. It should not be hard as I understand both of  
17 them are board members. I need follow up on all these issues I have addressed.

18 28. On January 17, 2017, MR. KAPETANSKY wrote MS. JORDAN a report of the  
19 findings and recommendations:

20 Good morning,

21 Based on our findings from 1/11 we note that temps in the office space are within normal  
22 guidelines for space comfort. Temperature set points are in-line with facility energy  
23 conservation goals. Please see the attached service invoice.

24 Attached are the photos that Brandon took on Wednesday, January 11 at about 12:45  
25 in the afternoon. He verified normal temps in the afternoon after his first trip in earlier the  
26 same morning. The attached photos also include tag info showing date and geo location.  
27 Also attached is a photo I took from December 2015 which clearly shows one of your VAV  
28 thermostats at ceiling height, that is the stat serving the center conference room area. This  
situation was never corrected. I've instructed a number of times in the past that the stat has  
to be moved to a normal temperature sensing heat to prove normal space temp comfort, if the  
unit is still operating it's going to steal capacity from elsewhere in your suite to try and  
satisfy the temperature set point from 10 feet off the floor. Needless to say, that's a tall order  
that would be inhibiting performance elsewhere in your suite.

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<sup>52</sup>*Id.*

<sup>53</sup>See Joint Trial Exhibit 46, E-mail exchange between MS. JORDAN and MS. PUGH, admitted into evidence.

1 You still have this unit and one other (photo of zone sensor also attached) that require  
2 replacement of the VAV actuator to ensure control and calibration capability. Without a  
3 complete retrofit of all the VAV actuators in your suite, you cannot achieve full control and  
4 maximize targeted comfort to the space. We cannot guarantee any operation at all from  
5 original VAV actuators, not heating, not cooling. Further, your suite is fully ¼ of the  
6 building at 2900 W. Horizon Ridge Pkwy. The suites elsewhere on the property campus are  
7 all designed to operate with 12 total VAV terminal units for that square footage, you have 11.  
8 Your north office space, where you reside as well as the ladies in the accounting area is  
9 served inadequately with one VAV providing air to 5 separate diffusers spread out across 4  
10 separate rooms (your original corner office, Laura's [WAALK] office, your new office and  
11 your new office restroom). The 12<sup>th</sup> VAV was likely removed during your T.I. where (along  
12 with the legacy of the thermostat 10 feet off the floor) we previously corrected one VAV that  
13 did not have a zone sensor installed at all (where we provided both the sensor and  
14 termination of wiring we found simply laying in the ceiling) and another that had zone sensor  
15 wire ran to a box in the wall and left there, unterminated. We have worked to correct duct  
16 work runs, air flow sensing faults and failed heating assemblies in your suite along with  
17 providing only a partial retrofit of VAV actuators.<sup>54</sup>

11 The pricing to complete the remaining 2 actuators and zone sensors (including installation  
12 and programming) would be \$2300.00.

13 Pricing to install a 12<sup>th</sup> VAV serving north office space (requiring updated drawings, high  
14 and low volt wiring infrastructure, duct work modification and space termination, terminal  
15 unit installation, actuator installation and programming as well as modification of existing  
16 duct runs to properly balance load) would be \$7800.00.

16 Detailed quotations are available should you decide to perform these strongly recommended  
17 improvements, pricing is included here so you can shop around if you like. Let us know if  
18 you'd like to proceed.

18 The evidence adduced at trial showed HORIZON HOLDINGS 2900, LLC never arranged for the  
19 installation of the twelfth VAV to serve the north office space.

20  
21 29. MS. JORDAN retained the services of an electrical contractor, DON L. GIFFORD of  
22 GIFFORD CONSULTING GROUP (also referred to as "GCG" within the evidence), and HARVEY  
23 H. IRBY, P.E. in or about March 2017 to evaluate and analyze the HVAC system in the 2900  
24 Building and particularly Suite 101. Both MR. GIFFORD and MR. IRBY eventually were retained  
25 as Plaintiff's electrical and mechanical engineering experts in this litigation. The parties stipulated  
26

27  
28 <sup>54</sup>See Defendant's Trial Exhibit 607, MR. KAPETANSKY'S e-mail to MS. JORDAN dated January 18, 2017,  
admitted into evidence.

1 to the admission of these gentlemen's "Preliminary HVAC Building Analysis, Suite 101" dated  
2 March 27, 2017 into evidence.<sup>55</sup> Both MR. GIFFORD and MR. IRBY concluded the available cubic  
3 foot per minute (also referred to as "CFM") within Suite 101 is inadequate "based not only on the  
4 results of our calculations, but are substantiated by [MS. JORDAN'S] descriptions of the inadequacy  
5 of the system to provide a reasonable environment in which to work and to serve ...clientele."  
6 They recommended HORIZON HOLDINGS 2900, LLC retain a contractor to add a twelfth (12<sup>th</sup>)  
7 VAV to the suite's northeast office, including an in-office thermostat, both of which would be  
8 Plaintiff's responsibility as the unit's owner pursuant to the CC&Rs. "This will require a  
9 modification to the existing medium-pressure ductwork. VAV 12 and the appropriate interfacing  
10 thermostat will need to be attached to System 2." MR. GIFFORD and MR. IRBY also  
11 recommended Plaintiff lower the height of the existing conference room thermostat to standard  
12 height, which, again, would be Plaintiff's responsibility.<sup>56</sup> In addition, MR. GIFFORD and MR.  
13 IRBY opined: "The 6-ton shortfall we delineate above is the result of building system inadequacies  
14 in design and/or operation as substantiated by Table 1 and the succeeding analysis. There is no  
15 evidence that the building HVAC system was ever properly commissioned, an industry standard for  
16 this quality and size of building. Hence, it is essential that property management commission and  
17 balance the system. Based on this assumption, it is our opinion that the system, once properly  
18 commissioned and balanced is capable of meeting the standard demands imposed by your office  
19 square footage." In rendering their opinions, MR. GIFFORD and MR. IRBY reviewed and relied  
20 upon mechanical drawings and construction plans for the 2904 Building, but not the 2900 Building  
21 where Plaintiff's office suite is located.<sup>57</sup> In this regard, MR. GIFFORD noted he saw nothing to  
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23  
24  
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26  
27 <sup>55</sup>See Joint Trial Exhibit 17 stipulated as admitted into evidence.

28 <sup>56</sup>*Id.*, p. 4.

<sup>57</sup>Only building plans for the 2904 Building were offered for admission into evidence. This Court understands MS. JORDAN went to the City of Henderson Building Department to acquire a copy of the Master Plan, and she

1 suggest the 2904 and 2900 Buildings were constructed differently. MR. IRBY admitted he had no  
2 intimate knowledge of the air conditioning systems in the 2900 Building and each building should  
3 have their individual or separate plans. He also noted the office in question was typical space that  
4 did not generate a lot of heat. He saw no obvious problems with installation.

5           30. WILLIAM BIRD, an expert in HVAC and plumbing, testified on behalf of the  
6 ASSOCIATION. He was retained to review the report authored by MR. GIFFORD and MR. IRBY.  
7 He was not provided any documents, such as mechanical engineering and other building plans, for  
8 the 2900 Building. He testified there had to be existing plans as one could not acquire a permit  
9 without the submission of plans. He would not have rendered an opinion using plans of a different  
10 building. Further, he did not know how MR. GIFFORD reached the conclusion there was a 6-ton  
11 shortfall when neither he nor MR. IRBY did a design. MR. BIRD also was critical of MR. IRBY'S  
12 position Plaintiff's suite was a "standard office," and the fact MR. GIFFORD inputted information  
13 for standard office space when conducting load calculations using a HAP<sup>58</sup> software program, a tool  
14 used by engineers to estimate loads and design HVAC systems. In MR. BIRD'S view, Plaintiff's  
15 unit is not a standard office; it houses several employees and patients, and consist of medical suites  
16 with examination rooms and equipment, such as EKGs, all of which generate heat.<sup>59</sup> In short,  
17 Plaintiff's suite has different loads than a typical office. MR. BIRD further opined the existing duct  
18 work should have been moved during the TI renovation if Plaintiff had intended to change the  
19 previous office space to medical suites. In addition, the server room housing Plaintiff's computers  
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21  
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24 received only that for the 2904 Building, although some mechanical engineering drawings for the 2900 Building were  
25 contained in the city's file for 2904. No other efforts were made during the course of discovery by the Plaintiff to  
26 acquire plans for the 2900 Building. Defense counsel subpoenaed the 2900 Building plans and received those for the  
27 2904 Building. During the course of the trial, it became apparent Plaintiff and its experts were relying upon 2904  
28 Building plans as those relating to the 2900 Building could not be found. MR. BRYAN of RYCON CONSTRUCTION,  
LLC, a witness to the litigation, went to the City of Henderson Building Department as he had received a telephone call  
from MS. JORDAN there was some confusion regarding the plans.

<sup>58</sup>"HAP" is the acronym for "hourly analysis program."

<sup>59</sup>"EKGs" is the acronym for "electrocardiograms."

1 should have been addressed; in this regard, MR. BIRD said it was not uncommon for a unit to have a  
2 stand-alone HVAC to specifically service such needs.

3 MR. BIRD also explained RTUs, at discharge, pushes air through the primary ducting to the  
4 medium pressure ducting, which, in turn, pushes air to the units' VAVs. A VAV will only output air  
5 being delivered to it. A VAV can decrease amount of air received, but cannot increase it. He found  
6 MR. GIFFORD at fault for not checking to see if the unit's VAVs were fully open. MR. BIRD also  
7 noted the unit's thermostat in the conference room was misplaced too high, ten (10) feet above the  
8 floor when it should be located "where the people are;" 48 inches is the standard height for  
9 thermostat placement. All in all, MR. BIRD opined the air conditioning system could be repaired  
10 without Plaintiff suffering a market loss.  
11

12 31. HORIZON HOLDINGS 2900, LLC presented the testimony of an appraisal expert,  
13 MATTHEW LUBAWY, MAI, CVA, to attest to its losses and damages. As set forth in his  
14 appraisal report,<sup>60</sup> MR. LUBAWY opined, if there were no HVAC issues, the market value of  
15 Plaintiff's 5,206 square foot office as of February 7, 2019 is \$1,800,000;<sup>61</sup> assuming the HVAC  
16 issue cannot be resolved, the value decreases to \$990,000 or is \$810,000 less. Loss in rental income  
17 and increased expenses in light of the unusable area of 2,237 square feet in the south portion of the  
18 office from August 1, 2015 through January 24, 2019 was \$225,000. In rendering his opinion, MR.  
19 LUBAWY noted: "Ideally, the 'cost to cure' would be considered in this situation with the  
20 installation of a new HVAC unit. However, given the condominium ownership of the subject office,  
21 this may not be allowed."<sup>62</sup> In this regard, MR. LUBAWY admitted he made "extraordinary  
22 assumptions the HVAC issue could never be resolved and estimated the value of the subject  
23  
24  
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26 <sup>60</sup>See Joint Trial Exhibit 24, Appraisal Report by VALBRIDGE PROPERTY ADVISORS, stipulated by the  
27 parties as admitted into evidence.

28 <sup>61</sup>MR. LUBAWY testified he appraised the subject property in December 2017 at a value of \$1,700,000. MS. JORDAN did not tell him there were HVAC issues at that time.

<sup>62</sup>*Id.*

1 property based on the revised size of 3,850 square feet (6,087 less the 2,327 unusable square feet).

2 As set forth by MR. LUBAWY in his report:

3 The subject's HVAC issues have been ongoing for several years and have not been resolved.  
4 It would be difficult for the subject owner to install their own HVAC system due to the  
5 condominium ownership which would likely prevent installation of ground-mounted or roof-  
6 mounted units. Therefore, we have employed an extraordinary assumption the HVAC issue  
could never be resolved. Use of this assumption would have an affect (sic) on the  
conclusions herein if found to be false.<sup>63</sup>

7 MR. LUBAWY testified he considered the "cost to cure," but did not investigate whether the HVAC  
8 maladies could be repaired. He also indicated if the assumptions change, his opinion as to market  
9 value also was subject to amendment. He also testified he did not review any leases, and his opinion  
10 as to lost rents were not based upon "actual" loss, but rather, a consideration of how the market  
11 reacts. He acknowledged the entities renting space from HORIZON HOLDINGS 2900, LLC are  
12 controlled by MS. JORDAN; that is, the leases were not arms-length transactions, and they, in  
13 essence, were "pocket to pocket."  
14

### 15 CONCLUSIONS OF LAW

16 1. As noted above, HORIZON HOLDINGS 2900, LLC has sued the ASSOCIATION,  
17 asserting three causes of action: (1) breach of contract, (2) breach of covenant of good faith and fair  
18 dealing and (3) declaratory relief. NRS 30.030 specifically provides the courts shall have the power  
19 to declare rights, status and other legal relations whether or not further relief is or could be claimed.  
20

21 The court's declaration may be either affirmative or negative in form and effect; such declaration  
22 shall have the force and effect of a final judgment or decree.  
23

24 2. In this case, HORIZON HOLDINGS 2900, LLC asserts a "breach of contract" claim  
25 against the ASSOCIATION, arguing it is entitled to certain rights and privileges by way of the  
26 Declaration or CC&Rs, including but not limited to the full benefit of all common elements,  
27  
28

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<sup>63</sup>*Id.*

1 “including the cool air provided by the HVAC.” Such is being refused by the ASSOCIATION,  
2 resulting in breach and causing Plaintiff to suffer damages.<sup>64</sup> While, by the terms of the CC&Rs,  
3 NRS Chapter 116 does not apply as the Project is a commercial or non-residential common-interest  
4 community, this chapter’s statutory scheme nevertheless is instructive in determining whether  
5 CC&Rs here impose contractual obligations between HORIZON HOLDINGS 2900, LLC and the  
6 ASSOCIATION.

7  
8 3. NRS 116.2101 permits the creation of a common-interest community “by recording a  
9 declaration executed in the same manner as a deed and, in a cooperative, by conveying the real  
10 estate subject to that declaration to the association.” A declaration must contain a number of  
11 required statements<sup>65</sup> and “may contain any other matters the declaration considers appropriate.”  
12 NRS 116.2105(2). “CC&Rs become a part of the title to property.” NRS 116.41095(2). By law, a  
13 person who buys a home subject to CC&Rs must receive as information statement warning “[b]y  
14 purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your  
15 lifestyle and freedom of choice” and the CC&Rs “bind you and every future owner of the property  
16 whether or not you have read them or had them explained to you.” *Id.* The statement must further  
17 advise the prospective home buyer “[t]he law generally provides for a 5-day period in which you  
18 have the right to cancel the purchase agreement.” NRS 116.41095(1).  
19  
20

21 4. The proposition CC&Rs create contractual obligations, in addition to imposing  
22 equitable servitudes, is widely accepted. U.S. Home Corporation v. Michael Ballesteros Trust, 134  
23 Nev. 180, 183, 415 P.3d 32, 36 (2018), *citing* Restatement (Third) of the Law of Property:  
24 Servitudes, ch. 4 intro. Note (Am. Law Inst. 2000) (“one of the basic principles underlying the  
25 Restatement is that the function of the law is to ascertain and give effect to the likely intentions and  
26

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27 <sup>64</sup>*Id.*

28 <sup>65</sup>*See* NRS 116.2105(1).

1 legitimate expectations of the parties who create servitudes, *as it does with respect to other*  
2 *contractual arrangements.*") (Emphasis added). By accepting the deed or other possessory interest  
3 in a unit, the owner manifests his or her assent to the CC&Rs.<sup>66</sup> Thus, this Court accepts the premise  
4 CC&Rs can impose contractual obligations upon both the association and unit owner.

5 5. Generally speaking, when a contract is clear on its face, it "will be construed from the  
6 written language and enforced as written." Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771,  
7 776, 121 P.3d 599, 603 (2005). The Court has no authority to alter the terms of an unambiguous  
8 contract. *Id.*, citing Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).<sup>67</sup> An  
9 ambiguity in the agreement's terms, however, shall be resolved against the contract's drafter. *See*  
10 Sullivan v. Dairyland Insurance Company, 98 Nev. 364, 366, 649 P.2d 1357, 1358 (1982).

11 6. A breach of contract occurs where a party does not perform a duty arising under the  
12 agreement, and such failure is material. *See* Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d  
13 1259, 1263 (2000), *reversed on other grounds*, Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

14 7. As pertinent to this case, the CC&Rs' Article I entitled "Definitions" specifically  
15 defines certain verbiage. Section 1.11 defined "Common Elements" as:

16 ...all portions of the Project, other than the Units, and all improvements thereon. Subject to  
17 the foregoing, Common Elements may include, without limitation: Building roof, exterior  
18 walls, and foundations, hardscape and parking area, greenbelt, all water and sewer systems,  
19 lines and connections, from the boundaries of the Project, to the boundaries of Units (but not  
20 including such internal lines and connections located inside Units); pipes, ducts, flues,  
21 chutes, conduits, wires, and other utility systems and installations (other than outlets located  
22 within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air  
23 conditioning, as installed by Declaration for common use of Units within each Building (but  
24 not including HVAC which serves a single Unit exclusively).

25 <sup>66</sup>Also see CC&Rs' Section 16.1: "The covenants and restrictions of this Declaration shall run with and bind the  
26 Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this  
27 Declaration, their respective legal representatives, successor Owners and assigns."

28 <sup>67</sup>In interpreting a contract, "the court shall effectuate the intent of the parties, which may be determined in light  
of the surrounding circumstances if not clear from the contract itself." Sheehan & Sheehan v. Nelson Malley &  
Company, 121 Nev. 481, 488, 117 P.2d 219, 224 (2005), *quoting* NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151,  
1158, 946 P.2d 163, 167 (1997), *and* Davis v. National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987).



1 “Exclusive Use Areas” is defined in Section 1.17 in pertinent part:

2 ...any portion of the Project, other than Units, and allocated exclusively to individual Units,  
3 together with such HVAC designed to serve a single Unit, but located outside of the Unit’s  
4 boundaries. Use, maintenance, repair and replacement of Exclusive Use Areas shall be as set  
5 forth in this Declaration. *If any chute, flue, duct, wire, conduit, bearing wall, bearing column*  
6 *or any other fixture lies partially within and partially outside the designated boundaries of a*  
7 *Unit, any portion respectively thereof serving only the Unit is an Exclusive Use Area*  
8 *allocated solely to that Unit, and any portion respectively thereof serving more than one Unit*  
9 *or any portion of the Common Elements is part of the Common Elements. ... (Emphasis*  
10 *added)*

11 “HVAC” is defined in Section 1.19 as:

12 ...heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on  
13 easements in Common Elements, which serve one Unit exclusively, shall constitute  
14 Exclusive Use Areas as to such Unit, pursuant to Section 2.10, ...

15 “Unit” is defined in Section 1.34 as:

16 ...each Unit space, and shall consist of a fee simple interest having the following boundaries  
17 all as originally constructed by Declarant and consisting of: (a) the exterior surface of  
18 exterior walls; (b) the exterior surface of interior walls that are not party walls; (c) the  
19 exterior surface of exterior windows and doors; (d) the interior surface of party walls; (e) the  
20 interior surface commencing with and including the finished floor; (f) the interior surface  
21 commencing with and including the finished ceiling; and (g) the airspace encompassed  
22 within the foregoing boundaries; together with the exclusive right to use, possess and occupy  
23 the Exclusive Use Areas (if any) serving such Unit exclusive; an undivided pro-rata  
24 fractional interest as tenants in common in the Common Elements (other than any Common  
25 Element conveyed in fee to the Association); easements of ingress and egress over and across  
26 all entry or access areas and of use and enjoyment of all other Common Elements; and  
27 membership and voting rights in the Association as set forth in the Governing Documents  
28 (which membership and vote shall be appurtenant to the Unit).

8. Article 2 of the CC&Rs addresses “Owners’ Property Rights; Easements.” Of  
significance here, Section 2.10 addresses easements and property rights related to HVAC; it states:

Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association,  
for the purpose or maintenance, repair and replacement of any heating, ventilation, and/or air  
conditioning and/or heating equipment and systems (“HVAC”) located in the Common  
Elements; *provided, however, that no HVAC shall be placed in any part of the Common*  
*Elements other than its original location as installed by Declarant, unless the approval of the*  
*Board is first obtained.* Notwithstanding the foregoing or any other provision in this  
Declaration, any HVAC which is physically located within the Common Elements, but  
which serves an individual Unit exclusively, shall constitute a Exclusive Use Area as to the  
Unit exclusively served by such HVAC, and the Owner of the Unit shall have the duty, at the

1 Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving  
2 the Unit, subject to the original appearance and condition thereof as originally installed by  
3 Declarant, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads  
underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common  
Elements. (Emphasis added)

4 9. Article 6, Section 6.1 provides the ASSOCIATION has the power and duty to  
5 "reasonably cause the Common Elements to be maintained in a neat and attractive condition, and  
6 kept in good repair, ..." Article 9, Section 9.1 sets forth each Owner shall, at its sole expense, keep  
7 the interior of its Unit, equipment and appurtenances in good, clean and sanitary order and condition.  
8

9 10. Article 16, "Additional Provisions," particularly Section 16.12 entitled "Limited  
10 Liability" sets forth:

11 Except to the extent, if any, expressly prohibited by applicable Nevada law, none of  
12 Declarant, Association, ARC, Declarant and/or Association, and none of their respective  
13 directors, officers, any committee representatives, employees, or agents, shall be liable to  
14 any Owner or any other Person for any action or for any failure to act with respect to any  
15 matter if the action taken or failure to act was reasonable or in good faith. The Association  
16 shall indemnify every present and former Officer and Director and every present and former  
committee representative against all liabilities incurred as a result of holding such office, to  
the full extent permitted by law. (Emphasis added)

17 11. In this case, HORIZON HOLDINGS 2900, LLC claims it suffered loss of rents and  
18 property value as the ASSOCIATION has refused or failed to abide by its responsibility under the  
19 CC&Rs to provide Plaintiff its *pro rata* share of the cooler air. Plaintiff's position is based upon the  
20 opinions rendered by its electrical and mechanical engineering experts, MR. GIFFORD and MR.  
21 IRBY, respectively. While these experts did opine "[t]he 6-ton shortfall we delineate...is the result  
22 of building system inadequacies in design and/or operation as substantiated by Table 1 and the  
23 succeeding analysis," and "[t]here [was] no evidence that the building HVAC system was ever  
24 properly commissioned" or balanced, they also noted the lack of cooler air was caused, in part, by  
25 Plaintiff's own failure to take measures to remedy the system for which it is responsible pursuant to  
26 the CC&Rs. For example, these experts' report dated March 2017 indicates HORIZON  
27  
28

1 HOLDINGS 2900, LLC should have retained a contractor to add a twelfth (12<sup>th</sup>) VAV to the suite's  
2 northeast office, including an in-office thermostat, which all evidence showed Plaintiff never did.  
3 Further, these experts also recommended Plaintiff lower the height of the existing conference room  
4 thermostat from its current location near the ceiling to standard height, another task Plaintiff did not  
5 undertake in efforts to remedy the situation. In short, these experts opined the HVAC issues are and  
6 were caused in part by HORIZON HOLDINGS 2900, LLC'S inaction; they are and were not the  
7 solely caused by the ASSOCIATION'S refusal or failure to balance or "properly commission" the  
8 building's HVAC system.  
9

10 12. Further, while MR. GIFFORD and MR. IRBY opined Plaintiff suffered a 6-ton  
11 shortfall in air given their assessment of building system inadequacy in design and operation, the  
12 evidence showed such was based, at least in part, upon their review of the 2904 Building plans.  
13 They were not afforded the opportunity to review the 2900 Building plans and specifications and  
14 made the supposition the 2900 and 2904 Buildings were identical. Such an assumption, however,  
15 dismisses the fact the two buildings are unique, by way of, *inter alia*, grading, location and facing.  
16 Further, the evidence showed the buildings' interiors or office suites were not identical or utilized in  
17 the same way. For example, Suites 100 and 110 in the 2900 Building cover 4,052 square feet  
18 (7.43% of building), whereas Suites 100 and 110 in the 2904 Building embody 3,989 square feet  
19 (7.21% of building).<sup>68</sup> Suites 101, 111, 120 and 121 in the 2900 Building occupy 9,664 square feet  
20 (17.5% of building) and the same numbered suites in the 2904 Building comprise 9,727 square feet  
21 (17.6% of building). While the business of HORIZON HOLDINGS 2900, LLC involves the  
22 leasing to medical offices providing on-site health services and diagnostic testing to patients, the  
23 work of its neighbor, MR. BORDERS, consists of market research. As MR. BORDERS testified,  
24  
25  
26

27  
28 <sup>68</sup>See Joint Trial Exhibit 2, First Amendment to Declaration of Commercial Office Subdivision Covenants,  
Conditions & Restrictions and Reservation of Easements for Shea At Horizon Ridge, Bates No. TAM0352-TAM0353.

1 every build-out is different. In short, the opinions rendered by MR. GIFFORD and MR. IRBY  
2 Plaintiff suffered a 6-ton shortfall given the building's inadequacy in design and operation are  
3 somewhat flawed given their reliance upon another building's construction plans and assumptions  
4 the 2900 and 2904 Buildings were identical. Further, MR. GIFFORD'S load calculations are  
5 likewise flawed as such were based upon data Plaintiff's suite was typical office space, and ignored  
6 the demands of medical facilities.

7  
8 13. Plaintiff's experts were not the only ones to cast partial blame upon Plaintiff for its  
9 HVAC issues. Defense expert, MR. BIRD, noted it was not uncommon for office occupants to  
10 acquire a stand-alone HVAC unit to service the computer server room. While Plaintiff proposed it  
11 was precluded from installing its own separate HVAC unit within the Common Elements to service  
12 its medical suites, the evidence belied that supposition. Section 2.10 of the CC&Rs provided "no  
13 HVAC shall be placed in any part of the Common Elements other than its original location as  
14 installed by Declarant, *unless* the approval of the Board is first obtained." (Emphasis added) No  
15 evidence was presented to suggest HORIZON HOLDINGS 2900, LLC ever sought the approval of  
16 the Board to install a stand-alone HVAC unit within the Common Elements; it follows, then,  
17 Plaintiff also was never denied Board approval. Further, precedent showed the Board had never  
18 denied such approval to any of its owners; if anything, MR. BORDERS testified the  
19 ASSOCIATION Board had granted approval at least twice before. Stand-alone HVAC units did  
20 exist on the rooftops of both the 2900 and 2904 Buildings. Further, MR. KAPETANSKY also noted  
21 it appeared air shortfall had also been caused by RYCON CONSTRUCTION, LLC when it  
22 constructed the TIs in Plaintiff's office suite in 2015.

23  
24 14. While the evidence showed the lack of cool air to Plaintiff's suite was caused, in part,  
25 by HORIZON HOLDINGS 2900, LLC not installing a twelfth VAV and/or stand-alone HVAC, and  
26 physically lowering its thermostat in the conference room from ceiling height to 48 inches from the  
27  
28

1 floor, evidence was presented by way of MR. BUFORD'S recommendation the building's HVAC  
2 system be balanced. Such recommendation was not ignored by the ASSOCIATION, and the  
3 evidence showed there was an intention for balancing to take place. However, prior to incur the  
4 expenses of balancing the entire building, the ASSOCIATION'S Board decided such would take  
5 place after certain repair work and replacement of old and deficient equipment was completed. In  
6 this Court's view, a decision to balance the system after the deficient HVAC equipment by both the  
7 ASSOCIATION and owners was repaired and/or replaced is reasonable and does not constitute a  
8 breach of the CC&Rs. Liability on part of the ASSOCIATION and its Board members cannot stand  
9 where their action taken or their failure to act is reasonable and in good faith. *See* CC&Rs Section  
10 16.12. This Court concludes the ASSOCIATION did not breach the CC&Rs or contract with  
11 HORIZON HOLDINGS 2900, LLC.  
12

13       **15.** Notwithstanding its conclusion actual breach is lacking, this Court also finds  
14 HORIZON HOLDINGS 2900, LLC did not suffer damages or losses as a result of the  
15 ASSOCIATION'S action or inaction. With respect to Plaintiff's alleged loss in property value,  
16 HORIZON HOLDINGS 2900, LLC'S appraiser, MR. LUBAWY, made certain assumptions, such  
17 as the impossibility of the HVAC system being remedied to provide Plaintiff adequate cool air,  
18 when he determined Plaintiff suffered \$810,000 loss in fair market value. MR. LUBAWY'S  
19 assumptions were flawed as the evidence showed the HVAC systems within the Common Elements  
20 and Owners' exclusive use could be repaired and/or replaced. Further, it was not impossible, given  
21 the condominium restrictions, for HORIZON HOLDINGS 2900, LLC to seek Board approval to  
22 install a stand-alone HVAC system. MR. LUBAWY admitted his opinion as to fair market value  
23 would change if his assumptions were not correct. With respect to loss of rents, there was no  
24 evidence Plaintiff suffered an actual deficit. The leases between HORIZON HOLDINGS 2900,  
25 LLC and its tenants were "pocket to pocket," meaning all entities were controlled by one managing  
26  
27  
28

1 member/principal, MS. JORDAN. No evidence was presented to show the tenants were unable to  
2 pay the landlord rent; if anything, the evidence showed at least one tenant, QUALITY NURSING,  
3 LLC, had adequate cash flow to pay rent as it loaned money to its landlord on a consistent basis. To  
4 wit, notwithstanding this Court's conclusion the ASSOCIATION did not breach the CC&Rs or  
5 contract, the First Claim for Relief cannot stand as the preponderance of the evidence showed  
6 Plaintiff did not suffer damages resulting therefrom.  
7

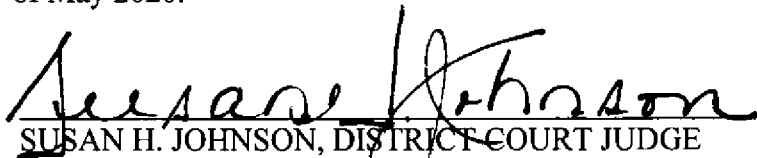
8       16. HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied  
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair  
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of  
11 America, 104 Nev. 587, 592 n.1, 763 P.2d 673, 676 n. 1 (1988). Under the implied covenant of  
12 good faith and fair dealing, each party must act in a manner that is faithful "to the purpose of the  
13 contract and the justified expectations of the other party." Morris v. Bank of America, 110 Nev.  
14 1274, 1278, 866 P.2d 454, 457 (1994), *quoting* Hilton Hotels v. Butch Lewis Productions, 107 Nev.  
15 226, 234, 808 P.2d 919, 923 (1991). Such position is true even where, ultimately, there is no breach  
16 of contract; a plaintiff "may still be able to recover damages for breach of the implied covenant of  
17 good faith and fair dealing." Hilton Hotels, 107 Nev. at 232, 808 P.2d at 922. To wit, whether a  
18 breach of the *letter* of the contract exists, the implied covenant of good faith is an obligation  
19 independent of the consensual contractual covenants. Morris, 110 Nev. at 1278, 886 P.2d at 457.  
20 Given the evidence presented in this case, this Court concludes the ASSOCIATION acted in a  
21 manner faithful to the CC&Rs' purpose and justified expectations of HORIZON HOLDINGS 2900,  
22 LLC. As noted above, the ASSOCIATION and its property manager, TAM, was responsive  
23 whenever MS. JORDAN complained about the lack of cool air in Plaintiff's medical suites. The  
24 ASSOCIATION made necessary repairs to the old and deficient equipment. Its HVAC vendors  
25 informed MS. JORDAN what needed to be done to accord Plaintiff and its tenants adequate cooling  
26  
27  
28

1 of air. Accordingly, this Court finds in favor of the ASSOCIATION as against HORIZON  
2 HOLDINGS 2900, LLC with respect to Plaintiff's Second Claim for Relief.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** judgment is rendered in  
5 favor of Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION as against Plaintiff  
6 HORIZON HOLDINGS 2900, LLC, whereby Plaintiff takes nothing by way of its Second Amended  
7 Complaint on file herein.  
8

9 DATED this 26<sup>th</sup> day of May 2020.


10   
11 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

12 **CERTIFICATE OF SERVICE**

13 I hereby certify, on the 26<sup>th</sup> day of May 2020, I electronically served (E-served), placed  
14 within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true  
15 and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
16 JUDGMENT to the following counsel of record, and first-class postage was fully prepaid thereon:  
17

18 ERIC ZIMBELMAN, ESQ.  
19 PEEL BRIMLEY, LLP  
20 3333 East Serene Avenue, Suite 200  
21 Henderson, Nevada 89074-6571  
[czimbelman@pcclbrimley.com](mailto:czimbelman@pcclbrimley.com)

22 ROBERT E. SCHUMACHER, ESQ.  
23 BRIAN K. WALTERS, ESQ.  
24 GORDON REES SCULLY MANSUKHANI, LLP  
25 300 South Fourth Street, Suite 150  
26 Las Vegas, Nevada 89101  
[rschumacher@grsm.com](mailto:rschumacher@grsm.com)  
[bwalters@grsm.com](mailto:bwalters@grsm.com)

27   
28 Laura Banks, Judicial Executive Assistant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**October 13, 2017**

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A-17-758435-C	Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)
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**October 13, 2017      10:30 AM      Minute Order**

**HEARD BY:** Johnson, Susan      **COURTROOM:** Chambers

**COURT CLERK:** Haly Pannullo

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Pursuant to EDCR 2.20(g), the moving party shall deliver Courtesy Copies of all papers related to their Motion at least 5 judicial days before the hearing. This includes the Opposition if opposing counsel fails to deliver their own courtesy copies. As all courtesy copies have not been received, the following hearing(s) have been VACATED:

Thursday, October 19, 2017: Defendants Tag Horizon Ridge and the Aligned Group s Motion to Dismiss

Should the parties wish to proceed, the Hearing will need to be Re-Noticed and courtesy copies delivered to chambers accordingly.

CLERK S NOTE: This Minute Order has been e-served to all appropriate parties by the Judicial Executive Assistant. hvp/10/13/17



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**November 28, 2017**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**November 28, 2017      10:30 AM      All Pending Motions**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Tena Jolley

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Cavanaugh, Colin      Attorney  
                 Huntley, Brent      Attorney  
                 Van, Michael C.      Attorney  
                 Walters, Brian K.      Attorney  
                 Wood, Brittany      Attorney

**JOURNAL ENTRIES**

- Catherine Jordan, Representative of Horizon Holdings 2900 LLC, also present.

Court noted that it signed an Order Shortening Time on Plaintiff's Motion for Leave to File a Supplemental Memorandum however it was never filed and therefore it is not on calendar today.

DEFENDANTS TAG HORIZON RIDGE AND THE ALIGNED GROUP'S MOTION TO DISMISS Argument by Mr. Cavanaugh that plaintiff was aware of the HVAC performance issues as evidenced by the invoicing for repairs and therefore the TAG two year post dissolution limitations period under NRS 86.505 bars the claims as to TAG and the Aligned Group. Argument by Mr. Van that plaintiff will need to file a Motion to Amend the Complaint to allege fraudulent concealment and forgery; that it was not until plaintiff received expert Gifford's report was when the learned of the improper design and the complaint was filed timely; and requested 56(f) relief to discover the factual issues. Further argument by Mr. Cavanaugh, including that plaintiff is attempting to impute liability to Aligned as its role as a member without any separate and distinct allegations as to Aligned. COURT

ORDERED, Motion to Dismiss GRANTED as to Aligned Group LLC as they are the manager of TAG Horizon Ridge LLC and FINDS there are no causes of action against Aligned Group LLC; As for the Motion to Dismiss by TAG Horizon Ridge LLC, the Court will take a closer look and MATTER TAKEN UNDER ADVISEMENT.

TAG HORIZON RIDGE, LLC and TAG FUND I, LLC'S MOTION TO DISMISS THE CROSS-CLAIM AND THIRD-PARTY COMPLAINT OF FIRST AMERICAN EXCHANGE

Following arguments by Mr. Cavanaugh and Ms. Wood, COURT ORDERED, Motion DENIED WITHOUT PREJUDICE.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract****COURT MINUTES****December 18, 2017**

A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
    vs.  
    Shea at Horizon Ridge Owners Association, Defendant(s)

**December 18, 2017      3:00 AM      Minute Order**

**HEARD BY:** Johnson, Susan      **COURTROOM:** Chambers

**COURT CLERK:** Elizabeth Vargas

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Defendants TAG Horizon Ridge, LLC's and Aligned Group, LLC's Motion to Dismiss filed September 12, 2017 was heard Tuesday, November 28, 2017 at 10:30 a.m. This Court granted the motion as it applied to the managing member of TAG Horizon Ridge, LLC (i.e. Aligned Group, LLC) in its entirety, but took the matter under advisement regarding the claims brought against TAG Horizon Ridge, LLC (the seller of the subject property). Having reviewed the matter given the oral arguments of the parties, and found good cause therefore,

IT IS ORDERED Defendants' Motion to Dismiss as it relates to the First Cause of Action (Breach of Contract) against TAG Horizon Ridge, LLC is GRANTED. Pursuant to Purchase and Sale Agreement & Escrow Instructions (hereinafter referred to as the "Agreement") entered into by Plaintiff Horizon Holdings 2900, LLC and TAG Horizon Ridge, LLC on November 14, 2014, Plaintiff agreed to buy the subject property "as is," with a closing date of February 22, 2015. See Section 5 of the Agreement. Given its as is condition, Plaintiff and Defendant understood and agreed the purchase price had been adjusted by prior negotiations; the parties further noted, in capitalized wording, it was "not contemplated that the purchase price will be increased if costs to buyer associated with the assets prove to be less than expected or will the purchase price be reduced if buyer's plan for the assets leads to higher cost projections. The sole and exclusive remedy of buyer will be to terminate this agreement as provided herein prior to the closing date." See Section 6 of the Agreement. Plaintiff

was accorded a 30-day investigation period in which "to review all aspects of the Property." See Section 7 of the Agreement. If there was a failure of any condition, Plaintiff had the opportunity to waive them, or have its entire deposit from Defendant (via the title company) refunded. Id.; also see Section 14(a) [buyer's sole and exclusive remedies in the event of seller's default is to (1) enforce specific performance of the agreement or (2) terminate the agreement and receive a refund of the deposit.] While Plaintiff now claims the HVAC system is not satisfactory in that it is too small to cool or heat the particular space and such could not have been found by due diligence inspection, Plaintiff agreed to the as is purchase and there would be no adjustment as to price. Notably, Plaintiff also agreed to release Defendant (again, the Seller) from any claims it may have for constructional defects, errors, omissions or other conditions, latent or otherwise affecting the property. See Section 6(b) of the Agreement.

IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Second Cause of Action (Breach of Warranty of Suitability) against TAG Horizon Ridge, LLC is GRANTED. This Court not only incorporates its discussion above concerning the First Cause of Action, but notes Plaintiff, as Buyer, agreed and acknowledge it was purchasing the property "as is," and "that Seller shall not be deemed to have made any representations or warranties," except as provided in Section 5 of the Agreement. None of these exceptions relate to constructional deficiencies, errors or other conditions, including the HVAC's capacity or ability to adequately cool or heat the space.

IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Third (Breach of Covenant of Good Faith and Fair Dealing), second Third (Non-Disclosure) and Fourth (Negligence) is GRANTED for the reasons set forth above. In addition, outside of the parties' Agreement, Defendant TAG Horizon Ridge, LLC owed no further duties to Plaintiff under a negligence theory or otherwise.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Van, Esq. (Shumway Van) and Colin Cavanaugh, Esq. (Keating Law Group). //ev 12/18/17

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**December 19, 2017**

---

A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**December 19, 2017      10:30 AM      Motion for Leave**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Tia Everett

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Cavanaugh, Colin      Attorney  
                         Huntley, Brent      Attorney

**JOURNAL ENTRIES**

- Court noted a decision was issued via minute order yesterday as to the Motion to Dismiss which was previously taken under advisement. Mr. Huntley advised based on the Court's decision this motion is moot. COURT ORDERED, Motion OFF CALENDAR. Mr. Cavanaugh advised parties have submitted a stipulation and order to extend briefing as to the Leave to File an Amended Complaint. Colloquy regarding scheduling. Court instructed parties to reach out to her Law Clerk regarding dates for the briefing schedule.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 06, 2018**

---

A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**February 06, 2018      10:30 AM      Motion For  
Reconsideration**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Cavanaugh, Colin      Attorney  
Van, Michael C.      Attorney  
Walters, Brian K.      Attorney  
Wood, Brittany      Attorney

**JOURNAL ENTRIES**

- Arguments by Mr. Van and Mr. Cavanaugh regarding the merits of the Motion. Court advised it wanted to review the original Motion, Opposition, and Reply and ORDERED, matter taken UNDER ADVISEMENT.

November 06, 2018

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**September 18, 2019**

---

A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**September 18, 2019      8:30 AM**

**Status Check: Trial  
Readiness**

**HEARD BY:** Johnson, Susan

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                         Walters, Brian K.      Attorney

**JOURNAL ENTRIES**

- Court advised counsel of their place on the trial stack. Mr. Zimbelman stated that he and Mr. Walters discussed moving the trial. Upon inquiry of the Court, Mr. Zimbelman stated that there were expert depositions left to be scheduled and both sides had pre-trial motions to file. Mr. Walters confirmed Mr. Zimbelman's representations. Counsel further confirmed that trial would take approximately one week to complete. COURT ORDERED, trial CONTINUED and advised that it would be the last continuance.

12/18/19 8:30 AM PRETRIAL/CALENDAR CALL

1/6/20 8:30 AM BENCH TRIAL



**December 18, 2019**

**January 21, 2020**

PRINT DATE: 06/30/2020 Page 11 of 20 Minutes Date: October 13, 2017

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 03, 2020**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**February 03, 2020      8:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                 Walters, Brian K.      Attorney  
                 Zimbelman, Eric B.      Attorney

**JOURNAL ENTRIES**

- Parties discussed their agreed upon joint exhibits.

Openings by counsel. Testimony and exhibits presented. (See worksheets)

COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO: 2/4/20 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 04, 2020**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**February 04, 2020      1:00 PM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                 Walters, Brian K.      Attorney  
                 Zimbelman, Eric B.      Attorney

**JOURNAL ENTRIES**

- Testimony and exhibits presented. (See worksheets)

Argument regarding the plaintiff having two experts opining on the same issues.

COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO: 2/5/20 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 05, 2020**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**February 05, 2020      9:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                 Walters, Brian K.      Attorney  
                 Zimbelman, Eric B.      Attorney

**JOURNAL ENTRIES**

- Mr. Zimbelman stated that the witness went down to the City of Henderson and got the plans for what would be considered building one. Argument by counsel. Court TRAILED matter to consider counsel's request.

MATTER RECALLED

Court advised counsel that it would like to have a rule 37 hearing on the matter and directed counsel to notify witnesses.

MATTER TRAILED

MATTER RECALLED

Further testimony heard and exhibits presented as to the rule 37 hearing.

COURT ORDERED, any reference to the plans for building one EXCLUDED as they were not

produced in discovery.

Trial testimony and presentation of exhibits continued.

COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO: 2/7/20 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 06, 2020**

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A-17-758435-C	Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)
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**February 06, 2020      10:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- JURY PRESENT

Testimony and exhibits presented. (See worksheets)

Plaintiff rested.

Court admonished and excused the Jury for the evening recess.

OUTSIDE THE PRESENCE OF THE JURY

Mt. Schumacher moved for a verdict in favor of the defendant and argued the rule 52 Motion.  
COURT ORDERED, MOTION DENIED. COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO: 2/7/20 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 07, 2020**

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A-17-758435-C	Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)
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**February 07, 2020      8:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Carolyn Jackson

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Horizon Holdings 2900 LLC	Plaintiff
	Schumacher, Robert E.	Attorney
	Shea at Horizon Ridge Owners Association	Defendant
	Walters, Brian K.	Attorney
	Zimbelman, Eric B.	Attorney

**JOURNAL ENTRIES**

- Mr. Schumacher advised that Ms. Chien was not available until 02/10/20. Discussion regarding scheduling issues.

Testimony and Exhibits presented. (See worksheets).

Evening recess.

02/11/2020 1:00 PM BENCH TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 11, 2020**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**February 11, 2020      1:00 PM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                 Walters, Brian K.      Attorney  
                 Zimbelman, Eric B.      Attorney

**JOURNAL ENTRIES**

- Testimony and exhibits presented. (See worksheets)

COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO: 2/12/20 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**February 12, 2020**

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A-17-758435-C	Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)
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**February 12, 2020      10:00 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Schumacher, Robert E.	Attorney
	Walters, Brian K.	Attorney
	Zimbelman, Eric B.	Attorney

**JOURNAL ENTRIES**

- Colloquy regarding admitted exhibits. Both sides rested and completed their closing arguments.

Court advised counsel that a decision will issue via minute order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Contract**

**COURT MINUTES**

**April 14, 2020**

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A-17-758435-C      Horizon Holdings 2900 LLC, Plaintiff(s)  
vs.  
Shea at Horizon Ridge Owners Association, Defendant(s)

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**April 14, 2020      8:30 AM      All Pending Motions**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Schumacher, Robert E.      Attorney  
                 Walters, Brian K.      Attorney  
                 Zimbelman, Eric B.      Attorney

**JOURNAL ENTRIES**

- TAYLOR ASSOCIATION MANAGEMENT'S MOTION FOR ATTORNEYS' FEES AND INTEREST...PLAINTIFF'S MOTION TO RE-TAX COSTS.

Argument by counsel as to the Motion for Attorneys' Fees and Interest. COURT ORDERED, MOTION FOR ATTORNEYS' FEES and INTEREST, DENIED.

Argument by counsel as to the Motion to Re-tax Costs. Court took MATTER UNDER ADVISEMENT to look at the costs.

Case No.: A-17-758435-C

Trial Date: February 3, 2020

Dept. No.: 22

Judge: Susan H. Johnson

Plaintiff: Horizon Holdings 2900, LLC

Court Clerk: Jill Chambers

Recorder / Reporter: Norma Ramirez

Counsel for Plaintiff: Eric B. Zimbelman

vs.

Defendant: Shea at Horizon ridge  
Owners Association, et al.

Counsel for Defendant: Robert E. Schumacher  
Brian K. Walters

**TRIAL BEFORE THE COURT**

**PLAINTIFF'S TRIAL EXHIBIT LIST**

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
101	1	Colored map of VAVs in Suite 1-1	JORDAN000657	2.5.2020	Y eldren	2.5.2020
102	1	Report from Sahara Air	JORDAN000086- JORDAN000087			
103	1	Email chain - Chien to Border et al.	SHEA0112- SHEA0116	2.12.20	N	2.12.2020
104	1	Gifford Consulting Expert Report				
105	1	Gifford Consulting letter	JORDAN000269- JORDAN000270			
106	1	Email - Chien to Greig and Border	SHEA0096			
107	1	Tenant Improvements - Keller Williams	SHEA-HBFS- 0527- SHEA- HBFS-0540			
108	1	Tenant Improvement Plans - Marketing Results	SHEA-HBFS- 0478- SHEA- HBFS-0480, SHEA-HBFS- 0487- SHEA- HBFS-0488	2.11.20	Skip	2.11.20
109	1	TI Permit - Suite 101	SHEA-HBFS- 0521- SHEA- HBFS-0526			
110	1	Building 1 Structural Plans	JORDAN000658- JORDAN000662			
111	1	Building 2 Structural Plans	JORDAN000666- JORDAN000668; JORDAN000670- JORDAN000671			
112	1	Site Plan	JORDAN000645			

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
113	1	Erection Drawing Building 1 and 2	JORDAN000714			
114	1	Rycon M-1 Plan	SHEA-HBFS-0129			
115	1	Payments records - Prime HVAC	JORDAN000587	2.6.2020	N	2.6.2020
116	1	Promissory Note and Updated Financial Records	JORDAN000743- JORDAN000757	2.6.2020	Y	2.6.2020
117	1	Vendor Balance Detail - Blinds	JORDAN000957	2.6.2020	N	2.6.2020
118	1	Shea's Responses to Plaintiff's First Requests for Production	N/A			
119	1	Taylor's Responses to Plaintiff's First Requests for Production	N/A			
120	1	Shea's Responses to Plaintiff's First Set of Interrogatories	N/A			
121	1	Taylor's Responses to Plaintiff's First Set of Interrogatories	N/A			
122	1	Email from Stephanie Freeman to Don Greig, Gary Border, Marissa Chien	SHEA-GB-000194 - SHEA-GB-00198			
123	1	Email from Stephanie Freeman to William Paul Wright, Esq. Don Greig, Gary Border, Marissa Chien	SHEA-GB-000220			
124	1	Letter from Shumway Van to Shea at Horizon Ridge	SHEA-GB-000221 - SHEA-GB-000230	2.11.20	Stip	2.11.20
125	1	Email from Don Greig to Marissa Chien and Gary Border	SHEA-GB-000326			
126	1	Email from Marissa Chein to Gary Border	SHEA-GB-000329 - SHEA-GB-000330			
127	1	Email from Marissa Chein to Gary Border	SHEA-GB-000331 - SHEA-GB-000333	2.12.20	Y	2.12.20
128	1	Email from H. Hassanally to Stephanie Freeman, Marissa Chien, Lori Brenner, Gary Border	SHEA-GB-000354 - SHEA-GB000355			
129	1	Email from Lorraine Conti to Don Shea, Gary Border, Michelle Merrick	SHEA-GB-000379			
130	1	Email from Catherine Jordan to Stephanie Freeman	SHEA-GB-000384 - SHEA-GB-000387			
131	1	Email from Marissa Chein to Gary Border	SHEA-GB-000396	2.11.20	Stip	2.11.20
132	1	Email from Gary Border to William Paul Wright and Don Greig	SHEA-GB-000568 - SHEA-GB-000573			
133	1	Email from Gary Border to Marissa Chien, Stephanie Freeman, Don, H. Keilor	SHEA-GB-000595 - SHEA-GB-000598	2.12.20	N	2.12.20

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
134	1	Email from Don Greig to Marissa Chien and Gary Border	SHEA-GB-000602 - SHEA-GB-000603	2.12.20	N	2.12.20
135	1	Email from Mario Moya to Marissa Chien	SHEA-GB-000620 - SHEA-GB-000622			
136	1	Email from Gary Border to Marissa Chien	SHEA-GB-000692 - SHEA-GB-000695	2.12.20	X	
137	1	Email from Gary Border to Lorraine Conti, Marissa Chien, Don Shea	SHEA-GB-000719 - SHEA-GB-000720			
138	1	Email from Marissa Chien to Gary Border	SHEA-GB-000747 - SHEA-GB-000748			
139	1	Email from Marissa Chien to Stephanie Freeman	SHEA-GB-000766 - SHEA-GB-000777			
140	1	Email from Gary Border to L. Pugh, Marissa Chien, Don Shea	SHEA-GB-000859 - SHEA-GB-000863			
141	1	Email from Gary Border to Stephanie Freeman and Marissa Chien	SHEA-GB-000864 - SHEA-GB-000866			
142	1	Email from Stephanie Freeman to L. Pugh, Marissa Chien, Gary Border	SHEA-GB-000895 - SHEA-GB-000899			
143	1	Email from Marissa Chien to L. Conti	SHEA-GB-001028 - SHEA-GB-001029			
144	1	Email from Gary Border to Don Greig	SHEA-GB-001121 - SHEA-GB-001122			
145	1	Association Flyer	SHEA-GB-001172	2.11.20	Stip	2.11.20
146	1	Email from Gary Border to Michelle Merrick	SHEA-GB-001174 - SHEA-GB-001176			
147	1	Email from Marissa Chien to Don, Gary Border	SHEA-GB-001196 - SHEA-GB-001199			
148	1	Email from Marissa Chien to Don and Gary Border	SHEA-GB-001208 - SHEA-GB-001209			
149	1	Email from Lorraine Conti to Marissa Chien	SHEA-GB-001324 - SHEA-GB-1326			
150	1	Email from Lorraine Conti to Don Shea, Gary Border, Michelle Merrick	SHEA-GB-001489			
151	1	Prime HVAC Invoice	SHEA-GB-001495			

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
152	1	Email from Stephanie Freeman to L. Brenner	SHEA-GB-001506			
153	1	Email chain from Stephanie Freeman to Marissa Chien	SHEA-GB-001556 - SHEA-GB-001568			
154	1	Email chain from Stephanie Freeman to Catherine Jordan, et al	SHEA-GB-001609 - SHEA-GB-001617			
155	1	Email from Gary Border to Lorraine Conti	SHEA-GB-001618			
156	1	2016 Proposed Operating Budget	SHEA-GB-000002 - SHEA-GB-000003			
157	1	Email from Marissa Chien to Mario Moya	SHEA-GB-000014	2/12/20	Y	2/12/20
158	1	Email from Marissa Chien to Stephanie Freeman	SHEA-GB-000023 - SHEA-GB-000026			
159	1	Photo of Building	SHEA-GB-000069			
160	1	Photo of Roof Top	SHEA-GB-000070			
161	1	Email from Lorraine Conti to Don Shea, Gary Border, Michelle Merrick	SHEA-GB-000075 - SHEA-GB-000077			
162	1	Email from Stephanie Freeman to William Paul Wright, Esq. Don Greig, Gary Border, Marissa Chien	SHEA-GB-000078 - SHEA-GB-000080			
163	1	Quality Mechanical's Proposed Project Agreement	SHEA-GB-000087 - SHEA-GB-000090			
164	1	Quality Mechanical's Proposed Project Agreement	SHEA-GB-000091 - SHEA-GB-000094			
165	1	Email from Stephanie Freeman to Gary Border and Marissa Chien	SHEA-GB-000095 - SHEA-GB-000098			
166	1	Email from Stephanie Freeman to Don Greig, Gary Border, Marissa Chien	SHEA-GB-000131 - SHEA-GB-000139			
167	1	Email from Lori Pugh to Marissa Chien, Don, Gary Border	SHEA-GB-000172 - SHEA-GB-000176			
168	1	Email from Lori Pugh to Marissa Chien, Don, Gary Border	SHEA-GB-000181 - SHEA-GB-000185			
169	1	Mechanical Drawings - Burford Deposition Exhibit 3				
170	1	Photo	JORDAN-GCG00720	2/3/2020	N	2/3/2020

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
171	1	Photo	JORDAN-GCG00703	2/3/2020	N	2/3/2020
172	1	Photo	JORDAN-GCG00660			
173	1	Photo	JORDAN-GCG00661			
174	1	Photo	JORDAN-GCG00662			
175	1	Photo	JORDAN-GCG00666			
176	1	Photo	JORDAN-GCG00669	2/3/2020	N	2/3/2020
177	1	Horizon Holdings 2900, LLC's Rebuttal Expert Disclosure				
178		RESERVED				
179		RESERVED				
180		RESERVED				
181		RESERVED				
182		RESERVED				
183		RESERVED				
184		RESERVED				
185		RESERVED				
186		Plaintiff reserves the right to use any pleading for rebuttal and/or impeachment purposes				
187		Plaintiff reserves the right to use any deposition transcripts and exhibits for impeachment purposes or in the event of witness unavailability				
188		Plaintiff reserves the right to use any document previously disclosed by any party				

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Case No.: A-17-758435-C

Trial Date: February 3, 2020

Dept. No.: 22

Judge: Susan H. Johnson

Plaintiff: Horizon Holdings 2900, LLC

Court Clerk: Jill Chambers

Recorder / Reporter: Norma Ramirez

Counsel for Plaintiff: Eric Zimbelman

vs.

Defendant: Shea at Horizon Ridge  
Owners Association, et al.

Counsel for Defendant: Robert E. Schumacher  
Brian K. Walters

**TRIAL BEFORE THE COURT**

**DEFENDANTS' TRIAL EXHIBIT LIST**

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
501	1	(04-06-2015) Community Management Agreement Shea and Taylor Management	SHEA0047-SHEA0060			
502	1	(12-09-14) E-mail exchange between Marissa Chien and Nicholas Angell of Controlco regarding quote	SHEA0067-SHEA0069			
503	1	(12-11-14) Controlco quote to Shea	SHEA0070-SHEA0072			
504	1	(12-30-14) E-mail from Lorraine Conti to Don Greig, Gary Border and Marissa Chien regarding HVAC proposals	SHEA0073-SHEA0080			
505	1	(12-30-14) E-mail from Steve Burford to Don Greig, Michelle Merrick, Gary Border, Heather Keillor and Marissa Chien re Building 2900 HVAC	SHEA0081-SHEA0083			
506	1	(10-29-15) E-mail from Mark Kapetansky to Stephanie Freeman, Don Greig, and Heather Keillor re RTU controller retrofit options	SHEA0084-SHEA0086			
507	1	(11-18-15) E-mail from Mark Kapetansky to Catherine Jordan re Quality Nursing Heating Inspection	SHEA0088-SHEA0089			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
508	1	(05-25-17) E-mail discussion between Mark Kapetansky, Don Greig, Gary Border and Marissa Chien re Shea operating schedule for the AC units	SHEA0138-SHEA0139			
509	1	Various Emails between Stephanie Freeman and Catherine Jordan	TAM0061-TAM0134			
510	1	CAMS Invoices and Service Work Orders for Shea at Horizon Ridge from May 2015 to January 2016	TAM0136-TAM0177			
511	1	(04-27-2018) ChillRite HVAC & Mechanical Invoice 43959 to Shea at Horizon Ridge	TAM0178			
512	1	Controlco Invoice and Credit Memo to Shea at Horizon Ridge	TAM0179-TAM0181			
513	1	Schneider Electric Invoices to Shea at Horizon Ridge	TAM0257-TAM0261			
514	1	(05-18-2017) E-mail from William Paul Wright to Michael Van "responding to Van Letter dated May 9, 2017"	TAM0283-TAM0286			
515	1	(05-10-2017) E-mail from William Paul Wright to Michael Van re "AC 2900 West Horizon Ridge"	TAM0283			
516	1	(02-28-2017) E-mail from William Paul Wright to Michael Van re "Technical Expert E-mail - Shea at Horizon - Jordan Unit"	TAM0281-TAM0282			
517	1	(01-23-2017) E-mail from William Paul Wright to Matthew Ekins re "Horizon Holdings A/C issue - Catherine Jordan"	TAM0280-TAM0281			
518	1	(06-15-2016) E-mail from William Paul Wright to Matthew Ekins re "2900 West Horizon Ridge Parkway, HVAC Schedule"	TAM0278-TAM0280			
519	1	(02-25-2016) E-mail from William Paul Wright to Matthew Ekins re "Horizon Ridge HVAC Upgrade Request"	TAM0276-TAM0278			
520	1	(02-25-2016) E-mail from William Paul Wright to Matthew Ekins re "Horizon Ridge HVAC Upgrade Request"	TAM0275-TAM0276			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
521	1	(01-28-2016) E-mail from William Paul Wright to Matthew Ekins re "2900 W Horizon Ridge HVAC and Sign Request Status"	TAM0274-TAM0275			
522	1	(01-08-2016) E-mail from William Paul Wright to Matthew Ekins re "2900 West Horizon Ridge ADA Requirements"	TAM0271-TAM0273			
523	1	(11-30-2015) E-mail from William Paul Wright to Matthew Ekins re "Shea at Horizon - Ekins message"	TAM0271			
524	1	(11-27-2015) E-mail from William Paul Wright to Matthew Ekins re "Quality Nursing Heating Inspection 11-19-2015"	TAM0268-TAM0270			
525	1	(11-19-2015) E-mail from William Paul Wright to Matthew Ekins re "Quality Nursing Heating Inspection 11-18-2015"	TAM0266-TAM0268			
526	1	(11-10-2015) E-mail from William Paul Wright to Matthew Ekins re "2900 West Horizon Ridge Parkway, HVAC matters"	TAM0265			
527	1	(09-16-2015) E-mail from William Paul Wright to Matthew Ekins re "AC and leaks at 2900 W. Horizon Ridge Pkwy"	TAM0264			
528	1	(09-14-2015) E-mail from William Paul Wright to Matthew Ekins re "AC and leaks at 2900 W. Horizon Ridge Pkwy"	TAM0263-TAM0264			
529	1	(09-10-2015) E-mail from William Paul Wright to Matthew Ekins re "South Offices"	TAM0262-TAM0263			
530	1	(07-24-2017) Various emails attaching Summons and Complaint	TAM0365-TAM0397			
531	1	William Bird Expert Job Files	WHB000014-WHB000116			
532	1	(08-29-2018) Affidavit of Custodian of Records for City of Henderson Department of Building and Fire Safety and copy of CD	SHEA-HBFS-0002-SHEA-HBFS-0003			
533	1	Documents produced by City of Henderson Department of Building	SHEA-HBFS-0179-SHEA-			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		and Fire Safety – Willow Creek Office Park Building #2 (Plumbing Plans)	HBFS-0182			
534	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Electrical Plans)	SHEA-HBFS-0183- SHEA-HBFS-0187			
535	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Sheet C1.1)	SHEA-HBFS-0188			
536	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #1 and #2 (Sheet A1.1)	SHEA-HBFS-0189			
537	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Architectural Plans)	SHEA-HBFS-0190- SHEA-HBFS-0203			
538	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Specifications)	SHEA-HBFS-0215- SHEA-HBFS-0216			
539	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (General Notes)	SHEA-HBFS-0217			
540	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Mechanical Schedules)	SHEA-HBFS-0218			
541	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Mechanical Plans)	SHEA-HBFS-0219- SHEA-HBFS-0222			
542	1	Documents produced by City of Henderson Department of Building	SHEA-HBFS-0223			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		and Fire Safety – Willow Creek Office Park Building #2 (General Notes)				
543		Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #1 (Structural Plans)	SHEA-HBFS-0224- SHEA-HBFS-0231			
544	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park Building #2 (Structural Plans)	SHEA-HBFS-0232- SHEA-HBFS-0239			
545	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park (Sheets C1.01-C1.02)	SHEA-HBFS-0240- SHEA-HBFS-0241			
546	1	Documents produced by City of Henderson Department of Building and Fire Safety – Willow Creek Office Park (Utility Plan)	SHEA-HBFS-0242			
547	1	Rycon Documents	SHEA-RC-001-SHEA-RC-025	2.5.2020	N	2.5.2020
548	1	Rycon Construction Building Plans for Tenant Improvement of Horizon Holdings 2900	SHEA-RC-026-SHEA-RC-045	2.5.2020	N	2.5.2020
549	1	CAMS Invoice 31836 Negotiated Bid Project	JORDAN000028-JORDAN000029			
550	1	CAMS Invoice 31837 Rooftop Inspections	JORDAN000030-JORDAN000035			
551	1	Schneider Electric invoice 573537 Communication Error on Switch Router	JORDAN000036			
552	1	Schneider Electric invoice 573545 Check BAS and LON	JORDAN000037			
553	1	CAMS Invoice 31874 Issue in Suite 200	JORDAN000038-JORDAN000039			
554	1	CAMS Invoice 31894	JORDAN000040			
555	1	Schneider Electronic Invoice 578100 Quarterly Statement	JORDAN000041			
556	1	CAMS Invoice 31956 Negotiated Bid	JORDAN000042-JORDAN000047			
557	1	Schneider Electronic Invoice 582189 Quarterly Balance	JORDAN000048			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
558	1	CAMS Invoice 32126	JORDAN000049- JORDAN000050			
559	1	CAMS Invoice 32139	JORDAN000051- JORDAN000052			
560	1	CAMS Invoice 32151 RE Install Fire Dampers	JORDAN000053			
561	2	CAMS Invoice 32165 RE Fire Dampers	JORDAN000054			
562	2	CAMS Invoice 32210	JORDAN000055- JORDAN000056			
563	2	CAMS Invoice 32316 Inspection Maintenance Contract	JORDAN000057			
564	2	CAMS Invoice 32354 RE Diagnosed Leak on AC	JORDAN000058- JORDAN000059			
565	2	CAMS Invoice 32356 RE Diagnosed Leak	JORDAN000060- JORDAN000061			
566	2	CAMS Invoice 32559 Replace Belts on Supply Fan	JORDAN000062- JORDAN000063			
567	2	CAMS Invoice 32566 RE Negotiated Bid Replace TXV	JORDAN000064- JORDAN000065			
568	2	Prime HVAC Service and Part Billing Statement	JORDAN000066			
569	2	Controlco Invoice 35310 BACNET AX	JORDAN000067			
570	2	CAMS Invoice 32597 Diagnose Issue with York AC I	JORDAN000068- JORDAN000070			
571	2	CAMS Invoice 32708 Removed Occupied Jumpers	JORDAN000071- JORDAN000072			
572	2	CAMS Invoice 32713 Unit Tripped	JORDAN000073- JORDAN000074			
573	2	CAMS Invoice 32760 Replace Condenser	JORDAN000075- JORDAN000076			
574	2	Prime HV AC LLC Service Proposal and All Payments Issued	JORDAN000079- JORDAN000081			
575	2	CAMS Invoice 32827 Diagnose Issue with AC Not Working	JORDAN000082- JORDAN000085			
576	2	CAMS Invoice 32551 Invoice Diagnose Northwest Unit	JORDAN000088- JORDAN000089			
577	2	Purchase and Sale Agreement	JORDAN000153- JORDAN000170			
578	2	SHEA at Horizon Level 2 Reserve Study	JORDAN000217- JORDAN000268			
579	2	Gibson Air HVAC Proposal	JORDAN000271			
580	2	Precision Air Balance Co. Price for	JORDAN000272			

*Returned*

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Tab				
581	2	First Amendment to Purchase Sale Agreement	JORDAN000292-JORDAN000293			
582	2	Fully Executed Second Amendment to PSA	JORDAN000302-JORDAN000303			
583	2	Certified Copy of First Subordination Agreement - Lease	JORDAN000307-JORDAN000314			
584	2	Certified Copy of Recorded 1st Deed of Trust	JORDAN000315-JORDAN000337			
585	2	Certified Copy of Second Subordination Agreement - Lease	JORDAN000367-JORDAN000374			
586	2	Val bridge Property Advisors Invoice 10194	JORDAN000396			
587	2	Prime HVAC, LLC's Service Proposal dated 7/27/2015	JORDAN000588	2.5.2020	N	2.5.2020
588	2	Prime HVAC, LLC's Service Proposal dated 11/4/2015	JORDAN000589-JORDAN000590	2.5.2020	N	2.5.2020
589	2	CAMS Invoice 32347 dated 7/10/2015	JORDAN000591			
		Diagnose Issue with Cooling				
590	2	Email dated 11/26/15 - Regarding Heating Inspection	JORDAN000593-JORDAN000594			
591	2	Email dated 11/04/15 - Regarding Repair & Follow - up	JORDAN000595			
592	2	Payment Recorded Receipt	JORDAN000596-JORDAN000597			
593	2	Articles of Organization Limited-Liability Company for Horizon Holdings 2900, LLC filed October 20, 2014 with the Nevada Secretary of State	JORDAN000598			
594	2	Operating Agreement of Horizon Holdings 2900, LLC	JORDAN000620-JORDAN000628			
595	2	Articles of Organization Limited-Liability Company for Quality Nursing, LLC filed July 14, 2018 with the Nevada Secretary of State	JORDAN000629			
596	2	Operating Agreement of Quality Nursing, LLC	JORDAN000630-JORDAN000638			
597	2	RESERVED	None			
598	2	RESERVED	None			
599	2	RESERVED	None			
600	2	RESERVED	None			
601	2	RESERVED	None			



#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
602	2	Jordan Depo Ex. B - Purchase Sale Agreement and Escrow Instructions	JORDAN000274-JORDAN000291			
603	2	Jordan Depo Ex. G - 6/30/2015 Email	TAM0135			
604	2	Jordan Depo Ex. H - 8/18/2015 Email	PRIME00022-PRIME00023			
605	2	Jordan Depo Ex. J - 9/3/2015 Email	PRIME00024-PRIME00025			
606	2	Jordan Depo Ex. K - 11/26/2015 Email	PRIME00090-PRIME00091	2.5.20	N	2.5.20
607	2	Jordan Depo Ex. L - 1/28/2017 Email	PRIME00165-PRIME00166	2.5.20	N	2.5.20
608	2	Jordan Depo Ex. N - Gibson Air Proposal	JORDAN000271			
609	2	Jordan Depo Ex. R - 2/7/2019 Sparks Report (4 pages)	No Bates			
610	2	Gifford Depo Ex. A - Notes	JORDAN-GCG00475-JORDAN-GCG00479			
611	2	Gifford Depo Ex. B - Gifford Reports - Gifford Preliminary HVAC Building Analysis, Suite 101, Rebuttal to William Wright Narrative, Follow up to conversations of late December 2017, Supplement to GCG 6/9/17 Rebuttal (16 pages)	No Bates			
612	2	Gifford Depo Ex. C - Notes	JORDAN-GCG00568-JORDAN-GCG00572			
613	2	Border Depo Ex. 1 - 1/22/15 E-Mail Message to Conti from Burford and Attached Documentation	CAMS00311-CAMS00313			
614	2	Border Depo Ex. 2 - 8/27/15 E-Mail Message to Burford from Jordan and Attached Messages	CAMS00137-CAMS00138			
615	2	Border Depo Ex. 5 - 5/25/17 E-Mail Message to Greig from Kapetansky and Attached Messages (2 pages)	No Bates			
616	2	Irby Depo Ex. A - Gifford Reports - Gifford Preliminary HVAC Building Analysis, Suite 101, Rebuttal to William Wright Narrative, Follow up to conversations of late December	No Bates			



#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		2017, Supplement to GCG 6/9/17 Rebuttal (22 pages)				
617	2	RESERVED	None			
618	2	RESERVED	None			
619	2	Sparks Depo Ex. C - Drawing	JORDAN000640			
620	2	RESERVED	None			
621	2	RESERVED	None			
622	2	Chien Depo Ex. 16 - 02/25/2016 Email chain between Marissa Chien, Don Greig and Gary Border	SHEA0096			
623	2	Chien Depo Ex. 19 - Email stream between Marissa Chien, Stephanie Freeman, Lori Pugh, and Catherine Jordan	SHEA0127-SHEA0129			
624	2	Chien Depo Ex. 20 - 03/27/2017 Gifford Consulting Group letter to Catherine Jordan re Preliminary HVAC Building Analysis, Suite 101 (5 pages)	No Bates			
625	2	RESERVED	None			
626	2	RESERVED	None			
627	2	Kapetansky Depo Ex. 4 - Drawing for Hobby Horse Association by Sherman Construction Company	JORDAN000681			
628	2	Kapetansky Depo Ex. 5 - Mechanical Plans	JORDAN000733-JORDAN000738			
629	2	Kapetansky Depo Ex. 6 - 3/22/17 Email chain between Marissa Chien, Mark Kapetansky and others re Space Consultation per Suite 101, 2900 WHPkwy	PRIME00176			
630	2	RESERVED	None			
631	2	Lubawy Depo Ex. 2 - Work File (102 pages)	No Bates			
632	3	Lubawy Depo Ex. 4 - Valbridge Appraisal Report, 12/7/17	JORDAN000397-JORDAN000511			
633	3	RESERVED	None			
634	3	Freeman Depo Ex. 2 - Community Management Agreement	TAM0047-TAM0060			
635	3	Freeman Depo Ex. 7 - Email chain	CAMS00253-CAMS00255			
636	3	Freeman Depo Ex. 15 6/23/15 Burford Letter to Taylor Association re Inspection Agreement for 2900-	CAMS00111-CAMS00116			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		2904 W. Horizon Ridge				
637	3	Freeman Depo Ex. 16 - Email chain re Horizon Holdings AC issue	SHEA0097-SHEA0098			
638	3	Freeman Depo Ex. 18 - Email chain re Horizon Holdings AC issue	SHEA0104-SHEA0107			
639	3	Freeman Depo Ex. 19 - Email chain re Horizon Holdings AC issue	SHEA0108-SHEA0111			
640	3	RESERVED	None			
641	3	(08/29/17) Prime Invoice ETA-1352 2904 Horizon Ridge RTU 1, Refrigerant Circuit 1 Leak Repair, Noted dual fan motor failure while undergoing refrigerant charge replacement work \$5,935.84	PRIME00726			
642	3	Burford Depo Ex. 2 - McDonald Carano Acceptance of Service of Subpoena to Corporate Air Mechanical Services, Inc. (2 pages)	No Bates			
643	3	Burford Depo Ex. 5 - 1/29/15 Email from Steve Burford to Don Greig	CAMS00306			
644	3	Burford Depo Ex. 12 - 5/20/15 Email from Dr. Tonie Valesano to Steve Burford re HVAC	CAMS00284			
645	3	Bird Depo Ex. 1 - CV and Fee Schedule of William Bird	WHB000006-WHB000009	02-07-20	N	02-07-20
646	3	Bird Depo Ex. 2 - 3/22/19 William Bird Rebuttal HVAC Report	WHB000010-WHB000013			
647	3	Bird Depo Ex. 3 - 2/07/19 William Bird HVAC Report	WHB000001-WHB000005			
648	3	Bird Depo Ex. 4 - Color Drawing	JORDAN000657			
649	3	Bird Depo Ex. 5 - Mechanical Plan, M1.01	JORDAN000735			
650	3	Bird Depo Ex. 6 - Plans from City of Henderson SP1.01, SP1.02, MG1.01, MG1.02, M1.01, M1.02, M1.03, M3.01	SHEA-HBFS-0215- SHEA-HBFS-0222			
651	3	Bird Depo Ex. 8 - 2/7/19 Sparks Engineering Transmittal re Mechanical Load Calculation & Report Revised (4 pages)	No Bates			
652	3	Bird Depo Ex. 9 - Rycon Construction Drawing, M-1	SHEA-HBFS-0129			
653	3	Bird Depo Ex. 10 - Keller Williams Tenant Improvement Plans, General	SHEA-HBFS-0527- SHEA-			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Notes, A1.1, M-1, P1	HBFS-0528; SHEA-HBFS-0539- SHEA-HBFS-0540			
654	3	Bird Depo Ex. 11 Marketing Results Tenant Improvement Package, C1, A1, M-1, P1	SHEA-HBFS-0478- SHEA-HBFS-0480; SHEA-HBFS-0487- SHEA-HBFS-0488			
655	3	Photo of Exam Room 1 - 78.9 F	PRIME00001			
656	3	Photo of Exam Room 2 - 79.2F	PRIME00002			
657	3	Photo of Exam Room 2 West Wall Diffuser No VAV Control - 68.8F	PRIME00003			
658	3	Photo of Exam Room 2 Zone Sensor - 68F	PRIME00004			
659	3	Photo of Exam Room 3 - 81.9F	PRIME00005			
660	3	(01-11-17) Photo of Jordan Med VAV 2 1245 PM - 74F	PRIME00006			
661	3	(01-11-17) Photo of Jordan Med VAV 5 1246 PM - 75F	PRIME00007			
662	3	(01-11-17) Photo of Jordan Med VAV 1246 PM - 73F	PRIME00008			
663	3	(01-11-17) Photo of Jordan Med VAV 1246 PM. - 72F	PRIME00009			
664	3	(01-11-17) Photo of Jordan Med VAV 8 1246 PM - 73F	PRIME00010			
665	3	Photo of Jordan Med VAV 9 1246 PM 1-11-17 -73F	PRIME00011			
666	3	(01-11-17) Photo of Jordan Med VAV 10 1247 PM - 74F	PRIME00012			
667	3	(01-11-17) Photo of Jordan Med VAV 11 1247 PM - 73F	PRIME00013			
668	3	Photo of Jordan Med VAV UK Original Ceiling	PRIME00014			
669	3	(01-11-17) Jordan Med VAV UK Original 1247 PM	PRIME00015			
670	3	Photo - QN LLC Disconnected ZS VAV 6.1	PRIME00016			
671	3	Photo - QN LLC Disconnected ZS VAV 6	PRIME00017			
672	3	Photo - QN LLC Disconnected ZA VAV 9	PRIME00018			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
673	3	Photo - Southern Entrance_Kitchen - 77.9F	PRIME00019			
674	3	Photo - Bound RTU 2 2900 Outdoor Air Actuator as Found 1.2016 Sneider	PRIME00020			
675	3	(09-09-15) Email from Mark Kapetansky to Catherine Jordan Re Quality Nursing VAV repair and follow up service	PRIME00026			
676	3	(10-23-15) Email from Marissa Chien to Mark Kapetansky Stephanie Freeman, Don Greig, H Keillor and Gary Border Re 2900 W. Horizon Rdige TRU Controller Retrofit options/Prime - Replacing and upgrading unit communication and control on rooftop AC #2 due to board level failure	PRIME00032- PRIME00035			
677	3	(10-23-15) Email from Don Greig to Mark Kapetansky Gar Border, Marissa Chien, Stephanie Freeman Re 2900 W Horizon Ridge Pkwy TRU Controller Retrofit options Prime	PRIME00036- PRIME00037			
678	3	(10-28-15) Email from Gary Border to Don Grieg, Mark Kapetansky Marissa Chien, Stephanie Freeman Re 2900 W. Horizon Ridge RTU Controller Retrofit Options Prime - Board approved installation of Vyvon Chase 334 and the static pressure sensor	PRIME00038- PRIME00039			
679	3	(10-28-15) Email from Mark Kapetansky to Stephanie Freeman, Don Greig, Heather Keillor, Marissa Chien, Gary Border Re 2900 W Horizon Ridge RTU Controller Retrofit Options Prime - connecting software to the AC units.	PRIME00040- PRIME00042			
680	3	(10-29-15) Email from Mark Kapetansky to Stephanie Freeman, Don Greig, Heather Keillor, Marissa Chien, Gary Border Re 2900 W. Horizon Ridge RTU Controller	PRIME00043- PRIME00046			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Retrofit options Prime Prima Invoice				
681	3	(11-06-15) Email from Nicholas Angell to Marissa Chien, Don Greig Re Training Reschedule EMS system	PRIME00051-PRIME00052			
682	3	(11-06-15) Email from Marissa Chien to Nicholas Angell Don Greig, Mark Kapetansky Re Training Reschedule automation system	PRIME00053-PRIME00054			
683	3	(11-06-15) Email from Gary Border to Nicholas Angell, Don Greig, Michelle Merrick, Mark Kapetansky and Mary Champagne Re Training Reschedule automation system	PRIME00055-PRIME00056			
684	3	(11-11-15) Email from Mark Kapetansky to Don Greig, Marissa Chien, Nicholas Angell, and Mary Champagne Re Training Reschedule automation system	PRIME00057-PRIME00059			
685	3	(11-11-15) Email from Don Greig to Mark Kapetansky Re Training Reschedule – Automation system	PRIME00060-PRIME00062			
686	3	(11-11-15) Email from Mark Kapetansky to Don Greig Re Training Reschedule TPM services to look at holes in the wall	PRIME00063-PRIME00065			
687	3	(11-11-15) Email from Don Greig to Mark Kapetansky Re Training Reschedule	PRIME00066-PRIME00068			
688	3	(11-04-15) Email from Mark Kapetansky to Catherine Jordan, Nicholas Angell, service at prime Re Quality Nursing VAV actuator repair retrofit proposal	PRIME00069			
689	3	(11-04-15) Email from Mark Kapetansky to Catherine Jordan, Don Greig, Nicholas Angell, and service at prime Re Quality Nursing VAV repair and follow up service – replacement of the final 6 VAV actuators	PRIME00070-PRIME00071			
690	3	(10-20-16) Email from Marissa Chien to Stephanie Freeman, tamhoa, Don Greig Re Horizon Holdings AC issue – AC has not worked correctly in	PRIME00072-PRIME00075			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		over a year				
691	3	(10-20-16) Email from Mark Kapetansky to Marissa Chein, Stephanie Freeman, Don Greig Re Horizon Holdings AC issue - Repairs on low circuit at 2900	PRIME00076-PRIME00080			
692	3	(11-18-15) Email from Marissa Chien to Mark Kapetansky and Don Greig Re 2900 RTU's Do RTU's cut the building in half on north-south basis or east-west basis	PRIME00086			
693	3	(11-18-15) Email from Mark Kapetansky to Catherine Jordan Re photos of heating at the so entrance/kitchen and Exam rooms 1-3 Exam 2 ceiling diffusers and the proper egg crate, air to the room is mid to high 60 degrees when it passes through a VAV unit	PRIME00087			
694	3	(11-18-15) Email from Mark Kapetansky to Catherine Jordan, Don Greig, Nicholas Angell Re Quality Nursing Heating Inspection 11-18-15 - Findings	PRIME00088-PRIME00089			
695	3	(11-19-15) Email from Mark Kapetansky to Catherine Jordan Re Quality Nursing Heating Inspection 11-19-15 Findings	PRIME00092			
696	3	(11-29-15) Email from Catherine Jordan to Mark Kapetansky RE Quality Nursing Heating Inspection 11-19-15 ordered new VAVs over 3 weeks ago	PRIME00093-PRIME00095			
697	3	(11-29-15) Email from Catherine Jordan to Mark Kapetansky Re Quality Nursing Heating Inspection 11-19-15, number of thermostats and actuators that were replaced and paid	PRIME00096-PRIME00098			
698	3	(12-23-15) Email from Mark Kapetansky to Don Greig, Stephanie Freeman, Heather Keillor, Marissa Chein, Gary Border, Nicholas Angell service at prime Re Follow up repairs to RTU 2 2900 WHR, Prime Service	PRIME00099			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		proposal to Taylor HR RTU 2 Repair				
699	3	(12-24-15) Email from Marrisa Chein to Mark Kapetansky, Don Greig, Stephanie Freeman, Heather Keillor, Gary Border, Nicholas Angell, service at prime Re Follow up repairs to RTU 2 2900 WHR – approval	PRIME00100			
700	3	(12-24-15) Email from Gary Border to Mark at Prime, Don Greig, Stephanie Freeman, Heather Keillor, Marissa Chien, Nicholas Angell, service at prime Re Follow up repairs at RTU 2 2900 WHR	PRIME00101- PRIME00102			
701	3	(01-04-16) Email from Mark Kapetansky to Don Greig, Nicholas Angell, Service at prime Re VAV Actuator Retrofit P15-105.1 – Quote for work performed at Don's suite	PRIME00103- PRIME00104			
702	3	(01-26-16) Email from Mark Kapetansky to Stephanie Freeman, Heather Keillor, Don Greig, Gary Border, Marissa Chien, Nicholas Angell Re Follow up mechanical repairs to RTU 25, 2900 W Horizon Ridge- Service invoice for additional repairs required to establish accurate duct static pressure	PRIME00114			
703	3	(01-27-16) Email from Heather Keillor to Mark Kapetansky Re follow up mechanical repairs to RTU 2 2900 Horizon Ridge static pressure and air temperature output	PRIME00115- PRIME00116			
704	3	(01-27-16) Email from Mark Kapetansky to Heather Keillor Re Follow up mechanical repairs to RTU 2, 2900 W Horizon Ridge, invoice lists the conditions in questions were serviced and inputs are operating correctly	PRIME00117- PRIME00119			
705	3	(01-27-16) Email from Heather Keillor to Mark Kapetansky Re Follow up mechanical repairs to RTU 2, 2900 W Horizon Ridge	PRIME00120- PRIME00122			
706	3	(01-31-16) Email from Mark	PRIME00123			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Kapetansky to Stephanie Freeman, Heather Keillor, Don Greig, Gary Border, Marissa Chein, Nicholas Angell Re Main Controller retrofit RTU 2, 2900 W Horizon Ridge -				
707	3	(01-31-16) Email from Marissa Chein to Mark Kapetansky Re Main Controller retrofit RTU 1, 2900 W Horizon Ridge	PRIME00124- PRIME00125			
708	3	(01-31-16) Email from Mark Kapetansky to Marissa Chein Re Main controller retrofit RTU 2, 2900 W Horizon Ridge	PRIME00126- PRIME00127			
709	3	(02-27-16) Email from Mark Kapetansky to Don Greig, Marissa Chien, Gary Border, Nicholas Angell, Stephanie Freeman, Heather Keillor Re 2900 WHR RTU 1 Central Unit Control Retrofit Prime Service Proposal	PRIME00128			
710	3	(11-2015) Photo of Jordan Medical disconnected zone sensor wiring 11-2015	PRIME00129			
711	3	(02-11-15) Photo of Jordan Medical disconnected zone sensor wiring	PRIME00130			
712	3	(11-2015) Photo of Jordan Medical zone sensors as found	PRIME00131			
713	3	(07-18-16) Email from Stephanie Freeman to Mark Kapetansky Re No Cooling 7-1 2900 WHRP Shea	PRIME00139			
714	3	(07-28-16) Email from Marissa Chien to Mark Kapetansky, Lori Pugh, Don Greig, Gary Border Re Shea 2900 Horizon Ridge RTU 2 2 <sup>nd</sup> stage Ref leak	PRIME00140- PRIME00141			
715	3	(08-01-16) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Don Greig, Gary Border, Marissa Chien, prime service Re No Cooling 07-29-16 2900 WHRP HR-RTU 2 Repairs	PRIME00142			
716	3	(08-07-16) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Don Greig, Gary Border,	PRIME00143- PRIME00144			



#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Marissa Chien prime service, Re No Cooling 08-03-16 2900 WHRP RTU2 2 <sup>nd</sup> Stg 2 <sup>nd</sup> Call, pressure relief, discharge piping & coupling				
717	3	(09-25-16) Email from Mark Kapetansky to Marissa Chien, Don Greig, Stephanie Freeman Re Roof proposal 2900 Horizon Ridge AC units to be removed and reset by other PRS Roofing	PRIME00145-PRIME00147			
718	3	(09-23-16) Email from Marissa Chien to Mark Kapetansky and Stephanie Freeman Re Roof referral Levi Building	PRIME00151			
719	3	(10-10-16) email from Mark Kapetansky to Marissa Chien, Lori Pugh Re Follow up work at 2900 WHRP, trying chemical sealing agent to fix leaking 2 <sup>nd</sup> circuit on RTU 2	PRIME00152			
720	3	(10-11-16) Email from Marissa Chien to Mark Kapetansky, Don Greig, Gary Border, Heather Keillor, Lori Pugh Re 2900 WHR RTU 2, Circuit 3 Refrigerant Leak Repair approval	PRIME00155-PRIME00156			
721	3	(10-24-16) Email from Mark Kapetansky to Marissa Chien, Stephanie Freeman, Lori Pugh, Don Greig, Re Horizon Holdings AC issue complaints about perimeter office space being insufficiently cooled	PRIME00157-PRIME00161			
722	3	(10-29-16) Email from Mark Kapetansky to Don Greig, Marissa Chien, Gary Border, Lori Pugh, Stephanie Freeman Re 2900 WHR RTU2, Circuit Refrigerant Leak Repair Invoice	PRIME00162			
723	3	(01-11-17) Email from Marissa Chien to Mark Kapetansky, Lori Pugh, Don Greig, Stephanie Freeman Re Inspection at Dr. Watenabi	PRIME00163-PRIME00164			
724	3	(03-20-17) Email from Lori Pugh to Gary Border, Marissa Chien, Mark Kapetansky, Stephanie Freeman Don Greig Re Unit Controller Retrofit	PRIME00169-PRIME00170			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		2900 WHR RTU 1 Prime Service Proposal				
725	3	(03-20-17) Email from Marissa Chien to Lori Pugh, Mark Kapetansky Stephanie Freeman, tamhoa, Don Greig Re Unit Controller Retrofit 2900 WHR	PRIME00171-PRIME00173			
726	3	(03-16-17) Email from Mark Kapetansky to Don Grieg Marissa Chien, Gary Border, Lori Pugh, Stephanie Freeman Re Administrative Error work to be performed is on 2900 WHR RTU 1, Circuit 1, refrigerant side repairs	PRIME00174-PRIME00175			
727	3	(05-15-17) Email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien Re Complete repair 2900 WHR RTU 1, RTU controller retrofit	PRIME00184-PRIME00185			
728	3	(05-25-17) email from Marissa Chien to Mark Kapetansky, Don Greig, L Brenner tamhoa, Stephanie Freeman Re Shea operating schedule for the AC Units	PRIME00191-PRIME00192			
729	3	(06-20-17) email from Gary Border to Marissa Chien Mark Kapetansky Re Freon – 2 units have no Freon	PRIME00193			
730	3	(06-26-17) email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien, Gary Border Re Completed repairs 2900 WHR RTU 2, circuit 2 refrigerant loss repairs	PRIME00194-PRIME00196			
731	3	(07-17-16) Email from Mark Kapetansky to Stephanie Freeman, Heather Keillor, Don Greig, Gary Border, Marissa Chien, service at prime Re No Cooling 07-01- 2900 WHRP Taylor 2900 WHRP RTU 1 NC	PRIME00205			
732	3	(07-19-17) Email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien Re Shea at HR RTU air filter replacements	PRIME00206-PRIME00207			
733	3	(07-26-17) Email from Marissa Chien	PRIME00208-			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		to Mark Kapetansky Re Shea compressor legend and serial numbers	PRIME00211			
734	3	(08-28-17) Email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien Re updated repair-service work spreadsheet	PRIME00214- PRIME00215			
735	3	(08-27-17) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Marissa Chien Re completed repairs 2900 WHR Pkwy RTU 2, circuit 1 stabilization efforts ETA 1350 Taylor 2900 WHR RTU 2, circuit 1 leak repairs	PRIME00216- PRIME00217			
736	3	(08-31-17) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Marissa Chien, updated repair spreadsheet 08-31-17 RTU itemization(not attached)	PRIME00218			
737	3	(10-13-17) Email from Marissa Chien to Mark Kapetansky, Lori Brenner Re 2900 W. Horizon Ridge Suite 200 photos (not attached)	PRIME00223- PRIME00225			
738	3	(11-22-17) Email from Marissa Chien to Mark Kapetansky Re split heat/ac	PRIME00226			
739	3	(12-19-17) Email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien Re Shea at HR RTU air filter replacements 12-2017	PRIME00227- PRIME00228			
740	3	(02-23-18) Email from Mark Kapetansky to Catherine Jordan, Nicholas Angell, accounting at primeac Re Suite inspection 1-11-17, VAV actuator Remove & Replace Quality Nursing temp evaluation, Conf Rm VAV actuator R&R (no attachment)	PRIME00229- PRIME00230			
741	3	(04-10-18) Email from Stephanie Freeman to Mark Kapetansky, Lori Pugh, Marissa Chien Re Shea at HR RTU circuits exam	PRIME00231- PRIME00232			
742	3	(04-18-18) Email from Marissa Chien to Steve at Chillrite, Mark Kapetansky, Gary Border	PRIME00233			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		RE 2900 WHR RTU 1, compressors in RTU #1 with these serial numbers to be replaced				
743	3	(04-26-18) Email from Mark Kapetansky to Gary Border Re crane for old equipment	PRIME00234- PRIME00237			
744	3	(05-15-18) Email from Stephanie Freeman to Marissa Chien, Mark Kapetansky, Lori Pugh Re Shea at HR RTU 1, 2900 repairs-chillrite	PRIME00238- PRIME00239			
745	3	(05-23-18) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Marissa Chien Re Shea at HR RTU 2, 2900 condenser coil cleaning, RTU air filter replacements 05-2018 (no attachments)	PRIME00240- PRIME00241			
746	3	(05-23-18) Email from Mark Kapetansky to Stephanie Freeman, Lori Pugh, Marissa Chien Re Shea at HR RTU 2, 2900 Condenser Coil Repairs	PRIME00242- PRIME00243			
747	3	(06-15-18) Email from Mark Kapetansky to Lori Brenner at tamhoa, Stephanie Freeman, Amanda Flores, Marissa Chien Re Shea 2900 odors, required repairs to RTU 2, circuit 2, proposal 18-020 Taylor, RTU 2 Condenser fan R&R	PRIME00244- PRIME00247			
748	3	(06-22-18) Email from Mark Kapetansky to Marissa Chien, Gary Borders, Stephanie Freeman, Lori Brenner Re Shea at 2900 HR RTU 2, circuit 2 condenser fan replacements 6-20-18, 1533 ETA invoice TAM 2900 RTU 2, ckt 2 condenser fan motor R&R, new fan motors and fan motor contactors on RTU 2	PRIME00255- PRIME00256			
749	3	(07-01-18) Email from Mark Kapetansky to Marissa Chien, Gary Border, Stephanie Freeman, Lori Brenner Re Shea at HR work itemization spreadsheet through 06-2018 RTU repair itemization (not attached)	PRIME00257- PRIME00258			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
750	3	(07-16-18) Email from Stephanie Freeman to Mark Kapetansky, Marissa Chien, Gary Broder, Lori Brenner h@expertmedicalsolutions Re Shea work on 2900 WHP, RTU 2, circuit 2	PRIME00259-PRIME00262			
751	3	(08-08-18) Email from Mark Kapetansky to Marissa Chien Re updated compressor serial number spreadsheet	PRIME00267			
752	3	(09-15-18) Email from Marissa Chien to Mark Kapetansky, Gary Border, Stephanie Freeman, Lori Brenner Re Shea at SR RTU Air Filter Replacements	PRIME00268-PRIME00269			
753	3	(09-17-18) Email from Mark Kapetansky to Marissa Chien, Stephanie Freeman, Lori Brenner, Gary Border Re Shea at HR RTU Air Filter Replacements 09-208-amended verbiage ETA 1578 Taylor Air Filter Replacements	PRIME00270-PRIME00272			
754	3	(11-15-18) Email from Marissa Chien to Mark Kapetansky Re Shea compressor legend - Shea compressor serial numbers	PRIME00273-PRIME00276			
755	3	(11-21-18) Email from Mark Kapetansky to Marissa Chien Re Warranty work requested	PRIME00277-PRIME00278			
756	3	(11-29-18) Email from Mark Kapetansky to Marissa Chien, Gary Border, Stephanie Freeman Re Shea at Horizon remaining original compressor replacements	PRIME00279			
757	3	(10-28-15) Email from Stephanie Freeman to Don Greig, Gary Border Re 2900 W Horizon Ridge RTU Controller Retrofit options-Prime, insulation for new controller, recommends more expensive controller	PRIME00280-PRIME00282			
758	3	(11-2018) Shea @ HR Compressor & Condenser Coil Legend	PRIME00298			
759	3	HR RTU Repair itemization	PRIME00299-			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Airhandling Unit 1, serving 2900 Horizon Ridge, North half of building, floors 1&2	PRIME00307			
760	3	(02-14-18) Affidavit of Custodian of Records for PRIME HAVAC, LLC	PRIME00653			
761	4	(07-27-15) PRIME Service Proposal 15-103, Suite 101 Retrofit - \$2,587.00	PRIME00654			
762	4	(10-22-15) PRIME Service Proposal 15-104 Focus Business Mgmt Institute 2900 horizon Ridge Suite 100, installation of new control devices \$1,137.00	PRIME00655			
763	4	(12-28-15) PRIME Service Proposal 15-105-1 Focus Business Mgmt 2900 W Horizon Ridge, Suite 100 Complete installation of new control devices \$5,550.00	PRIME00656- PRIME00657			
764	4	(11-04-15) PRIME Service Proposal - Catherine Jordan, Quality Nursing 2900 Horizon Ridge Suite 101 - complete installation of new control devices \$4,500	PRIME00660- PRIME00661			
765	4	(10-28-15) PRIME Service Proposal 15-109 Shea at Horizon 2900 W Horizon Ridge RTU 2 - Retrofit existing non-communication rooftop interface with new Vykon JACE controller \$4,210.00	PRIME00662- PRIME00663			
766	4	(10-28-15) PRIME Service Proposal 15-110 2900 W Horizon Ridge RTU2 - Retrofit of existing non-communicating rooftop interface with new Honeywell Spyder programmable controller \$1,335	PRIME00664- PRIME00665			
767	4	(11-12-15) PRIME Service Proposal 15-111 Marketing Results 2900 Horizon Ridge Pkwy Suite 200 - complete installation of new control devices \$4,539.00	PRIME00666- PRIME00667			
768	4	(11-12-15) PRIME Service Proposal 15-112 Marketing Results 2900 Horizon Ridge Suite 200, complete installation of new control devices	PRIME00668- PRIME00669			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		\$9,139.00				
769	4	(12-10-15) PRIME Service Proposal 15-113 Ameriprise Financial Services 2900 Horizon Ridge Suite 2014, complete installation of new control devices \$4,625.00	PRIME00670-PRIME00671			
770	4	(12-10-15) PRIME Service Proposal 15-114 2900 Horizon Ridge Pkwy Suite 201, complete installation of new control devices \$1,450	PRIME00672-PRIME00673			
771	4	(12-22-15) PRIME Service Proposal 15-115, 2900 W Horizon Ridge RTU 2, repair static pressure reference input to duct pressure sensing device, repair power supply loss to duct pressure sensing device and verify device output, repair supply air temperature input to ne Vykon controller, up to an including replacement of supply air temperature sensor, \$1,250.00	PRIME00674			
772	4	(10-10-16) PRIME Service Proposal 16-100 2900 W Horizon Ridge RTU 2, recover remaining circuit #2 R22 refrigerant for eventual reinstallation. Provide for new circuit refrigerant filter drier and circuit sight glass, modify circuit refrigerant piping as required. Provide normal circuit evacuation with repairs completed and return recovered and required amount of virgin RE22 refrigerant to circuit to provide for normal operation. Additionally provide required (rate3d) chemical based refrigerant leak sealant and separate drying agent with appropriate operational follow up to activate sealant throughout circuit, \$5,920.05	PRIME00675-PRIME00676			
773	4	(03-13-17) PRIME Service Proposal 17-012 2900 Horizon Rdge RTU 1, provide for circuit leak check, and repair \$≤\$7,500.00	PRIME00682			
774	4	(03-16-17) PRIME Service Proposal	PRIME00683			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		17-100 2900 Horizon Ridge RTU 1, retrofit existing/original rooftop interface with new Cykon JACE controller				
775	4	(06-15-18) PRIME Service Proposal 18-020, replace both circuit 2 (original) 2 H.P. condenser fan motors on RTU 2, replace all 4 unit condenser fan contactors	PRIME00686			
776	4	(08-29-18) PRIME Service Proposal 18-029, Marketing Results, 2900 Horizon Ridge Suite 200, Re-establish ducted cooling to current office space utilized for server operations. Space updates pending to remove server operations from space (by owners), \$1,691.26	PRIME00687			
777	4	(09-09-15) PRIME Invoice ESH-0805 HVAC Controls Programming & VAV Actuators Retrofit \$2,587.06	PRIME00689			
778	4	(01-15-16) PRIME Invoice EQN-1042 Quality Nursing Home Health Suite 101, 2940 Horizon Ridge, VAV Location Verification & Suite Plans Updating, \$1,350.00	PRIME00690			
779	4	(01-11-17) PRIME Invoice EQN-1211 Jordan Medical Suite 101, 2904 Horizon Ridge, Space Temperature Concerns/system Evaluation, \$215.00	PRIME00691			
780	4	(02-15-18) PRIME Invoice EQN-1443, Quality Nursing Home-Jordan Medical Suite 101, 2904 Horizon Ridge, Conference Room VAV Actuator R&R, Install new zone sensor control wiring,. Work included necessary heating coil contactor replacement as advised. \$1,236.13	PRIME00692			
781	4	(11-06-15) PRIME Invoice, EMR-1012 Marketing Results, 2900 Horizon Ridge, Suite 200, VAV System Heating Analysis & Repair, Noted VAV 12 zone sensors malfunction subsequent to contactor	PRIME00696			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		replacement, likely source of heating short cycle and cause of contactor failure. Recommending replacement of unit actuator/sensor along with other repair requirements \$971.27				
782	4	(01-15-16) PRIME Invoice EMR-1041, Marketing Results, 2900 W Horizon Ridge, Suite 200, VAV heating Contactor Replacement-Sensor programming, \$1,000.00	PRIME00697			
783	4	(09-07-18) PRIME Invoice EMR-1579, Marketing Results, 2900 Horizon Ridge, Suite 200, Cooling Supply Retrofit to Server Space, \$1,691.26	PRIME00698			
784	4	(01-31-16) PRIME Invoice ETA-0807, Shea at Horizons, 2900-2904 Horizon Ridge, Restoration of Unit Remote Communication-Unit Control retrofit Replacement, work also required troubleshooting and repair of unit duct static pressure control power supply, replacement of unit supply air temperature sensor and replacement of failed mixed air damper actuator.\$4,294.20	PRIME00700			
785	4	(05-12-17) PRIME Invoice ETA-0815 Shea at Horizon, 2900 Horizon Ridge, RTU 1 Main Control Retrofit, \$6,797.61	PRIME00702			
786	4	(11-12-15) PRIME Invoice ETA-1016, Shea at Horizon, 2900-2904 Horizon Ridge, No heat-Use Interface Control Programming Inspection & Adjustment \$443.70	PRIME00703			
787	4	(12-28-15) PRIME Invoice ETA-1045 Shea at Horizon Ridge 2900-2904 Horizon Ridge, No Heat-Excessively Negative Building Pressure, \$1,587.24	PRIME00704			
788	4	(01-20-16) PRIME Invoice ETA-1046, Shea at Horizon Ridge, Improper Duct Static Pressure-No Supply Air Temp \$1,249.50	PRIME00705			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
789	4	(06-30-16) PRIME Invoice ETA-1124, Shea at Horizon, 2900 Horizon Ridge, Loss of Cooling Capacity RTU 1, Previous concerns over lack of cooling capacity to suite 120. Operational examination found reduced cooling performance from RTU 1. Call on 7/1 for poor space cooling found failed ckt 1 condenser fan fuse and no active mechanical cooling from RTU. \$280.00	PRIME00706			
790	4	(07-28-16) PRIME Invoice ETA-1141 Shea at Horizon, 2900 Horizon Ridge, Loss of Cooling Capacity RTU 2, poor cooling notification from suite 20., multiple refrigerant leaks in 1 <sup>st</sup> stage condenser coil. Will attempt repairs in lieu of replacement, noted previous repairs to circuit by other contractors included removal of same device entirely. \$1,864.95	PRIME00707			
791	4	(08-03-16) PRIME Invoice ETA-1145, Shea at Horizon Ridge, 2900 Horizon ridge, Loss of Cooling Capacity Stage 2, 2 <sup>nd</sup> call RTU 2, \$1,038.83	PRIME00708			
792	4	(09-15-16) PRIME Invoice ETA-1170, RTU Seasonal Air Filter Replacement \$956.02	PRIME00709			
793	4	(10/26/16) Prime Invoice ETA-1183 2900 Horizon Ridge RTU 2 Circuit 2 leak repair, \$5,100.00	PRIME00711			
794	4	(03/09/17) Prime Invoice ETA-1243 2900 Horizon Ridge Suite 101, Roof Walk/RTU Service Inspection Per Suite 101 Owner Request Provided consultation services to private mechanical engineers hired by suite 101 owner to evaluate RTU performance and discuss particular suite 101 deficiencies \$142.10	PRIME00712			
795	4	(06-08-17) Prime Invoice ETA-1304 2900 Horizon Ridge Circuit 2 Leak Repair last circuit leak call in October	PRIME00718			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		2016 Condenser replacement across all 4 RTU's is strongly advised.\$3,774.00				
796	4	(06/20/17) Prime Invoice ETA-1317 RTU Condenser Coil Cleaning Treatment, \$711.14	PRIME00722			
797	4	(07/14/17) Prime Invoice ETA-1332 2900/2904 Horizon Ridge, RTU Seasonal air Filter Replacement, \$918.85	PRIME00724			
798	4	(08/08/17) Prime Invoice ETA-1350, 2900 Horizon Ridge RTU 2, Refrigerant Circuit 1 Stabilization, calls from owner over marginal cooling performance in various suite space. In lieu, of substantive repairs and with larger scale equipment structural overhaul planes, determined circuit stabilization was more economically appropriate. \$670.00	PRIME00725			
799	4	(12/13/17) Prime Invoice ETA-1409 2900/2904 Horizon Ridge RTU Seasonal Air filter Replacement, \$918.85	PRIME00727			
800	4	(03/19/18) Prime Invoice ETA-1464 2900/2904 Horizon Ridge RTU Circuit Operational Analysis, Inspect for new refrigeration side failures, \$229.00	PRIME00728			
801	4	(04/25/18) Prime Invoice ETA-1484, 2900 Horizon Ridge, RTU1 Condenser Side Repair/CKT 1 compressor Replacements, \$458.00	PRIME00729			
802	4	(05/21/18) Prime Invoice ETA-1494, 2900 Horizon Ridge RTU 2 Refrigerant Circuit 1 Repair, noted one original condenser fan motor failure prior to listed repairs. Fatigued motors likely contributing to leaks. Tandem fan motor replacement required/bot motors original to unit. \$4,098.00	PRIME00730			
803	4	(05/11/18) Prime Invoice ETA-1501	PRIME00731			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		2900 Horizon Ridge RTU 2, Circuit 1 condenser Fan Motor R&R, found failed original condenser fan motor/failed, \$3,003.96				
804	4	(05/16/18) Prime Invoice ETA-1505, 2900/2904 Horizon Ridge, RTU Seasonal Air Filter Replacement \$934.51	PRIME00732			
805	4	(06/20/18) Prime Invoice ETA-1533, 2900 Horizon Ridge RTU2, Circuit 2 Condenser Fan Motor R&R, replace both condenser fan motors on 2 <sup>nd</sup> circuit after recent work replacing fan motors on 1 <sup>st</sup> circuit, also installed new contactors for all 4 fans. \$3,661.62	PRIME00736			
806	4	(07/06/18) Prime Invoice ETA-1540 2900 Horizon Ridge RTU 2 Circuit 2 Leak Repair, 2 <sup>nd</sup> stage found leaking/confirmed flat at repair. Completed welded reinforcement of approx.. 40 individual coil connections in position. \$5,000.00.	PRIME00737			
807	4	(09/06/18) Prime Invoice ETA-1578 2900/2904 Horizon Ridge RTU Seasonal Air Filter & Fan Grease/Belt Service \$2,623.30	PRIME00738			
808	4	(01-14-18) Affidavit of Custodian of Records – Corporate Air Mechanical Services, Inc. (CAMS)	CAMS00001			
809	4	(01-01-16) CAMS invoice 32960 to Shea at Horizons – Inspection Maintenance Contract Semi-Annual Billing Jan-Jun2016, \$2,125.00	CAMS00002			
810	4	(02-26-16) Shea Check #20159 to CAMS - \$2,125.00	CAMS00003			
811	4	(07-01-15) CAMS invoice to Shea – Inspection Maintenance Contract – Semi Annual Billing \$2,125.00	CAMS00004			
812	4	(07/21/15) Shea check #20046 to CAMS, \$2,125.00	CAMS00005			
813	4	(12-29-15) CAMS Service Work Order 17683 – Job LV15227- Operational inspection on 4 York	CAMS00006-CAMS00010			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		rooftop package units & Air Conditioning-Heating Checklists (smart relay display is blank)				
814	4	(07-14-15) CAMS Service Work Order 17227 – Job LV15227 Perform Annual inspections maintenance and filter change out & Air conditioning-Heating checklist Sys 1 & 2 (#1 compressor on System 1 bad-must replace Bldg 2900, Exhaust fan on lower roof Bldg 2904 needs repair)	CAMS00011-CAMS00015			
815	4	(09-11-15) CAMS Service Work Order 17526 Job LTS090740 \$423.81 to Shea Replaced low pressure switch circuit 2 – A-C 1 north unit Installed new switch on a 1/4 swivel tee – all of operations normal	CAMS00016			
816	4	(09-08-15) CAMS Service Work Order 17477 Job LT5090740 \$190 Bldg 2900 – Trouble call No cool-Bas low pressure switch	CAMS00017			
817	4	(10-07-15) Shea Check #20085 to CAMS \$2,018.81 (Invoices 32566,32559,32597)	CAMS00018			
818	4	(08-28-15) CAMS Service Work Order 17471 Bldg 2900 – Recover unit and replaced compressor vacuum recharge, unit operation normal	CAMS00019			
819	4	(06-15-15) CAMS Service Work Order 17160 Job LT5060413 \$152.50 Bldg 2900 – Trouble call no cool-circuit 1 was tripped – Compressor on circuit 1 is drawing too many amps	CAMS00020			
820	4	(06-22-15) CAMS Invoice 32210 to Shea Project-LT 5060413 \$152.50, Bldg 2900 – No cooling 1 circuit tripped, compressor drawing too many amps	CAMS00021			
821	4	(06-29-15) Shea Check #20036 To CAMS \$152.50, Invoice 32210	CAMS00022			
822	4	(07-06-15) CAMS Service Work Order 17280 Job LT5070513 \$880.80 Bldg 2900 – found leak on A-C 1, circuit 1	CAMS00023			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
823	4	(07-13-15) CAMS Invoice# 32354 Project LT5070513\$880.80 to Shea Bldg 2900 – diagnosed and repaired leak on A-C 1	CAMS00024			
824	4	(07-23-15) Shea Check #20049 to CAMS \$1,802.46, Invoices 32356, 32354	CAMS00025			
825	4	(07-10-15) CAMS Service Work Order 17226 Job LT5060452 \$921.66 Bldg 2900 – Leak Repair at condenser coil – all conditions normal	CAMS00026			
826	4	(07-13-15) CAMS Invoice #32356 Job LT5060452 \$921.66 to Shea – Diagnosed leak on A-C 2 performed leak repair Bldg 2900	CAMS00027			
827	4	(07-23-15) Shea Check# 20049 to CAMS \$1,802.46 Invoices 32356, 32354	CAMS00028			
828	4	(03-04-15) CAMS Service Work Order 16806 Job LT5030178 \$247.50 Bldg 2900 Check suite 200, entire area cold, unit communication board is out, runs 24/7	CAMS00029			
829	4	(03-16-15) CAMS Invoice#31874 Job LT5030178 to Shea Bldg 2900, suite 200 entire area is cold, unit running 64 degrees, communication board out, \$247.50	CAMS00030			
830	4	(03-31-15) Shea Check #6667 to CAMS Invoice 31874R	CAMS00031			
831	4	(02-19-15) CAMS Service Work Order#16742 Job LT5020136 \$1,577.50 Bldgs 2900 & 2904 Inspect leak on rooftop units check bldg. pressure sensors & unit operation & A-C Heating checklist, Bldg static pressure sensor is bad, exhaust fan locked out by controls, Freon leak, unit has a supply air leak, evap face damper disconnected, both circuits have freon leak	CAMS00032- CAMS00037			
832	4	(03-10-15) Shea Check# 6654 to CAMS \$1,577.50, invoice # 31837	CAMS00038			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
833	4	(01-28-15) Service Work Order #16751 Job LT5020124 \$2,520 Suite 201 Common area, checked return layout on 1 <sup>st</sup> & 2 <sup>nd</sup> floor, checked vav;s	CAMS00040			
834	4	(01-27-15) CAMS Service Work Order#16633 Job LT5020124 \$3,330 Suite 101, ductwork vav survey checked vav operations, cfm readings	CAMS00043			
835	4	(02-23-15) CAMS Invoice #31833 Job LT5020124 \$13,545 to Shea vav & duct mapping and inspections of systems, Suites 100, 101, 120, 200, 201	CAMS00045			
836	4	(04-07-15) Shea Check #6675 \$3,500 to CAMS Invoice #31894, repair control board, R&M-HVAC repairs	CAMS00051			
837	4	(03-23-15) CAMS Invoice #31894 Project LN5030181 \$3,500 to Shea, negotiated bid -project- Repair AC 2 control board, remove board and ship to York for repair	CAMS00052			
838	4	(03-09-15) CAMS Service Work Order #16811 Job LN5030181, remove circuit board to send back for repair	CAMS00053			
839	4	(03-06-15) CAMS Proposal to Shea, Board of Directors, Project: 2900 Horizon Ridge AC2 Repair Control Board \$3,500	CAMS00054			
840	4	(04-21-15) Shea Check #6686 \$7,100 to CAMS Project LN5020158, Invoice #31956, HVAC repairs	CAMS00055			
841	4	(04-13-15) CAMS Invoice #31956 Project LN5020158 \$7,100 to Shea, Bldg 2900 Negotiated bid Repair 4 refrigerant leaks, replace 2 pressure sensors, repair separated duct	CAMS00056			
842	4	(02-25-15) CAMS Service Work Order 16820 Job LN5020158 Repaired broken supply air duct in 1 <sup>st</sup> floor hallway, repaired two air leaks in supply duct Suite 120, repaired broken supply air duct in 2 location,	CAMS00058			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		suite 200 S. West – repaired air leak in supply plenum for AC on roof				
843	4	(02-24-15) CAMS Service Work Order #16750 Job LN5020158, repairs refrigerant leaks on AC 2 Bldg 2904 & AC 1&2 in Bldg 2900	CAMS00059			
844	4	(03-03-15) Shea Check #6644 \$2,160 Invoice #31836 Job LN5020130 to CAMS, refill coolant, R&M HVAC repairs	CAMS00060			
845	4	(02-10-15) CAMS Service Work Order #16736 Bldg 2900 Suite 100 \$2,160, 1 York RTU-2, no cooling TRU-2, unit was locked out on alarm	CAMS00061			
846	4	(02-10-15) CAMS Proposal to Shea Project 2900 Bldg, refill Circuit 2 with 65 lbs of R22, \$2,160	CAMS00063			
847	4	(10-07-15) Shea Check #20085 \$2,018.81 to CAMS, invoices 32566, 32559, 32597	CAMS00064			
848	4	(09-08-15) CAMS Invoice #32566 to Shea Project LN5080695 \$1,385 Bldg 2900, Negotiated Bid AC-1 Replace TXV power head on Circuit #2, replace circuit breaker for circuit #1, compressor #2	CAMS00065			
849	4	(09-02-15) CAMS Service Work Order #17459 Bldg 2900 \$1,385, installed the breaker overload on compressor, pumped down circuit #2, changed the power head of stage #2, circuit #2	CAMS00066			
850	4	(06-22-15) Shea Check #20029 \$4,965 to CAMS, Invoices 32126, 32139	CAMS00067			
851	4	(05-26-15) CAMS Service Work Order #17047 Job LN5040260 \$3,500 Installed control board	CAMS00068			
852	4	(06-01-15) CAMS Invoice #32126 Project LN5040260 \$3,500 Bldg 2900 Negotiated Bid AC-1, Replace control board with rebuilt control board	CAMS00069			
853	4	(07-06-15) Shea Check #20041	CAMS00070			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		\$37,700 Project LN5040250 Invoice 32165, 32151				
854	4	(06-08-15) CAMS Invoice #32151 Negotiated Bid Bldg 2900 \$17,850 Install Fire Dampers in Hallways of 1 <sup>st</sup> and 2 <sup>nd</sup> floors	CAMS00071			
855	4	(07-06-15) Shea Check #20041 \$35,700 Invoices 32165, 32151	CAMS00072			
856	4	(06-22-15) Shea Check #20029 \$4,965 to CAMS Invoices 32126, 32139	CAMS00075			
857	4	(05-28-15) CAMS Service Work Order #17051 \$1,465 Bldg 2900, replace contactors circuit #1, compressors removed the burnt contactors & installed new ones	CAMS00076			
858	4	(06-01-15) CAMS Invoice #32139 \$1,465 Project LN5050329 to Shea Bldg 2900 Negotiated Bid AC-2 replace contactors for compressor #1	CAMS00077			
859	4	(07-31-15) Johnson Controls Check #3316203 \$3,168.94 to CAMS, Purchase Order-Warranty, Invoice #1236576290	CAMS00078			
860	4	(09-03-15) She Check #1001 \$12,350 to CAMS Invoice #32493	CAMS00079			
861	4	(08-21-15) CAMS Invoice #32493 to Shea Project LN5060452 \$12,350 Bldg 2900, Negotiated Bid Install 2 OEM compressors on circuit 1 of AC-2	CAMS00080			
862	4	(07-06-15) CAMS Service Work Order #17279 Job LN5060452 Bldg 2900, replace compressor AC-2 & repair Leaks	CAMS00081			
863	4	(08-06-15) CAMS Service Work Order #17347 Job LN5060452 Bldg 2900, recovered system 1, removed tandum compressor, installed new tandum compressor system	CAMS00082			
864	4	(12-21-15) Shea Check #20125 to CAMS Invoice 32898 \$950	CAMS00083			
865	4	(12-07-15) CAMS Invoice #32898 Project LN5110922 \$950, Negotiated	CAMS00084			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Bid Bldg 2900 AC-1, replace overload for Circuit #1 Compressor #1				
866	4	(12-02-15) CAMS Service Work Oder #17847 Job LN5110922 Bldg 2900 \$950 1 overload, 1 aux contact	CAMS00085			
867	4	(11-06-15) Shea Check #20104 Invoice #32760 \$1,360	CAMS000086			
868	4	(10-26-15) CAMS Invoice #32760 Project LN5100819 \$1,360 to Shea Bldg 2900 Negotiated Bid Replace condenser fan motor on AC-1	CAMS00087			
869	4	(10-23-15) CAMS Service Order #17698 Job LN5100819 \$1,360 AC-1, replaced condenser fan motor on AC unit, operation normal	CAMS00088			
870	4	(10-07-15) Shea Check #20085 \$2,018.81 to CAMS, Invoices 32566, 32559, 32597	CAMS00089			
871	4	(01-07-16) CAMS Service Work Order #17856 Job LT6010019 \$247.50 Trouble call, too much static pressure in Bldg, checked unit, blew lines, operation normal	CAMS00092			
872	4	(11-10-15) CAMS Service Work Order #17751 Job LT5110905 \$152.50, trouble call AC unit not working, found trip on compressor overload, reset unit, operation normal, overload is going hard	CAMS00095-CAMS00096			
873	4	(11-16-15) CAMS Invoice #32827 Project LT5110905 Bldg 2900 \$152.50, called out to diagnose issue with Ac not working, found it was tripped on compressor overload, all normal, overload is going bad	CAMS00097			
874	4	(11-30-15) Shea Check #152.50 to CAMS Invoice #32827	CAMS00098			
875	4	(10-09-15) CAMS Service Work Order #17686 Job LT5100813 \$200 Bldg 2900, trouble call, no cool, unit trip reset unit, blown fuse on stage 1 condenser, fan motor should be replaced, bearings are starting to	CAMS00099-CAMS00100			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		make noise				
876	4	(10-19-15) CAMS Invoice #32713 Project LT5100813 Bldg 2900 \$200 Diagnose issue with no cooling, blown fuse on stage one condenser fans	CAMS00101			
877	4	(11-11-15) Shea Check #20108 \$352.50, invoice 32713, 32708	CAMS00102			
878	4	(09-29-15) CAMS Service Work Order #17591 Job LT5100836 \$152.50 Bldg 2900 & 2904, remove occupied jumpers from rood top units, #2 & #4	CAMS00103- CAMS00104			
879	4	(10-19-15) CAMs Invoice #32708 Project LT5100836 \$152.50 to Shea Bldgs 2900 & 2904 removed occupied jumpers from roof top units	CAMS00105			
880	4	(11-11-15) Shea Check #20108 \$352.50 Invoices 32713, 32708	CAMS00106			
881	4	(08-26-15) CAMS Service Work Order #17451 \$342.50 Bldg 2900, NW unit both circuits, circuit #1 compressor #2, motor protection shuts circuit down. Circuit breaker overload is bad, Circuit #2 locked out on low pressure, appears the TXV power head is bad	CAMS00107			
882	4	(09-01-15) CAMS Invoice #32551 Project LT5080691 Bldg 2900, diagnose NW unit. Both circuits locked out, circuit #1 compressor #2 motor protection shuts circuit down, circuit overload is bad, circuit #2 is locked out on low pressure, appears TXV power head is bad	CAMS00108			
883	4	Shea Check #20092, \$342.50, Invoice #32551	CAMS00109			
884	4	(09-11-15) Email from Steve Burford to Don Greig, Gary Border, Marissa Chien, Stephanie Freeman Re Duct static pressure set point and sensor that make sure the correct volume of air is going through the main duct work to all of the suites	CAMS00118			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
885	4	(07-08-15) Email from Stephanie Freeman to Steve Burford, heather Keillor, Don Greig, Gary Border, Marissa Chien RE will be out on Friday at 7:00 am to complete the compressor change out for 2900 Horizon Ridge	CAMS00121			
886	4	(02-23-15) Email to Steve Burford, Marissa Chien, Lorraine Conti, Donald Paradiso, Don Greig, Gary Border Re Repair Quote to take care of the repairs we noted during our inspection.	CAMS00122			
887	4	(07-13-15) Email from Stephanie Freeman to Steve Burford, heather Keillor, Don Greig, Gary Border, Marissa Chein Re 2900 Horizon Ridge signed CAMS proposal	CAMS00123			
888	4	(07-30-15) Email from Steve Burford to Marissa Chien, Re Controllers, 25 controllers and wall sensors, can get the price down to \$952/controller and wall stat	CAMS00124			
889	4	(08-10-15) email from Marissa Chien to Nicholas Angell Re Defective VAV report, Shea Bldg 2 Testing, Software And Hardware Testing Spread Sheet	CAMS00125- CAMS00127			
890	4	(08-13-15) Email from Don Greig to Steve Burford Re 2900 Building HVAC, brand new compressors we just installed at Bldg 2900 have failed mechanically, something internal had broken and its causing the compressor to over amp and trip the unit off. Parts & Labor covered by warranty	CAMS00128- CAMS00129			
891	4	(07-13-15) Email from Gary Border to Stephanie Freeman, Don Greig, Marissa Chien Re 2900 Bldg HVAC Re I approve OEM equipment for the compressor in case of future emergency, cost to install one non OEM Compressor \$61,00, two OEM	CAMS00130- CAMS00133			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		compressors \$12,350.00, two bids from Scheider, compressors for units on 2900 are the incorrect size				
892	4	(08-26-15) Email from Don Greig to Gary Border, Steve Burford Re access to building to change out faulty compressor at Bldg 2900	CAMS00134- CAMS00136			
893	4	(09-08-15) Email from Nicholas Angell to Marissa Chien, Steve Burford, Stephanie Freeman, Gary Border, Don Greig Re Software upgrade and commissioning	CAMS00141			
894	4	(09-09-15) PRIME Invoice ESH-0805 to Catherine Jordan Bldg 2904, Suite 101, Quality Nursing Home Re HVAC Controls Programming & VAV Actuators \$2,587.06	CAMS00143			
895	4	(10-12-15) Email from Steve Burford to Stephanie Freeman Re Bldg 2900 AC1 Called out to Bldg 2900 last week due to the Northern unit not working. Found one condenser fan motor had blown it fuse. Motor is still currently working, recommend replacing the condenser fan motor before it fails completely.	CAMS00144			
896	4	(09-03-15) Email from Steve Burford to Catherine Jordan, Stephanie Freeman, Marissa Chien, Don Greig Re South Offices, temperature readings of the air coming out of the supply registers foun between 59 and 63 degrees out of all registers	CAMS00145- CAMS00146			
897	4	(06-02-15) Email from Steve Burford to Catherine Jordan Re new sensors were initially ordered on May 21 <sup>st</sup> via email from me to the supplier.	CAMS00147			
898	4	(07-01-15) Email from Steve Burford to Catherine Jordan Re couldn't get anyone over there today, been busy	CAMS00148			
899	4	(07-06-15) Email from Steve Burford to Catherine Jordan Re left message with Nick	CAMS00149			
900	4	(07-06-15) Email from Steve Burford	CAMS00150			

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#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		to Catherine Jordan Re Nick will check two more controllers that are not communicating correctly				
901	4	(07-07-15) Email from Steve Burford to Nicholas Angell Re controller count for Catherine Jordan's office	CAMS00151			
902	4	(07-09-15) Email from Steve Burford to Catherine Jordan Re Make invoice and proposals billed out to Quality Nursing	CAMS00152-CAMS00153			
903	4	(07-07-15) Email from Nicholas Angell to Steve Burford Re total of 3 confirmed bad controllers	CAMS00154			
904	4	(07-10-15) Email from Steve Burford to Catherine Jordan Re Controller Replacement proposal for three controllers and corresponding wall sensors \$1000 of bid for programming controllers	CAMS00155			
905	4	(06-02-15) CAMs Proposal Replace Three VAV Controller and Three Wall Sensors \$3,820.00	CAMS00156-CAMS00157			
906	4	(08-26-15) Email from Steve Burford to Don Greig, Gary Shea, Marissa Chien, Heather Keillor, Stephanie Freeman, Michelle Merrick Re Compressor on Bldg 2900 on northern half of the building, unit was tripped off on a fault, one of the compressor circuit breakers is bad on circuit 1, temperature in 80 degrees in office and unbearable	CAMS00158-CAMS00162			
907	4	(08-27-15) Email from Steve Burford to Catherine Jordan Re picture of TXV and the original order from the York units	CAMS00163			
908	4	(08-27-15) Email from Steve Burford to Marissa Chien, Gary Shea, Don Greig, Stephanie Freeman Re Replace TXV Power head and Circuit Breaker AC1 Bldg 2900, CAMS proposal for 2900 Bldg AC1 - \$1,385.00	CAMS00164-CAMS00166			
909	4	(08-27-15) Email from Steve Burford	CAMS00167			

*Returned*

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		to Catherine Jordan, Matthew Ekins, Stephanie Freeman Re Fixing northern units for 2900 Horizon Ridge				
910	4	(08-27-15) Email from Catherine Jordan to Steve Burford, Matthew Ekins, Stephanie Freeman RE Fixing northern units for 2900 Horizon Ridge	CAMS00168			
911	4	(09-02-15) Email from Steve Burford to Catherine Jordan Re tech will be out to fix North unit	CAMS00169			
912	4	(12-09-14) Email from Lorraine conti to Steve Burford, Simon at Wattmaster, Marissa Shea Re Meeting with Shea to see how this system will function and help them take control	CAMS00170			
913	4	(12-09-14) Email from Marissa Chein to Lorraine Conti, Gary Border, Steve Burford and Simon Re demonstration meeting with Shea Board	CAMS00171			
914	4	(12-19-14) Email from Lorraine Conti to Don Greig, Steve Burford, Marissa Chien Gary Border Re Office inspection	CAMS00172-CAMS00174			
915	4	(01-05-15) Email from Steve Burford to Marissa Chien, Gary Border, Lorraine Conti Re Shea CAMS and Wattmaster Letter bid prie for VAV, control board etc	CAMS00175-CAMS00176			
916	4	(02-13-15) Email from Lorraine Conti to Steve Burford, Don Shea, Gary Shea, Gary Border, Marissa Shea Re Rooftop Units , CAMs has approval to proceed with the repairs	CAMS00180			
917	4	(01-22-15) CAMS Proposal to Shea Project Repair four Refrigerant Leaks, Replace two Pressure Sensors, Repair Separated Duct \$12, 250.00	CAMS00200			
918	4	(02-23-15) Email from Shea at Horizon to Steve Burford Re Repair Quote Approved, Board moving forward with repair excluding any	CAMS00201			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		repairs in 101				
919	4	(02-25-15) Email from Steve Burford to Don Greig, Lorraine Conti, Marissa Chein, Donald Paradiso, Gary Border Re Repairs, all of the leaks we found in the main supply aire ducts have been repaired	CAMS00202-CAMS00203			
920	4	(03-04-15) Email from Marissa Chien to Steve Burford, Lorraine Conti, Gary Border Re YPAL Communications Info Form 06-26-14	CAMS00204			
921	4	(03-07-16) Email from Heather Keillor to Lori Kekich, Cesar Rodriguez, Delfino, Kristy at titan roofing, Mark at Prime Ac C Fulton Re Shea work orders	CAMS00206			
922	4	(03-24-16) Email from Steve Burford to Heather Keillor Re Inspection reports from December 2015 inspection for 2900 and 2904 Horizon Ridge	CAMS00207-CAMS00208			
923	4	(08-25-15) Email from Heather Keillor to Steve Burford Re Inspection Reports for 2900 & 2904, board would like you to fix the belts	CAMS00209			
924	4	(08-10-15) Email from Heather Keillor to Steve Burford Re HVAC Blowing at 85 degrees	CAMS00210-CAMS00212			
925	4	(07-10-15) Email from Stephanie Freeman to Steve Burford, Heather Keillor Re HVAC Docs, HVAC bids, proposals, compressor B-1 B-2 quote, TAC compressor approval 12000, HVAC Repair	CAMS00215			
926	4	(07-09-15) Email from Steve Burford to Stephanie Freeman, heather Keillor Re HVAC 2940 #201 Assuming controller is bad because it is not communicating with the BMS	CAMS00216-CAMS00218			
927	4	(05-27-15) Email from Steve Burford to Michelle Merrick, Stephanie Freeman, Heather Keillor, Gary Border Re HVAC 2900 #2 , parts in stock in CA	CAMS00219-CAMS00221			

Returned



#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
928	4	(05-26-15) Email from Merrick to Stephanie Freeman Gary Border, Re HVAC system is not putting out any cold air this morning	CAMS00222-CAMS00223			
929	4	(10-12-15) Email from Steve Burford to Stephanie Freeman Don Greig, Marissa Chien Re AC 1 Bldg 2900, northern unit not working, condenser fan motors blown fuse	CAMS00224			
930	4	(10-12-15) CAMS Proposal Bldg 2900 AC1, replace condenser fan motor \$1,3609.00	CAMS00225			
931	4	(11-16-15) CAMS Proposal to Shea Bldg 2900 AC1 Replace Overload for Circuit1, compressor 1 \$950.00	CAMS00229			
932	4	(11-16-15) Email from Steve Burford to Stephanie Freeman Re Proposal to replace an overload on AC 1 of the Bldg 2900	CAMS00230-CAMS00231			
933	4	(11-09-15) Email from Catherine Jordan to Stephanie Freeman, William Paul Wright, Esq., Don Greig, Marissa Chien Gar Border Re Tech out tomorrow morning at 7 am to do 2 <sup>nd</sup> inspection of the 4 rooftop units at 2900 and 2904	CAMS00232			
934	4	(10-12-15) Email from Nicholas Angell Control co to Marissa Chien Steve Burford, Don Greig, Gary Border, Heather Keillor Re Bldg 2940 Suite 201 AC issues, multiple factors contributing to the issues in suite 201, issues with occupancy and unit running constantly, conference room and the main broker's office are 84 degrees	CAMS00243-CAMS00245			
935	4	(10-14-15) Email from Marissa Chien to Donna Stephanie Freeman, Heather Keillor, Don Greig, Steve Burford, Nick Angell Re Bldg 2940 Suite 201 AC issues - VAV controller on your conference needed to be replaced	CAMS00246			
936	4	(10-15-15) Email from Donna	CAMS00248			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		Flanigan to Nick Angell, Stephanie Freeman, Heather Keillor, Don Greig, Gary Border, Marissa Chein, Steve Burford Re Bldg 2940 Suite 201 AC Issues, front office 77 degrees right now, conference room was too warm				
937	4	(10-15-15) Email from Donna Flanigan to Marissa Chien, Nick Angell, Stephanie Freeman, Heather Keillor, Don Greig, Gary Border, Steve Burford Re Bldg 2940 Suite 201 AC issues	CAMS00249			
938	4	(08-06-15) Email from Don Greig to Steve Burford Re Call me to talk about what needs to be done	CAMS00250			
939	4	(07-13-15) Email from Stephanie Freeman to Heather Keillor Don Greig, Gary Border, Marissa Chien Re Bldg 2900	CAMS00251			
940	4	(07-06-15) Email from Steve Burford to Stephanie Freeman Re compressor we received from York for rooftop unit at 2900 I incorrect	CAMS00252			
941	4	(04-14-15) Email from Steve Burford to Don Greig, Lorraine Conti Re Bldg 2900 AC1 Control Board for AC 1 on Bldg 2900 is damaged and needs to be replaced, photo of AC1 Board	CAMS00279- CAMS00283			
942	4	(04-02-15) Email from Lorraine Conti to Steve Burford, Don Shea Re HVAC update request, 2904 no return lines needed, just return air grilles that lay in the drop ceiling grid, fire dampers need to be installed for the return air grilles to be effective, only remaining item is the building pressure sensors, proposals for 2904 to install additional return air grilles in their space, Ste 200, 120, 100	CAMS00285- CAMS00287			
943	4	(04-03-15) CAMS Proposal to Owner to Install 27 Additional Return Air Grilles in Drop Ceiling, Ste 200 \$1,320.00, Install 8 Additional Return Air Grilles in Drop Ceiling Ste	CAMS00288- CAMS00290			

*Returned*

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		120\$480.00, Install 8 additional return air grilles in drop ceiling Ste 100 \$450.00				
944	4	(03-20-15) Email from Steve Burford to Lorraine Conti, Don Greig, Marissa Chien, Gary Border Re Fire Damper proposals to install the fire dampers in the hallways above the drop ceiling	CAMS00300			
945	4	(02-11-15) Email from Lorraine Conti to Steve Burford, Don Greig Re Shea controlco proposals and supplemental information	CAMS00303			
946	4	(02-11-15) Email from Steve Burford to Jeannie Schneider, Lorrain Conti, Don Greig RE CAMS signed proposal Bldg 2900, have Schneider come out to give us access to the control system in order to make some adjustments	CAMS00304			
947	4	(02-10-15) Email from Steve Burford to Don Greig Re Bldg 2900 AC problem found one of your AC circuits flat empty of refrigerant, tech fixed the area leaking	CAMS00305			
948	4	(01-29-15) Email from Steve Burford to Don Greig Re will have guys there tomorrow to start taking air flow reading, map out suite 201 in Bldg 2900 to check ductwork	CAMS00307- CAMS00309			
949	4	(01-22-15) Email from Lorraine Conti to Steve Burford Re Shea diagrams and hvac duct survey	CAMS00313- CAMS00314			
950	4	(11-06-14) Email from Steve Burford to Lorraine Conti, RE heating and cooling checklist, CAMS proposal to install 8 additional return air grilles in drop ceiling Ste 100 \$450.00, CAMS Proposal to install 8 additional return air grilles in drop ceiling suite 120 \$480.00, CAMS proposal to replace three VAV controllers and three wall sensors \$3,820.00, CAMs proposal to install 27 additional return air grilles	CAMS00315- CAMS00323			

*Returned*

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		in drop ceiling \$1,320.00, CAMS proposal to install 8 additional return air grilles in drop ceiling, \$450.00, CAMS proposal to install 8 additional return air grilles in drop ceiling \$480.00, CAMs proposal to install 27 additional return air grilles in drop ceiling \$1,320.00				
951	4	(07-10-15) CAMS Invoice to Quality Nursing, Project LN5070532, issue with cooling, VAVs operating normal, duct pressure appears normal \$105.00	CAMS00324			
952	4	(09-14-15) Quality Nursing Check to CAMS #9162, Invoice 32347, \$105.00	CAMS00325			
953	4	(07-10-15) CAMS Service Work Order #13795 to Quality Nursing, Bldg 2900 Ste 101 Check VAVS working normal \$105.00	CAMS00326			
954	4	(02-23-15) CAMS Service Work Order #16759 to Ameriprise Financial – whistling sound coming from ceiling found 20" supply duct that reduces to an 8' duct was separated \$152.50	CAMS00327			
955	4	(02-23-15) CAMS Invoice #31855 to Flynn group - diagnose issue with whistling sound coming from ceiling, found 20' supply duct that reduces to an 8' duct was separated \$152.50	CAMS00328			
956	4	(03-05-15) Check #3218 from Flynn Group to CAMS \$152.50,	CAMS00329			
957	4	(01-28-15) CAMs service Work Order #16752 to Flynn Group, Bldg 2900 Suite 201, ductwork & VAV survey checked VAV operation took CFM reading at each supply & return, made maps \$190.00	CAMS00330			
958	4	(02-23-15) CAMS Invoice #31834 to Flynn Group Project LT5020086, perform ductwork VAV survey for mapping operations \$190.00	CAMS00331			
959	4	(02-23-15) Flynn Group check #3235 to CAMS, \$190.00, Invoice	CAMS00332			

#	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
		#31834				
960	4	(05-13-15) CAMS Proposal to Rycon Construction Project Install Four Schneider Electric Wall Sensors Bldg 2900 Ste 101 \$760.00	CAMS00333			
961	4	(06-12-15) CAMS Invoice 32188 to Rycon Const Project LN5050310 Bldg 2900 Ste 101 Install 4 Schneider Electric wall sensors \$760.00	CAMS00334			
962	4	(07-07-15) Rycon Construction check #4448 to CAMS \$760.00	CAMS00335			
963	4	(06-08-15) CAMS Service Work Order #17078 to Rycon Construction Bldg 2900 Ste 101, Install 3 of 4 sensor for suite 100 \$760.00	CAMS00336			
964	4	(05-07-15) CAMS Service Work Order #16976 Bldg 2900 Ste 101, Ste 101 is too hot, found not return to any of the spaces and verified the VAVs were all working properly	CAMS00341			

Case No.: A-17-758435-C

Trial Date: February 3, 2020

Dept. No.: 22

Judge: Susan H. Johnson

Plaintiff: Horizon Holdings 2900, LLC

Court Clerk: Jill Chambers

Recorder / Reporter: Norma Ramirez

Counsel for Plaintiff: Eric B. Zimbelman

vs.

Defendant: Shea at Horizon ridge  
Owners Association, et al.

Counsel for Defendant: Robert E. Schumacher  
Brian K. Walters

TRIAL BEFORE THE COURT

JOINT STIPULATED TRIAL EXHIBIT LIST

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted
J1	1	Declaration of Commercial Office Subdivision Covenants, Conditions & Restrictions	TAM0308-TAM0347	2/3/2020	N	2/3/2020
J2	1	First Amendment to Declaration of Commercial Office Subdivision Covenants, Conditions & Restrictions	TAM0348-TAM0353			
J3	1	Calculation	SHEA-RC-018-SHEA-RC-020			
J4	1	Email from Catherine Jordan to Stephanie Freeman	TAM0135			
J5	1	Email chain - Burford to Chien	CAMS00158			
J6	1	Email - Jordan to Burford	CAMS00137-CAMS00138			
J7	1	Email chain - Freeman to Jordan	JORDAN000548-JORDAN000556			
J8	1	Email - Burford to Jordan	CAMS00117			
J9	1	Letter - TAMS to CAMS	CAMS00110			
J10	1	Letter - Horizon Holdings to Shea	JORDAN000078			
J11	1	Report from Sahara Air	JORDAN000086-JORDAN000087			
J12	1	Email - Chien to Kapetansky et al.	PRIME00047 - PRIME00050	2/3/2020	N	2/3/2020
J13	1	Email - Kapetansky to Jordan	TAM0134	"	"	"
J14	1	Email chain - Chien to Burford	CAMS00142-CAMS00143	"	"	"

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted	
J15	1	Email chain - Chien to Freeman et al.	SHEA0102 - SHEA0103	2/3/2020	N	2/3/2020	PS
J16	1	Email Chain - Freeman to Pugh et al.	SHEA0127- SHEA0129	"	"	"	PS
J17	1	Gifford Consulting letter	JORDAN000001- JORDAN000005	"	"	"	PS
J18	1	Precision Air Balance proposal	JORDAN000090	"	"	"	PS
J19	1	Email and Duct Survey	CAMS00181- CAMS00194				
J20	1	Work Orders, Invoices and Checks	CAMS00039- CAMS00048				
J21		Sparks Expert Report	Sparks Dep. Ex. B	2/3/2020	N	2/3/2020	PS
J22	1	Mechanical Drawings - Burford annotated	SHEA-HBFS-0219 - SHEA-HBFS-0220	"	"	"	PS
J23	1	Commercial Lease Agreement	JORDAN000599- JORDAN000619	"	"	"	PS
J24	1	Lubawy Expert Report	Lubway Dep. Ex. 1	"	"	"	PS
J25	1	CAMS Proposal to Rycon, Invoice, Work Order, Check	CAMS00333- CAMS00336	"	"	"	PS
J26	1	Email - Greig to Burford	CAMS00299	2-4-2020	Y	2-4-2020	PS
J27	1	Email - Conti to Burford	CAMS00291- CAMS00295	2/4/2020	N	2/4/2020	PS
J28	1	Email - Greig to Burford	CAMS00282	2/3/2020	N	2/3/2020	PS
J29	1	Email - Valesano to Burford	CAMS00284	"	"	"	PS
J30	1	Email - Border to Burford et al	CAMS 00139 - CAMS00140	"	"	"	PS
J31		Email - Greig to Burford	CAMS00228	"	"	"	PS
J32	1	Email - Burford to Freeman et al	CAMS00236				
J33	1	Email - Chien to Kapetansky et al.	PRIME00189- PRIME00190				
J34	1	Email - Chien to Border	SHEA0099 - SHEA0101	2/3/2020	N	2/3/2020	PS
J35	1	Articles of Incorporation	TAM0287- TAM0288				PS
J36	1	By Laws	TAM0289- TAM0307				PS
J37	1	Rules and Regulations	TAM0360- TAM0364				PS
J38	1	Email - Burford to Chien	CAMS0158				PS
J39	1	Meeting Minutes	TAM0571- TAM0572				PS
J40	1	Construction Agreement	JORDAN000572- JORDAN000578				PS
J41	1	Floor Plan	SHEA-RC-030, SHEA-RC-027				PS

Ex.	Vol.	Description	Bates Range	Date Offered	Objection	Date Admitted	
J42	1	Letter from Jordan	TAM132- TAM133	2/3/2020	N	2/3/2020	BS
J43	1	Promissory Note	JORDAN000743- JORDAN000757	"	"	"	BS
J44	1	Community Management Agreement	TAM047- TAM060	"	"	"	BS
J45	1	Email - Flanigan to Freeman	CAMS00234				
J46	1	Email chain - Chien to Freeman	SHEA0130- SHEA0135	2/3/2020	N	2/3/2020	BS
J47	1	Prime HVAC Proposal	Kapetansky Dep. Ex. 7	"	"	"	BS
J48	1	Email chain - Kapetansky to Chien et al	PRIME00081- PRIME00085	"	"	"	BS
J49	1	Gibson Air HVAC Proposal	JORDAN000271	"	"	"	BS



# EXHIBIT(S) LIST

Case No.: A758435

Trial Date: 2/3/2020

Dept. No.: XXII

Judge: Susan Johnson

Plaintiff: Horizon Holdings 2900

Court Clerk: Jill Chambers

Recorder: Norma Ramirez

Counsel for Plaintiff: Eric Zimbelman

vs.

Defendant: Shea at Horizon Ridge

Counsel for Defendant: Robert Schmacher  
Brian Walters

## TRIAL BEFORE THE COURT

Court's EXHIBITS

Ex. #	Exhibit Description	Date Offered	Obj .	Date Admitted
1.	Demonstrative - Map Willow Creek	2.7.2020		2.12.2020
2.	" - Willow Creek Office Park	2.7.2020		2.12.2020
3.	William Bird - Rebuttal HVAC Report	2.7.2020		2.12.2020
4.	William Bird - HVAC Report	2.7.2020		2.12.2020
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16.				
17.				
18.				

# EXHIBIT(S) LIST

Case No.: A758435

Trial Date: 2/5/2020

Dept. No.: XXII

Judge: Susan Johnson

Plaintiff: Horizon Holdings 2900

Court Clerk: Jill Chambers

Recorder: Norma Ramirez

Counsel for Plaintiff: Eric Zimbelman

vs.

Defendant: Shea at Horizon Ridge  
Owner's Association

Counsel for Defendant: Robert Schumacher  
Brian Walters

## TRIAL BEFORE THE COURT

Plaintiff's EXHIBITS

Ex. #	Exhibit Description	Date Offered	Obj	Date Admitted
1.	Subpoena - Custodian of Recs - Henderson	2.5.2020	N	2.5.2020
2.	Affidavit	"	"	"
3.	Building Plans - 2900 W. Horizon	"	"	"
4.	" " " - 2904 W. Horizon	"	"	"
5.	CD - Building Plans - 2900 + 2904 W. Horizon	"	"	"
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**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**ERIC ZIMBELMAN, ESQ.**  
**3333 E, SERENE AVE., STE 200**  
**HENDERSON, NV 89074**

**DATE: June 30, 2020**  
**CASE: A-17-758435-C**

**RE CASE:** HORIZON HOLDINGS 2900, LLC vs. SHEA AT HORIZON RIDGE OWNERS ASSOCIATION;  
TAYLOR MANAGEMENT ASSOCIATION

NOTICE OF APPEAL FILED: June 29, 2020

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

HORIZON HOLDINGS 2900, LLC,

Plaintiff(s),

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION; TAYLOR MANAGEMENT  
ASSOCIATION,

Defendant(s),

Case No: A-17-758435-C

Dept No: XXII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 30 day of June 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk