

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

HORIZON HOLDINGS 2900, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, A DOMESTIC NON-  
PROFIT CORPORATION,

Respondent.

No. 81421

District Court No. A-17-2805-C

Electronically Filed  
Aug 10 2020 01:58 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## DOCKETING STATEMENT CIVIL APPEALS

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Department: 22

**Judge: Susan H. Johnson**

**A-17-758435-C**

**Telephone: (702) 990-7272**

**Client(s):** Horizon Holdings 2900, LLC

**Telephone: (702) 892-3500**

**Client(s):** Horizon Holdings 2900, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**Telephone: (702) 577-9339**

**Client(s):** Shea at Horizon Ridge Owners Association

**4 Nature of disposition below (check all that apply)**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify):                               |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition                              |
|  | (specify):_____   |

**5 Does this appeal raise issues concerning any of the following? No.**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

**6 Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7 Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8 Nature of the action.** Briefly describe the nature of the action and the result below:

Since Plaintiff Horizon Holdings 2900, LLC ("Horizon") purchased its property in 2015, Defendant Shea at Horizon Ridge Owners Association ("Association") has denied Horizon its use and enjoyment of its contractual right to an undivided pro rata share of the air conditioning as provided for under the governing CC&Rs. The Association breached its contractual obligation to Horizon by unreasonably denying Horizon's request to balance, or commission, the HVAC units for the building to ensure that Horizon received its pro rata share. After suffering years of heat in the Las Vegas summers, spending thousands of dollars to ameliorate the lack of air conditioning, incurring loss of property value and associated income, and having the Association place unilateral conditions precedent on Horizon before it would balance the system, Horizon brought its complaint for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and declaratory relief against, among others, the Association.

After a bench trial, the district court, relying on facts not supported by the testimony or evidence, entered findings of fact, conclusions of law, and judgment against Horizon and in favor of the Association. Horizon continues to suffer extreme temperatures in its unit and continues to be denied its pro rata share of the air conditioning.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

**Preliminarily, and without limitation, Plaintiff's appeal will raise the following issues:**

- a. Whether the District Court erred by (i) including "facts" as findings that are wholly unsupported, and contradicted, by the evidence presented at the trial; (ii) including findings that are not supported by the sufficiency of the evidence such that a review of the entire evidence demonstrates that the District Court committed a mistake; and (iii) compounding these errors by relying on the tainted findings of fact to support its conclusions of law and therefore incorrectly enter judgment against Horizon and in favor of the Association;
- b. Whether the District Court erred in finding that the Association acted "reasonably" by creating unilateral conditions precedent that were not in the CC&Rs and which Horizon had to satisfy before the Association met its own contractual obligation;
- c. Whether the District Court erred in concluding that the Association did not breach the CC&Rs despite the weight of the evidence that demonstrated that the HVAC system should be balanced, or commissioned, and which is within the Association's contractual responsibility;
- d. Whether the District Court erred in concluding that the Association did not breach the implied covenant of good faith and fair dealing despite the sufficient evidence presented at trial that the Association required Horizon to satisfy unilateral conditions precedent that it did not require of other unit owners, including Association Board Members;
- e. Whether the District Court erred by finding that Horizon did not suffer any damages when the evidence at trial demonstrated that the Association refused to balance the HVAC system such that the lack of the undivided pro rata share of air conditioning diminished the unit's property value;

- f. Alternatively, whether the District Court erred by finding that Horizon did not suffer any damages because the lease for the unused space was a “pocket to pocket” lease; however, the evidence at trial demonstrated that Horizon’s expert used market rates for Horizon’s loss in rent, resulting in damages to Horizon for its unused space;
- g. Whether the District Court erred by failing to make any findings of fact and conclusions of law based on Horizon’s declaratory relief claim;
- h. Whether the District Court erred in denying Horizon’s request to admit newly discovered evidence; and
- i. Alternatively, whether the District Court erred in refusing to allow the introduction of additional and relevant evidence to ensure that justice is done.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

**None.**

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
- ☐ Yes
- ☐ No

If not, explain:

12. **Other issues Does this appeal involve any of the following issues: No.**

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where *en banc* consideration is necessary to maintain uniformity of this court’s decisions
- ☐ A ballot question If so, explain:

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17 and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

**Pursuant to NRAP 17, this matter is NOT presumptively assigned to the Court of Appeals because it involves a contract dispute where the amount in controversy substantially exceeds \$75,000 and no other provisions of NRAP 17(b) apply.**

14. **Trial.** If this action proceeded to trial, how many days did the trial last? **Eight (8) days**  
Was it a bench or jury trial? **Bench Trial**
15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

**No.**

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### **TIMELINESS OF NOTICE OF APPEAL**

16. **Date of entry of written judgment or order appealed from:**

**May 26, 2020**

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served:**

**June 1, 2020**

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59). None.**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- |                          |                    |                      |
|--------------------------|--------------------|----------------------|
| <input type="checkbox"/> | NRCP 50(b)         | Date of filing _____ |
| <input type="checkbox"/> | NRCP 52(b)         | Date of filing _____ |
| <input type="checkbox"/> | Nev. R. Civ. P. 59 | Date of filing _____ |

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_\_,**

245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling mission \_\_\_\_\_

(c) Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**Horizon Holdings 2900, LLC filed its Notice of Appeal on June 29, 2020.**

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

**NRAP 4(a)(1)**

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ **NRAP 3A(b)(1)**

☐ **NRAP 3A(b)(2)**

☐ **NRAP 3A(b)(3)**

☐ **Other (specify)**

☐ **NRS 38.205**

☐ **NRS 233B.150**

☐ **NRS 703.376**

(b) Explain how each authority provides a basis for appeal from the judgment or order:

**Appellant appeals from a final order or judgment of the district court.**

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

<b>Plaintiff:</b>	<b>Horizon Holdings 2900, LLC</b>
<b>Defendant:</b>	<b>Shea at Horizon Ridge Owners Association</b>
<b>Defendant:</b>	<b>Taylor Management Association</b>
<b>Defendant/</b>	
<b>Cross-Claimant:</b>	<b>First American Exchange Company, LLC</b>
<b>Defendant/</b>	
<b>Cross-Defendant:</b>	<b>TAG Horizon Ridge, LLC</b>
<b>Defendant:</b>	<b>The Aligned Group, LLC</b>

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**January 2, 2018 – Notice of Entry of Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC’s Motion to Dismiss**

**March 8, 2018 – Stipulation and Order for Dismissal with Prejudice as to Defendant/Cross-Claimant First American Exchange Company, LLC Only**

**March 22, 2019 – Notice of Entry of Order for Dismissal of Cross-Claim and Third-Party Complaint of First American Exchange Company, LLC against TAG Horizon Ridge, LLC and TAG Fund I, LLC**

**February 4, 2020 – Notice of Entry of Granting in Part and Denying in part Defendants’ Shea at Horizon Ridge Owners Association and Taylor Association Management’s Motion for Partial Summary Judgment**

**February 5, 2020 – Notice of Entry of Order Denying Plaintiff’s Motion for Partial Summary Judgment**

- 23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

*See Summary of Case Chart, Attached as Exhibit 1*

- 24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- ☒ **Yes, except for a pending Motion for Attorney’s Fees, Costs and Interest (see below)**  
☐ **No**

- 25. If you answered "No" to question 24, complete the following:**

- (a) Specify the claims remaining pending below:

**Respondent’s Motion for an Award of Attorney’s Fees, Costs and Interest is pending for hearing before the District Court on August 14, 2020.**



- (b) Specify the parties remaining below:

**Horizon Holdings, 2900 LLC  
Shea at Horizon Ridge Owners Association**

- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes  
☒ No

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes  
☒ No

- 26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**The order is independently appealable under NRAP 3A(b))**

**Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Horizon Holdings 2900, LLC  
Name of appellant

Eric Zimbelman, Esq.  
Name of counsel of record

August 10, 2020  
Date

/s/ Eric Zimbelman  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

Matthew D. Ekins, Esq.  
Name of counsel of record

August 10, 2020  
Date

/s/ Matthew D. Ekins  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the this 10th day of August, 2020, I served a copy of this completed **DOCKETING STATEMENT** upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)
- ☐ By Electronic transmission (Court's ECF)

Robert E. Schumacher, Esq.  
Nevada Bar No. 7504  
Brian K. Walters, Esq.  
Nevada Bar No. 9711  
GORDON REES SCULLY MANSUKANI LLP  
300 S. Fourth Street, Suite 1550  
Las Vegas, NV 89101  
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[rschumacher@grsm.com](mailto:rschumacher@grsm.com)  
[bwalters@grsm.com](mailto:bwalters@grsm.com)

*Attorneys for Respondent*  
*Shea at Horizon Ridge Owners Association*

Dated this 10th day of August, 2020.

/s/ Theresa M. Hansen

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Signature

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3                                   **Supreme Court Case No. 81421**

4  
5  
6                                   **HORIZON HOLDINGS 2900, LLC,**  
7                                   **A NEVADA LIMITED LIABILITY COMPANY**

8                                   Appellants,

9                                   v.

10                                  **SHEA AT HORIZON RIDGE OWNERS ASSOCIATION,**  
11                                  **A DOMESTIC NON-PROFIT ORGANIZATION,**

12                                  Respondent.

13  
14  
15                                  Appeal from Judgment After Bench Trial  
16                                  Eighth Judicial District Court, Clark County  
17                                  The Honorable Susan H. Johnson, District Court Judge  
  District Court Case No. **A-17-758435-C**

18                                  **APPENDIX OF EXHIBITS TO HORIZON HOLDINGS, 2900,**  
19                                  **LLC’S DOCKETING STATEMENT - VOLUME 1 OF 1**

20  
21                                  ERIC B. ZIMBELMAN, ESQ.  
22                                  Nevada Bar No. 9407  
23                                  **PEEL BRIMLEY LLP**  
24                                  3333 E. Serene Avenue, Suite 200  
25                                  Henderson, NV 89074  
26                                  Telephone: (702) 990-7272  
27                                  Facsimile: (702) 990-7273  
28                                  [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
  Attorneys for Appellant  
  Horizon Holdings, 2900, LLC

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

## TABLE OF APPENDIX

<u>Exhibit</u>	<u>Document</u>	<u>Bates Range</u>	<u>Volume</u>
1	Summary of Case Chart		1
		Horizon Exhibit Pages	
	A. District Court Docket for Case No. A-17-758438	000001 – 000050	1
	B. Original Complaint	000051 - 000063	1
	C. Notice of Entry of Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss	000064 - 000071	1
	D. Notice of Entry of Stipulation and Order for Dismissal as to Defendant First American Exchange Company, LLC, Only	000072 – 000078	1
	E. Notice of Entry of Order Granting in Part and Denying in Party Defendants' Shea and Taylor's Motion for Partial Summary Judgment	000079 - 000086	1
	F. First Amended Complaint	000087 - 000099	1
	G. Second Amended Complaint	000100 - 000109	1
	H. First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third-Party Complaint	000110 - 000132	1

<u>Exhibit</u>	<u>Document</u>		<u>Bates Range</u>	<u>Volume</u>
	I.	Notice of Entry of Stipulation and Order of Cross-Claim and Third-Party Complaint with Prejudice	000133 - 000139	1
	J.	Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	000140 - 000177	1

# EXHIBIT A

## Case Information

A-17-758435-C | Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)

Case Number  
A-17-758435-C  
File Date  
07/14/2017

Court  
Department 22  
Case Type  
Other Contract

Judicial Officer  
Johnson, Susan  
Case Status  
Closed

## Party

### Plaintiff

Horizon Holdings 2900 LLC

### Address

2900 W. Horizon Ridge Pkwy, Suite 101  
Henderson NV 89052

### Active Attorneys ▼

Lead Attorney  
Zimbelman, Eric B.  
Retained

Attorney  
Ekins, Matthew D.  
Retained

Attorney  
Lawrence, Nathan  
Edward  
Retained

### Defendant

Shea at Horizon Ridge Owners Association

### Address

259 N. Pecos Road, Suite 100  
Henderson NV 89074

### Active Attorneys ▼

Lead Attorney  
Schumacher,  
Robert E.  
Retained

Attorney  
Walters, Brian K.  
Retained



Defendant  
Taylor Management Association

Active Attorneys ▼  
Lead Attorney  
Schumacher,  
Robert E.  
Retained

---

Attorney  
Walters, Brian K.  
Retained

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## Disposition Events

01/02/2018 Judgment ▼

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Judicial Officer  
Johnson, Susan

Judgment Type  
Order of Dismissal

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Monetary Judgment

Debtors: Horizon Holdings 2900 LLC (Plaintiff)

Creditors: Tag Horizon Ridge LLC (Defendant), Aligned Group LLC  
(Defendant)

Judgment: 01/02/2018 Docketed: 01/02/2018

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03/08/2018 Judgment ▼

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Judicial Officer  
Johnson, Susan

Judgment Type  
Order of Dismissal

Monetary Judgment

Debtors: Horizon Holdings 2900 LLC (Plaintiff)

Creditors: First American Exchange Group LLC (Defendant)

Judgment: 03/08/2018 Docketed: 03/08/2018

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03/21/2018 Judgment ▼

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Judicial Officer

Johnson, Susan

Judgment Type

Order of Dismissal With Prejudice

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Monetary Judgment

Debtors: First American Exchange Group LLC (Cross Claimant)

Creditors: Tag Horizon Ridge LLC (Cross Defendant)

Judgment: 03/21/2018 Docketed: 03/22/2018

---

Monetary Judgment

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

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02/04/2020 Judgment ▼

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Judicial Officer

Johnson, Susan

Judgment Type

Summary Judgment

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Monetary Judgment

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

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04/05/2020 Judgment ▼

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Judicial Officer  
Johnson, Susan

Judgment Type  
Order

---

Monetary Judgment

Debtors: Horizon Holdings 2900 LLC (Plaintiff)

Creditors: Taylor Management Association (Defendant)

Judgment: 04/05/2020 Docketed: 04/16/2020

Total Judgment: \$7,997.53

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05/26/2020 Judgment ▼

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Judicial Officer  
Johnson, Susan

Judgment Type  
Judgment

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Monetary Judgment

Debtors: Horizon Holdings 2900 LLC (Plaintiff)

Creditors: Shea at Horizon Ridge Owners Association (Defendant)

Judgment: 05/26/2020 Docketed: 05/27/2020

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## Events and Hearings

07/14/2017 Complaint ▼

Complaint - COMP

Comment

**Complaint**

07/17/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

**Initial Appearance Fee Disclosure**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/20/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/21/2017 First Amended Complaint ▼

Amended Complaint - ACOM

Comment

**First Amended Complaint**

07/21/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/21/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/21/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/21/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons**

07/21/2017 Summons Electronically Issued - Service Pending ▼

Comment

**SUMMONS**

09/05/2017 Answer and Crossclaim ▼

Answer and Crossclaim - AACR

Comment

**First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third Party Complaint**

09/05/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

**Initial Appearance Fee Disclosure**

09/12/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

**Initial Appearance Fee Disclosure**

09/12/2017 Motion to Dismiss ▼

Motion to Dismiss - MDSM

Comment

Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss

09/14/2017 Three Day Notice ▼

Three Day Notice - THDN

Comment

Three Day Notice of Intent To Take Default

09/15/2017 Answer to Amended Complaint ▼

Answer - ANS

Comment

Defendant Shea at Horizon Ridge Owners Association's Answer to First Amended Complaint

09/15/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (Shea)

09/15/2017 Answer to Amended Complaint ▼

Answer - ANS

Comment

Defendant Taylor Management Association's Answer to First Amended Complaint

09/15/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (Taylor)

09/19/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Cross-Defendant TAG HORIZON RIDGE, LLC)

09/19/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Third Party Defendant TAG FUND I, LLC)

09/29/2017 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD

Comment

Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendant's Tag Horizon Ridge and The Aligned Group's Motion to Dismiss

10/09/2017 Motion to Dismiss ▼

Motion to Dismiss - MDSM

Comment

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

10/09/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure

10/12/2017 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD

Comment

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

10/12/2017 Reply in Support ▼

Reply - RPLY

Comment

Reply Brief in Support of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss

10/13/2017 Minute Order ▼

Minute Order

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Minute Order - No Hearing Held

10/13/2017 Amended Notice ▼

Amended Notice - ANOT

Comment

Amended Notice of Hearing of Defendants Tag Horizon Ridge  
and The Aligned Group's Motion to Dismiss

10/13/2017 Notice of Change of Hearing ▼

Notice of Change of Hearing - NOCH

Comment

Notice of Change of Hearing

10/13/2017 Notice of Hearing ▼

Notice of Hearing - NOH

Comment

Notice of Hearings

10/19/2017 Motion to Dismiss ▼

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Cancel Reason

Vacated

Comment

Defendant's Tag Horizon Ridge and The Aligned Groups' Motion to  
Dismiss

10/26/2017 Stipulation and Order ▼

Stipulation and Order - SAO

Comment

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

10/30/2017 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO

Comment

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 & Defendant's Tag Horizon Ridge  
and the Aligned Group's Motion to Dismiss

11/01/2017 Reply in Support ▼



Reply - RPLY

Comment

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

11/08/2017 Motion for Leave to File ▼

Motion for Leave to File - MLEV

Comment

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

11/17/2017 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (CIV)

Comment

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

11/20/2017 Receipt of Copy ▼

Receipt of Copy - ROC (CIV)

Comment

Receipt of Copy

11/20/2017 Receipt of Copy ▼

Receipt of Copy - ROC (CIV)

Comment

Receipt of Copy

11/20/2017 Receipt of Copy ▼

Receipt of Copy - ROC (CIV)

Comment

Receipt of Copy

11/21/2017 Reply to Opposition ▼

Reply - RPLY (CIV)

Comment

Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants TAG Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike

11/28/2017 Motion to Dismiss ▼

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Denied Without Prejudice

Comment

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

Parties Present ▲

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

11/28/2017 Motion to Dismiss ▼

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Granted in Part

Comment

Amended Notice of Hearing of Defendants TAG Horizon Ridge and the Aligned Group's Motion to Dismiss

11/28/2017 Opposition and Countermotion ▼

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Comment

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

11/28/2017 All Pending Motions ▼

All Pending Motions

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Matter Heard

Parties Present ▲

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

12/01/2017 Motion for Leave to File ▼

Motion for Leave to File - MLEV (CIV)

Comment

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

12/05/2017 Notice of Non Opposition ▼

Notice of Non Opposition - NNOP (CIV)

Comment

Notice of Non-Opposition to Plaintiff Horizon Holdings 2900,  
LLC's Motion for Leave to File an Amended Complaint

12/08/2017 Order Denying Motion ▼

Order Denying Motion - ODM (CIV)

Comment

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

12/11/2017 Commissioners Decision on Request for Exemption -  
Granted ▼

Commissioners Decision on Request for Exemption -

Comment

Commissioner's Decision on Request for Exemption - Granted

12/11/2017 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

12/14/2017 Arbitration File ▼

Arbitration File

Comment

Arbitration File

12/18/2017 Minute Order ▼

Minute Order

Judicial Officer

Johnson, Susan

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

12/19/2017 Motion for Leave ▼

Minutes - Motion for Leave

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Off Calendar

Comment

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

12/19/2017 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Vacate Hearing and Briefing on Plaintiff's Motion for Leave to File an Amended Complaint

12/21/2017 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

01/02/2018 Order Granting Motion ▼

Order - ORDR (CIV)

Comment  
Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss

01/02/2018 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment  
Notice of Entry of Order

01/02/2018 Motion to Reconsider ▼

Motion to Reconsider - MRCN (CIV)

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

01/04/2018 Notice of Early Case Conference ▼

Notice of Early Case Conference - NECC (CIV)

Comment  
Notice of Early Case Conference

01/09/2018 Motion for Leave ▼

Judicial Officer  
Johnson, Susan

Hearing Time  
10:30 AM

Cancel Reason  
Vacated - per Stipulation and Order

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

01/12/2018 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment  
Opposition to Plaintiff's Motion for Leave to File an Amended Complaint

01/19/2018 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment  
Opposition to Plaintiff's Motion for Reconsideration and/or Rehearing

01/30/2018 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

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

02/06/2018 Motion For Reconsideration ▼

Minutes - Motion For Reconsideration

Judicial Officer

Johnson, Susan

Hearing Time

10:30 AM

Result

Motion Denied

Comment

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

Parties Present ▲

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

02/16/2018 Joint Case Conference Report ▼

Joint Case Conference Report - JCCR (CIV)

Comment

JOINT CASE CONFERENCE REPORT

02/16/2018 Amended Joint Case Conference Report ▼

Amended Joint Case Conference Report - AMDC (CIV)

Comment

Amended Joint Case Conference Report

03/08/2018 Stipulation and Order for Dismissal With Prejudice ▼

Stipulation and Order for Dismissal With Prejudice - SODW (CIV)

Comment

Stipulation and Order for Dismissal With Prejudice as to Defendant First American Exxchange Company, LLC, Only

03/08/2018 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

03/21/2018 Stipulation and Order for Dismissal With Prejudice ▼

Stipulation and Order for Dismissal With Prejudice - SODW (CIV)

Comment

Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice

03/22/2018 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

04/02/2018 Order Denying Motion ▼

Order Denying Motion - ODM (CIV)

Comment

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 - NEOJ (CIV)

Comment

Notice of Entry of Order

04/04/2018 Scheduling Order ▼

Scheduling Order - SCHO (CIV)

Comment

Scheduling Order

04/05/2018 Order Setting Civil Bench Trial ▼

Order Setting Civil Bench Trial - OSBT (CIV)

Comment

Order Setting Civil Bench Trial

04/13/2018 Memorandum of Costs and Disbursements ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Verified Memorandum of Costs

04/23/2018 Motion for Attorney Fees ▼

Motion for Attorney Fees - MATF (CIV)

Comment

(6/5/18 Withdrawn) Motion for Attorneys' Fees and Costs

04/23/2018 Motion to Strike ▼

Motion to Strike - MSTR (CIV)

Comment

(6/5/18 Withdrawn) Plaintiff's Motion to Strike and Retax  
Defendants' Memorandum of Fees and Costs

05/24/2018 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

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 ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

06/05/2018 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

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 ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

06/08/2018 Substitution of Attorney ▼

Substitution of Attorney - SUBT (CIV)

Comment

Substitution of Attorney



06/26/2018 Motion for Attorney Fees and Costs ▼

Judicial Officer

**Johnson, Susan**

Hearing Time

**10:30 AM**

Cancel Reason

**Vacated - per Stipulation and Order**

Comment

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

06/26/2018 Motion to Strike ▼

Judicial Officer

**Johnson, Susan**

Hearing Time

**10:30 AM**

Cancel Reason

**Vacated - per Stipulation and Order**

Comment

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

06/26/2018 Certificate of Mailing ▼

Certificate of Mailing - CERT (CIV)

Comment

**Certificate of Mailing**

10/12/2018 Amended Order Setting Civil Non-Jury Trial ▼

Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)

Comment

**Amended Order Setting Civil Non-Jury Trial**

10/15/2018 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

**Stipulation and Order to Extend Discovery Deadlines and Reset Trial**

10/16/2018 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

10/25/2018 Motion for Leave to File ▼

Motion for Leave to File - MLEV (CIV)

Comment

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

11/05/2018 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

Defendants Shea at Horizon Ridge Owners' Association and  
Defendant Taylor Management Association's Opposition to  
Plaintiff's Motion to Amend

11/05/2018 Declaration ▼

Declaration - DECL (CIV)

Comment

Declaration of Stephanie Freeman in Support of Defendants'  
Opposition to Plaintiff's Motion for Leave to File Second  
Amended Complaint

11/05/2018 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants'  
Opposition to Motion for Leave to File Second Amended  
Complaint

11/06/2018 Motion for Leave ▼

Minutes - Motion for Leave

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Granted in Part

Comment

Plaintiff Horizon Holdings 2900 LLC's Motion for Leave to File Second  
Amended Complaint

Parties Present ▲

Plaintiff

Attorney: Zimbelman, Eric B.

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

11/09/2018 Order ▼

Order - ORDR (CIV)

Comment

Order Re: Plaintiff Horizon Holdings 2900, LLC's Motion for  
Leave to File Second Amended Complaint

11/28/2018 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Allow Second Amended Complaint

11/28/2018 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

11/28/2018 Amended Complaint ▼

Amended Complaint - ACOM (CIV)

Comment

Horizon Holdings 2900, LLC's Second Amended Complaint

01/30/2019 Status Check: Trial Readiness ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Cancel Reason

Vacated - per Stipulation and Order

02/05/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Extend Expert Disclosure Deadlines  
(Second Request)

02/05/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

02/21/2019 Answer ▼

Answer - ANS (CIV)

Comment

Defendant Shea at Horizon Ridge Owners Association's Answer to Second Amended Complaint

02/21/2019 Answer ▼

Answer - ANS (CIV)

Comment

Defendant Taylor Management Association's Answer to Second Amended Complaint

04/15/2019 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)

Comment

Stipulation and Order to Extend Discovery Deadlines

04/15/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

05/08/2019 Pretrial/Calendar Call ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Cancel Reason

Vacated - per Stipulation and Order

05/20/2019 Bench Trial ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Cancel Reason

Vacated - per Stipulation and Order

06/11/2019 Amended Order Setting Civil Non-Jury Trial ▼

Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)

Comment

**Second Amended Order Setting Civil Non-Jury Trial**

06/11/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

**Stipulation and Order to Continue Trial Date and Extend  
Discovery Deadlines**

06/11/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

**Notice of Entry of Stipulation and Order**

07/10/2019 Status Check: Trial Readiness ▼

Judicial Officer

**Johnson, Susan**

Hearing Time

**8:30 AM**

Cancel Reason

**Vacated - per Stipulation and Order**

08/19/2019 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

**Affidavit/Declaration of Service of Prime HVAS, LLC Attn: Person  
Most Knowledgeable**

08/19/2019 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

**Affidavit/Declaration of Service of Mark Kapetansky**

08/19/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

**Acceptance of Service of Subpoena to Steve Burford**

08/19/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service of Subpoena to Corporate Air Mechanical Services, Inc.

08/21/2019 Pretrial/Calendar Call ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Cancel Reason

Vacated - per Stipulation and Order

09/03/2019 Bench Trial ▼

Judicial Officer

Johnson, Susan

Hearing Time

1:00 PM

Cancel Reason

Vacated - per Stipulation and Order

09/06/2019 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)

Comment

Stipulation and Order to Extend Certain Deadlines (Fifth Request)

09/06/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

09/10/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service for Stephanie Freeman

09/10/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service for Gary Border

09/10/2019 Acceptance of Service ▼

Acceptance of Service - ACSR (CIV)

Comment

Acceptance of Service for Marissa Chien

09/18/2019 Status Check: Trial Readiness ▼

Minutes - Status Check: Trial Readiness

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Matter Heard

Parties Present ▲

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

09/18/2019 Amended Order Setting Civil Non-Jury Trial ▼

Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)

Comment

Third Amended Order Setting Civil Bench Trial

10/02/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Extend Dispositive Motions Deadline  
(Sixth Request)

10/02/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Stipulation and Order

11/12/2019 Motion for Partial Summary Judgment ▼

Motion for Partial Summary Judgment - MPSJ (CIV)

Comment  
Plaintiff Horizon Holdings 2900, LLC's Motion for Partial  
Summary Judgment

11/12/2019 Appendix ▼

Appendix - APEN (CIV)

Comment  
Appendix to Plaintiff Horizon Holdings 2900, LLC's Motion for  
Partial Summary Judgment

11/12/2019 Notice of Motion ▼

Notice of Motion - NOTM (CIV)

Comment  
Notice of Motion

11/12/2019 Motion for Summary Judgment ▼

Motion for Summary Judgment - MSJD (CIV)

Comment  
Defendants' Motion for Summary Judgment

11/12/2019 Appendix ▼

Appendix - APEN (CIV)

Comment  
Appendix of Exhibits to Defendants' Motion for Summary  
Judgment

11/13/2019 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment  
Notice of Hearing

11/13/2019 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment  
Notice of Hearing

11/14/2019 Errata ▼

Errata - ERR (CIV)

Comment  
Errata to Appendix of Exhibits to Defendants' Motion for  
Summary Judgment

11/27/2019 Stipulation and Order ▼



Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Continue Hearings

11/27/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

12/16/2019 Pre-trial Memorandum ▼

Pre-trial Memorandum - PMEM (CIV)

Comment

Pre-Trial Memorandum Jointly Filed By Plaintiff and Defendants

12/16/2019 Pre-trial Memorandum ▼

Pre-trial Memorandum - PMEM (CIV)

Comment

Pre-Trial Memorandum Jointly Filed by Plaintiff and Defendants

12/17/2019 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment

12/17/2019 Appendix ▼

Appendix - APEN (CIV)

Comment

Appendix to Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment

12/17/2019 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment

12/18/2019 Pretrial/Calendar Call ▼

Minutes - Pretrial/Calendar Call

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Trial Date Set

Parties Present ▲

Plaintiff

Attorney: Zimbelman, Eric B.

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

12/18/2019 Errata ▼

Errata - ERR (CIV)

Comment

Errata to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment

12/30/2019 Objection ▼

Objection - OBJ (CIV)

Comment

Defendants' Objection to Plaintiff's Offer of Judgment

12/30/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment

12/31/2019 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment

01/13/2020 Reply to Opposition ▼

Reply to Motion - REM (CIV)

Comment

Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants' Opposition to Motion for Partial Summary Judgment

01/13/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

Defendants' Shea at Horizon Ridge Owners Association and  
Taylor Association Management's Reply in Support of Motion for  
Partial Summary Judgment

01/17/2020 Notice ▼

Notice - NOTC (CIV)

Comment

Defendants' Notice of Trial Subpoena

01/21/2020 Motion for Partial Summary Judgment ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Denied

Comment

Plaintiff Horizon Holdings 2900 LLC Motion for Partial Summary  
Judgment

01/21/2020 Motion for Summary Judgment ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Granted

Comment

Defendant's Motion for Summary Judgment

01/21/2020 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Zimbelman, Eric B.

Defendant

Attorney: Walters, Brian K.

Defendant

Attorney: Walters, Brian K.

01/21/2020 Notice ▼

Notice - NOTC (CIV)

Comment

Plaintiff's Notice of Trial Subpoenas

01/22/2020 Notice ▼

Notice - NOTC (CIV)

Comment

Defendants' Notice of Intent to Lodge Original Deposition  
Transcripts

01/23/2020 Notice ▼

Notice - NOTC (CIV)

Comment

Plaintiff's Notice of Intent to Lodge Original Deposition  
Transcripts

01/23/2020 Notice ▼

Notice - NOTC (CIV)

Comment

Defendants' Supplemental Notice of Trial Subpoenas

02/03/2020 Bench Trial ▼

Minutes - Bench Trial

Minutes - Bench Trial

Minutes - Bench Trial

Minutes - Bench Trial

Minutes - Bench Trial

Minutes - Bench Trial

Minutes - Bench Trial

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Trial Continues

Parties Present ▲

Plaintiff

Attorney: Zimbelman, Eric B.

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

02/04/2020 Order ▼

Order - ORDR (CIV)

Comment

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

02/04/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

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

02/05/2020 Order Denying Motion ▼

Order Denying Motion - ODM (CIV)

Comment

Order Denying Plaintiff's Motion for Partial Summary Judgment

02/05/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

02/06/2020 Trial Memorandum ▼

Trial Memorandum - MEM (CIV)

Comment

Defendants' Civil Trial Memorandum Pursuant to EDCR 7.27

02/07/2020 Brief ▼

Brief - BREF (CIV)

Comment

Horizon Holdings 2900, LLC's Trial Brief

02/10/2020 Memorandum of Costs and Disbursements ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

Taylor Association Management's Verified Memorandum of Costs and Disbursements

02/11/2020 Bench Trial ▼

Judicial Officer

Johnson, Susan

Hearing Time

1:00 PM

Cancel Reason

Vacated - Duplicate Entry

02/24/2020 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Extend Deadlines Relating to Memorandum of Costs

02/24/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

02/25/2020 Motion for Attorney Fees ▼

Motion for Attorney Fees - MATF (CIV)

Comment

Taylor Association Management's Motion for Attorneys' Fees and Interest

02/25/2020 Appendix ▼

Appendix - APEN (CIV)

Comment

Appendix of Exhibits to Taylor Association Management's Motion for Attorneys' Fees Costs and Interest

02/25/2020 Declaration ▼

Declaration - DECL (CIV)

Comment

**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 ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

**Notice of Hearing**

02/27/2020 Motion to Retax ▼

Motion to Retax - MRTX (CIV)

Comment

**Motion to Re-tax Costs**

02/27/2020 Appendix ▼

Appendix - APEN (CIV)

Comment

**Appendix to Motion to Re-Tax Costs**

02/28/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

**Notice of Hearing**

03/05/2020 Response ▼

Response - RSPN (CIV)

Comment

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

03/16/2020 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

**Stipulation and Order to Continue Hearings**

03/16/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

Notice of Entry of Stipulation and Order

03/20/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

Bench Trial - Day 1 February 3, 2020

03/20/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

Recorder's Transcript of Bench Trial - Day 3 February 5, 2020

03/20/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

Bench Trial - Day 4 February 6, 2020

03/20/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

Bench Trial - Day 5 February 7, 2020

03/24/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

Plaintiff's Opposition to Taylor Association Management's Motion  
for Attorneys' Fees and Interest

03/24/2020 Appendix ▼

Appendix - APEN (CIV)

Comment

Appendix to Plaintiff's Opposition to Taylor Association  
Management's Motion for Attorney's Fees and Interest

03/24/2020 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

Plaintiff's Reply to Taylor's Opposition to Motion to Re-Tax Costs

03/26/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)



Comment

Bench Trial - Day 6 February 11, 2020

03/26/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

Recorders Transcript of Bench Trial - Day 7 February 12, 2020

04/07/2020 Reply to Motion ▼

Reply to Motion - REM (CIV)

Comment

Taylor Association Management's Reply in Support of Motion for Attorneys' Fees and Interest

04/14/2020 Motion for Attorney Fees ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Denied

Comment

Taylor Association Management's Motion for Attorneys' Fees and Interest

04/14/2020 Motion to Retax ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Under Advisement

Comment

Plaintiff's Motion to Re-tax Costs

04/14/2020 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Zimbelman, Eric B.

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

Defendant

Attorney: Schumacher, Robert E.

Attorney: Walters, Brian K.

04/15/2020 Order ▼

Order - ORDR (CIV)

Comment

Order Re: Plaintiff's Motion to Re-Tax Costs

04/24/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order Re: Motion to Re-Tax Costs

05/26/2020 Findings of Fact, Conclusions of Law and Judgment ▼

Findings of Fact, Conclusions of Law and Judgment - FFCL (CIV)

Comment

Findings of Fact, Conclusions of Law and Judgment

06/01/2020 Notice of Entry of Findings of Fact, Conclusions of Law ▼

Notice of Entry of Findings of Fact, Conclusions of Law - NEFF (CIV)

Comment

Notice of Entry of Findings of Fact, Conclusions of Law and Judgment

06/01/2020 Memorandum of Costs and Disbursements ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

Shea at Horizon Ridge Owners Association s Verified Memorandum of Costs and Disbursements

06/02/2020 Errata ▼

Errata - ERR (CIV)

Comment  
Errata to Shea at Horizon Ridge Owners Association's Verified  
Memorandum of Costs and Disbursements

06/12/2020 Motion for Attorney Fees and Costs ▼

Motion for Attorney Fees and Costs - MAFC (CIV)

Comment  
Shea at Horizon Ridge Owners Association's Motion for  
Attorney's Fees, Costs and Interest

06/12/2020 Appendix ▼

Appendix - APEN (CIV)

Comment  
Appendix of Exhibits to Shea at Horizon Ridge Owners  
Association s Motion for Attorney s Fees, Costs and Interest

06/12/2020 Declaration ▼

Declaration - DECL (CIV)

Comment  
Declaration of Robert E. Schumacher, Esq. in Support of  
Defendant Shea at Horizon Ridge Owners Association s Motion  
for Attorneys Fees, Costs and Interest

06/15/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment  
Notice of Hearing

06/22/2020 Notice of Appearance ▼

Notice of Appearance - NOTA (CIV)

Comment  
Notice of Appearance by Gallian Welker & Beckstrom, L.C.

06/29/2020 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment  
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

06/29/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment  
Notice of Entry of Stipulation and Order to Extend Time and  
Continue Hearing on Motion for Attorney's Fees, Costs and  
Interest

06/29/2020 Case Appeal Statement ▼

Case Appeal Statement - ASTA (CIV)

Comment  
Case Appeal Statement

06/29/2020 Notice of Appeal ▼

Notice of Appeal - NOAS (CIV)

Comment  
Notice of Appeal

07/15/2020 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment  
Bench Trial - Day 2 February 4, 2020

07/21/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment  
Plaintiff's Opposition to Shea at Horizon Ridge Owners  
Association's Motion for Attorney's Fees, Costs and Interest

07/21/2020 Appendix ▼

Appendix - APEN (CIV)

Comment  
Plaintiff's Appendix to Opposition to Shea at Horizon Ridge  
Owners Association's Motion for Attorney's Fees, Costs and  
Interest

07/21/2020 Cost on Appeal Bond ▼

Cost on Appeal Bond - COAB (CIV)

Comment  
Cost on Appeal Bond

07/24/2020 Order Denying Motion ▼

Order Denying Motion

Comment  
Order Denying Defendant Taylor Association Management's  
Motion For An Award of Attorney's Fees and Interest

07/24/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order

08/04/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

Shea at Horizon Ridge Owners Association's Reply in Support of Motion for Attorneys' Fees, Costs and Interest

08/11/2020 Motion for Attorney Fees and Costs ▼

Judicial Officer

Johnson, Susan

Hearing Time

8:30 AM

Comment

Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

## Financial

Horizon Holdings 2900 LLC

Total Financial Assessment	\$509.00
Total Payments and Credits	\$509.00

7/17/2017	Transaction	\$270.00
	Assessment	

7/17/2017	Efile	Receipt	HORIZON	(\$270.00)
	Payment	# 2017-	HOLDINGS	
		57622-	2900, LLC	
		CCCLK		

11/12/2019	Transaction	\$200.00
	Assessment	

11/12/2019	Efile Payment	Receipt # 2019- 68375- CCCLK	Horizon Holdings 2900 LLC	(\$200.00)
6/29/2020	Transaction Assessment			\$24.00
6/29/2020	Efile Payment	Receipt # 2020- 34324- CCCLK	Horizon Holdings 2900 LLC	(\$24.00)
7/21/2020	Transaction Assessment			\$15.00
7/21/2020	Payment (Phone)	Receipt # 2020- 12302- FAM	Horizon Holdings 2900 LLC	(\$15.00)
Shea at Horizon Ridge Owners Association				
	Total Financial Assessment			\$716.00
	Total Payments and Credits			\$716.00
9/18/2017	Transaction Assessment			\$449.50
9/18/2017	Efile Payment	Receipt # 2017- 72361- CCCLK	Shea at Horizon Ridge Owners Association	(\$449.50)
11/5/2018	Transaction Assessment			\$3.50
11/5/2018	Efile Payment	Receipt # 2018- 73384- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
2/21/2019	Transaction Assessment			\$3.50
2/21/2019	Efile Payment	Receipt # 2019- 11206- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
11/12/2019	Transaction Assessment			\$203.50

11/12/2019	Efile Payment	Receipt # 2019- 68556- CCCLK	Shea at Horizon Ridge Owners Association	(\$203.50)
11/14/2019	Transaction Assessment			\$3.50
11/14/2019	Efile Payment	Receipt # 2019- 69095- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
12/17/2019	Transaction Assessment			\$3.50
12/17/2019	Efile Payment	Receipt # 2019- 75477- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
12/18/2019	Transaction Assessment			\$3.50
12/18/2019	Efile Payment	Receipt # 2019- 75691- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
12/30/2019	Transaction Assessment			\$3.50
12/30/2019	Efile Payment	Receipt # 2019- 77449- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
12/31/2019	Transaction Assessment			\$3.50
12/31/2019	Efile Payment	Receipt # 2019- 77541- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
12/31/2019	Transaction Assessment			\$3.50

12/31/2019	Efile Payment	Receipt # 2019- 77621- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
1/13/2020	Transaction Assessment			\$3.50
1/13/2020	Efile Payment	Receipt # 2020- 02390- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
1/17/2020	Transaction Assessment			\$3.50
1/17/2020	Efile Payment	Receipt # 2020- 03383- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
1/22/2020	Transaction Assessment			\$3.50
1/22/2020	Efile Payment	Receipt # 2020- 04261- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
1/23/2020	Transaction Assessment			\$3.50
1/23/2020	Efile Payment	Receipt # 2020- 04597- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
2/6/2020	Transaction Assessment			\$3.50
2/6/2020	Efile Payment	Receipt # 2020- 07794- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
6/1/2020	Transaction Assessment			\$3.50



6/1/2020	Efile Payment	Receipt # 2020- 29000- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
6/1/2020	Transaction Assessment			\$3.50
6/1/2020	Efile Payment	Receipt # 2020- 29157- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
6/2/2020	Transaction Assessment			\$3.50
6/2/2020	Efile Payment	Receipt # 2020- 29282- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
6/12/2020	Transaction Assessment			\$3.50
6/12/2020	Efile Payment	Receipt # 2020- 31348- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
8/4/2020	Transaction Assessment			\$3.50
8/4/2020	Efile Payment	Receipt # 2020- 42925- CCCLK	Shea at Horizon Ridge Owners Association	(\$3.50)
Taylor Management Association				
	Total Financial Assessment			\$28.00
	Total Payments and Credits			\$28.00
2/4/2020	Transaction Assessment			\$3.50
2/4/2020	Efile Payment	Receipt # 2020- 07089- CCCLK	Taylor Management Association	(\$3.50)
2/4/2020	Transaction Assessment			\$3.50

2/4/2020	Efile Payment	Receipt # 2020- 07112- CCCLK	Taylor Management Association	(\$3.50)
2/10/2020	Transaction Assessment			\$3.50
2/10/2020	Efile Payment	Receipt # 2020- 08266- CCCLK	Taylor Management Association	(\$3.50)
2/25/2020	Transaction Assessment			\$3.50
2/25/2020	Efile Payment	Receipt # 2020- 11622- CCCLK	Taylor Management Association	(\$3.50)
2/25/2020	Transaction Assessment			\$3.50
2/25/2020	Efile Payment	Receipt # 2020- 11626- CCCLK	Taylor Management Association	(\$3.50)
3/5/2020	Transaction Assessment			\$3.50
3/5/2020	Efile Payment	Receipt # 2020- 13881- CCCLK	Taylor Management Association	(\$3.50)
4/7/2020	Transaction Assessment			\$3.50
4/7/2020	Efile Payment	Receipt # 2020- 19504- CCCLK	Taylor Management Association	(\$3.50)
4/24/2020	Transaction Assessment			\$3.50
4/24/2020	Efile Payment	Receipt # 2020- 21991- CCCLK	Taylor Management Association	(\$3.50)
First American Exchange Group LLC				
Total Financial Assessment				\$358.00
Total Payments and Credits				\$358.00

9/6/2017	Transaction Assessment			\$358.00
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9/6/2017	Efile Payment	Receipt # 2017-69878-CCCLK	First American Exchange Group LLC	(\$358.00)
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Tag Horizon Ridge LLC

Total Financial Assessment	\$253.00
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Total Payments and Credits	\$253.00
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9/12/2017	Transaction Assessment			\$253.00
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9/12/2017	Efile Payment	Receipt # 2017-71112-CCCLK	Tag Horizon Ridge LLC	(\$253.00)
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Tag Fund I LLC

Total Financial Assessment	\$223.00
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Total Payments and Credits	\$223.00
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10/9/2017	Transaction Assessment			\$223.00
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10/9/2017	Efile Payment	Receipt # 2017-77525-CCCLK	Tag Fund I LLC	(\$223.00)
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## Documents

Complaint - COMP

Initial Appearance Fee Disclosure - IAFD

Amended Complaint - ACOM

Answer and Crossclaim - AACR

Initial Appearance Fee Disclosure - IAFD

Initial Appearance Fee Disclosure - IAFD

Motion to Dismiss - MDSM

Three Day Notice - THDN

Answer - ANS

Initial Appearance Fee Disclosure - IAFD

Answer - ANS  
Initial Appearance Fee Disclosure - IAFD  
Acceptance of Service - ACSR  
Acceptance of Service - ACSR  
Opposition to Motion to Dismiss - OMD  
Motion to Dismiss - MDSM  
Initial Appearance Fee Disclosure - IAFD  
Opposition to Motion to Dismiss - OMD  
Reply - RPLY  
Minute Order  
Amended Notice - ANOT  
Notice of Change of Hearing - NOCH  
Notice of Hearing - NOH  
Stipulation and Order - SAO  
Notice of Entry of Stipulation and Order - NTSO  
Reply - RPLY  
Motion for Leave to File - MLEV  
Opposition and Countermotion - OPPC (CIV)  
Receipt of Copy - ROC (CIV)  
Receipt of Copy - ROC (CIV)  
Receipt of Copy - ROC (CIV)  
Reply - RPLY (CIV)  
All Pending Motions  
Motion for Leave to File - MLEV (CIV)  
Notice of Non Opposition - NNOP (CIV)  
Order Denying Motion - ODM (CIV)  
Commissioners Decision on Request for Exemption -  
Notice of Entry of Order - NEOJ (CIV)  
Arbitration File  
Minute Order  
Stipulation and Order - SAO (CIV)  
Minutes - Motion for Leave  
Notice of Entry of Order - NEOJ (CIV)  
Order - ORDR (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Motion to Reconsider - MRCN (CIV)  
Notice of Early Case Conference - NECC (CIV)  
Opposition to Motion - OPPM (CIV)  
Opposition to Motion - OPPM (CIV)  
Reply in Support - RIS (CIV)  
Minutes - Motion For Reconsideration  
Joint Case Conference Report - JCCR (CIV)

Amended Joint Case Conference Report - AMDC (CIV)  
Stipulation and Order for Dismissal With Prejudice - SODW (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Stipulation and Order for Dismissal With Prejudice - SODW (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Order Denying Motion - ODM (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Scheduling Order - SCHO (CIV)  
Order Setting Civil Bench Trial - OSBT (CIV)  
Memorandum of Costs and Disbursements - MEMC (CIV)  
Motion for Attorney Fees - MATF (CIV)  
Motion to Strike - MSTR (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Substitution of Attorney - SUBT (CIV)  
Certificate of Mailing - CERT (CIV)  
Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Motion for Leave to File - MLEV (CIV)  
Opposition to Motion - OPPM (CIV)  
Declaration - DECL (CIV)  
Reply to Opposition - ROPP (CIV)  
Minutes - Motion for Leave  
Order - ORDR (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Amended Complaint - ACOM (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Answer - ANS (CIV)  
Answer - ANS (CIV)  
Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Affidavit of Service - AOS (CIV)  
Affidavit of Service - AOS (CIV)  
Acceptance of Service - ACSR (CIV)

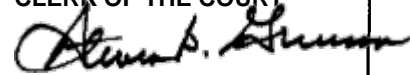
Acceptance of Service - ACSR (CIV)  
Stipulation and Order to Extend Discovery Deadlines - SOED (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Acceptance of Service - ACSR (CIV)  
Acceptance of Service - ACSR (CIV)  
Acceptance of Service - ACSR (CIV)  
Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)  
Minutes - Status Check: Trial Readiness  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Motion for Partial Summary Judgment - MPSJ (CIV)  
Appendix - APEN (CIV)  
Notice of Motion - NOTM (CIV)  
Motion for Summary Judgment - MSJD (CIV)  
Appendix - APEN (CIV)  
Clerk's Notice of Hearing - CNOC (CIV)  
Clerk's Notice of Hearing - CNOC (CIV)  
Errata - ERR (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Pre-trial Memorandum - PMEM (CIV)  
Pre-trial Memorandum - PMEM (CIV)  
Opposition to Motion - OPPM (CIV)  
Appendix - APEN (CIV)  
Opposition to Motion - OPPM (CIV)  
Errata - ERR (CIV)  
Minutes - Pretrial/Calendar Call  
Objection - OBJ (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Reply to Motion - REM (CIV)  
Reply in Support - RIS (CIV)  
Notice - NOTC (CIV)  
Notice - NOTC (CIV)  
Notice - NOTC (CIV)  
Notice - NOTC (CIV)  
Notice - NOTC (CIV)  
Minutes - All Pending Motions  
Order - ORDR (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Order Denying Motion - ODM (CIV)  
Notice of Entry of Order - NEOJ (CIV)

Trial Memorandum - MEM (CIV)  
Brief - BREF (CIV)  
Memorandum of Costs and Disbursements - MEMC (CIV)  
Minutes - Bench Trial  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Motion for Attorney Fees - MATF (CIV)  
Appendix - APEN (CIV)  
Declaration - DECL (CIV)  
Clerk's Notice of Hearing - CNOC (CIV)  
Minutes - Bench Trial  
Minutes - Bench Trial  
Minutes - Bench Trial  
Minutes - Bench Trial  
Minutes - Bench Trial  
Motion to Retax - MRTX (CIV)  
Appendix - APEN (CIV)  
Clerk's Notice of Hearing - CNOC (CIV)  
Minutes - Bench Trial  
Response - RSPN (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Opposition to Motion - OPPM (CIV)  
Appendix - APEN (CIV)  
Reply to Opposition - ROPP (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Reply to Motion - REM (CIV)  
Minutes - All Pending Motions  
Order - ORDR (CIV)  
Notice of Entry of Order - NEOJ (CIV)  
Findings of Fact, Conclusions of Law and Judgment - FFCL (CIV)  
Notice of Entry of Findings of Fact, Conclusions of Law - NEFF (CIV)  
Memorandum of Costs and Disbursements - MEMC (CIV)  
Errata - ERR (CIV)  
Motion for Attorney Fees and Costs - MAFC (CIV)  
Appendix - APEN (CIV)  
Declaration - DECL (CIV)

Clerk's Notice of Hearing - CNOC (CIV)  
Notice of Appearance - NOTA (CIV)  
Stipulation and Order - SAO (CIV)  
Notice of Entry of Stipulation and Order - NTSO (CIV)  
Case Appeal Statement - ASTA (CIV)  
Notice of Appeal - NOAS (CIV)  
Recorders Transcript of Hearing - RTRAN (CIV)  
Opposition to Motion - OPPM (CIV)  
Appendix - APEN (CIV)  
Cost on Appeal Bond - COAB (CIV)  
Order Denying Motion  
Notice of Entry of Order - NEOJ (CIV)  
Reply in Support - RIS (CIV)



# **EXHIBIT B**


**COMP**

MICHAEL C. VAN, ESQ.

Nevada Bar No. 3876

BRENT D. HUNTLEY, ESQ.

Nevada Bar No. 12405

RICHARD A STORMS, ESQ.

Nevada Bar No. 14283

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*Attorneys for Plaintiff***DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

SHEA AT HORIZON RIDGE OWNERS  
ASSOCIATION, a Domestic Non-Profit  
Corporation, TAYLOR MANAGEMENT  
ASSOCIATION, a Nevada Limited-Liability  
Company, FIRST AMERICAN EXCHANGE  
GROUP, LLC, a Nevada 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.: Department 22

**COMPLAINT****COMPLAINT**

Plaintiff HORIZON HOLDINGS 2900, LLC, by and through its counsel of record, the law firm of SHUMWAY VAN, complains, alleges, and avers against Defendants SHEA AT HORIZON RIDGE OWNERS ASSOCIATION, FIRST AMERICAN EXCHANGE

1 COMPANY, LLC, TAYLOR MANAGEMENT ASSOCIATION, TAG HORIZON RIDGE,  
2 LLC, and THE ALIGNED GROUP LLC, as follows:

3 **THE PARTIES**

4 1. At all times relevant hereto, Plaintiff HORIZON HOLDINGS 2900, LLC, is and  
5 was a Nevada limited liability company.

6 2. Upon information and belief, Defendant SHEA AT HORIZON RIDGE OWNERS  
7 ASSOCIATION, is and was at all times material herein, a domestic non-profit association.

8 3. Upon information and belief, Defendant TAYLOR MANAGEMENT  
9 ASSOCIATION, is and was at all times material herein, a domestic limited-liability company.

10 4. Upon information and belief, Defendant FIRST AMERICAN EXCHANGE  
11 COMPANY, LLC, is and was at all times material herein, a foreign limited-liability company.

12 5. Upon information and belief, Defendant TAG HORIZON RIDGE, LLC, is and was  
13 at all times material herein, a Nevada limited-liability company.

14 6. Upon information and belief, Defendant THE ALIGNED GROUP LLC, is and was  
15 at all times material herein, a Nevada limited-liability company.

16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction over this matter and venue is proper because the acts,  
18 transactions, and operations giving rise to this Complaint took place in Clark County, Nevada.

19 **GENERAL ALLEGATIONS**

20 8. Horizon Holdings 2900, LLC ("Horizon Holdings" or "Plaintiff") is the owner of  
21 Suite 101 on the property located at 2900 West Horizon Ridge Parkway, Henderson, Nevada  
22 89002 (the "Property").

23 9. Horizon Holdings purchased the Property from TAG Horizon Ridge, LLC ("TAG")  
24 on February 12, 2015, through its qualified intermediary First American Exchange Company, LLC  
25 ("First American").

26 10. Upon information and belief, The Aligned Group LLC ("Aligned Group") also  
27 assisted in the sale of the Property.  
28

11. Horizon Holdings purchased the Property under the good faith belief that it was properly built according to local, state, and federal codes and that its utilities would adequately function, such that it could be used and enjoyed for the particular purposes for which it was purchased.

12. Given Horizon Holdings purchased the Property in February, it was unable to determine at that time the performance it could expect of the air conditioning system during the hot summer months.

13. Horizon Holdings then leased the Property to Quality Nursing, LLC.

14. Horizon Holdings and Quality Nursing, LLC are both managed by Catherine Jordan.

15. Soon after purchase, Horizon Holdings began to experience issues with the heating, ventilation and air conditioning ("HVAC") systems on the Property.

16. Temperatures would fluctuate wildly between 81 degrees Fahrenheit in the summer and 65 degrees Fahrenheit in the winter and cause excessive discomfort to staff and clientele within the Property.

17. During Summer months, Horizon Holdings offices would routinely reach temperatures between 78 degrees Fahrenheit and 81 degrees Fahrenheit despite every effort to regulate and stabilize the temperature both for clients and staff.

18. When Horizon Holdings reported these problems to Shea at Horizon Ridge Owners' Association ("Shea") and the Shea's management company, Taylor Management Association ("Taylor"), it was told that Shea and Taylor were both aware of the HVAC problems, and that Shea's Board had considered revamping the entire HVAC system of the Property, but opted for smaller, less costly, and less effective repairs instead.

19. After months of continued HVAC failures, and inactivity from Shea and Taylor to address the problem, Horizon Holdings hired an expert to investigate why the HVAC at the Property was having so many problems.

20. Horizon Holdings' expert determined that the HVAC system of the Property was improperly sized and not adequate to properly serve the needs of the office space due to the VAV capacity not meeting the system demand.

21. Upon information and belief, the Property's HVAC system was not ever properly commissioned, sized or balanced according to industry standards.

22. Upon being confronted with this report, Shea and Taylor both responded that any HVAC issues were entirely the fault of Horizon Holdings and only Horizon Holdings was responsible for any costs, repairs, or maintenance associated with the HVAC system.

23. Horizon Holdings, as well as Catherine Jordan and Quality Nursing, LLC, has had to spend thousands of dollars to make repairs, obtain expert reports, and address these and other HVAC related issues.

24. Notwithstanding such efforts, the HVAC system requires additional service, which can only be provided by Shea and Taylor.

#### **FIRST CLAIM FOR RELIEF**

*(Breach of Contract Against TAG, First American, and Aligned)*

25. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

26. Defendants TAG, First American, and Aligned, entered into a valid and binding contract, namely the agreement to sell and purchase the Property.

27. Upon information and belief, TAG, First American, and Aligned knowingly or unknowingly sold the Property under false pretenses, namely that the HVAC system was properly commissioned, sized, balanced and functioned adequately to cool and heat the Property.

28. As a result, Plaintiff agreed to the purchase of the Property under these false pretenses.

29. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

30. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SECOND CLAIM FOR RELIEF**

*(Breach of the Warranty of Suitability against all Defendants)*

31. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

32. Plaintiff entered into a contract with TAG, First American and Aligned to purchase the Property.

33. Tag, First American and Aligned knew, or should have known, Plaintiff intended to utilize the Property for commercial purposes where employees and clients would expect a certain level of comfort.

34. Plaintiff relied on Tag, First American and Aligned's knowledge of the Property in that they had a duty to disclose any facts relevant to the suitability of the Property.

35. Defendants Shea and Taylor are contractually obligated to provide services to Plaintiff, ensuring the Property is fit for use in its intended purpose.

36. Shea and Taylor knew, or should have known, Plaintiff utilizes the Property for commercial purposes where employees and clients would expect a certain level of comfort.

37. Plaintiff relied on Shea and Taylor's experience and expertise to ensure the Property, and the building in which it is located, would be maintained in such a manner that it would be suitable for its intended purpose.

38. Shea and Taylor have been notified the Property is performing in a manner suitable to its intended purpose, but have failed to remedy the situation.

39. Due to the failures of Defendants to ensure the suitability of the Property, Plaintiff has been damaged in that it cannot offer its employees and clients a comfortable experience, which directly impacts Plaintiff's ability to function.

40. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to exceed \$15,000, but which amount will be determined at trial.

41. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**THIRD CLAIM FOR RELIEF**

*(Breach of Covenant of Good Faith and Fair Dealing Against TAG, First American, and Aligned)*

42. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

43. Each and every contract in the State of Nevada carries an implied covenant of good faith and fair dealing.

44. Defendants TAG, First American, Aligned and Plaintiff entered into a valid and binding contract, namely the agreement to sell and purchase the Property.

45. Upon information and belief, TAG, First American, and Aligned knowingly sold the Property under false pretenses, namely that the HVAC system was properly commissioned and functioned adequately to cool and heat the property.

46. TAG, First American, and Aligned acted in bad faith by intentionally or negligently misleading Plaintiff as to the condition of the Property.

47. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

48. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**THIRD CLAIM FOR RELIEF**

*(Non-Disclosure against TAG, First American, and Aligned)*

49. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

50. Upon information and belief, Defendants TAG, First American, and Aligned either had or should have had knowledge of the inadequacy of the Property's HVAC system.





61. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**FIFTH CLAIM FOR RELIEF**  
*(Negligence against Taylor and Shea)*

62. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

63. Defendants Taylor and Shea have a duty of care to Plaintiff to act on an informed basis, in good faith, and in the honest belief that their actions are in the best interest of the association.

64. Defendants breached their duty of care by failing to act to rectify the deficiencies of the Property's HVAC system, opting instead for cheaper, but ineffective, solutions.

65. As a result of Defendant's actions, Plaintiff has been forced to spend thousands of dollars on repairs and expert opinions, and additional repairs are still required.

66. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

67. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SIXTH CLAIM FOR RELIEF**  
*(Negligent Undertaking against Taylor)*

68. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

69. Defendant Taylor operates as the management association for Defendant Shea.

70. Upon information and belief, Defendant Taylor has rendered services for consideration on behalf of Defendant Shea.

71. These services, including managing the Shea Owners' Association, have been necessary for the protection of Plaintiff and the Property.

72. Defendant Taylor failed to exercise reasonable care in managing the owners' association and arranging for the servicing and repair of the Property's inadequate HVAC system.

73. Plaintiff has thus been harmed in the amount of several thousand dollars for repair and expert analysis and continues to occupy the Property with inefficient and ineffective HVAC performance, because of their reliance upon Taylor.

74. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

75. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SEVENTH CLAIM FOR RELIEF**  
*(Negligence Per Se against Taylor and Shea)*

76. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

77. Taylor and Shea had a duty to exercise due care with respect to Plaintiff and the common elements of the Property as defined by NRS 116.

78. Plaintiff, as a member of the Owner's Association, belongs to the class of persons NRS 116 was designed to protect.

79. Taylor and Shea breached the duty by violating NRS 116.3107 by failing to abide by the terms of the recorded CC&Rs for the Owners' Association with require Taylor and Shea to perform necessary repairs to common elements and utilities, such as the HVAC system.

80. Because Taylor and Shea have refused to perform necessary repairs, Plaintiff has been forced to spend thousands of dollars on repairs and inspections, and additional repairs are still required.

81. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

82. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**EIGHTH CLAIM FOR RELIEF**  
*(Declaratory Relief against Taylor and Shea)*

83. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

84. The Covenants, Conditions & Restrictions ("CC&R's") obligate the Owners' Association for the control, installation, maintenance and repair of utility services association with the common elements of the Property.

85. Defendants have refused to fulfill this obligation because they have deemed it too costly, and/or because they claim it is Plaintiffs' responsibility.

86. The refusal of Defendants to complete necessary repairs constitutes a justiciable controversy between Defendants and Plaintiffs regarding Plaintiffs' rights pursuant to the CC&R's.

87. Plaintiff asserts the CC&R's give it a legally protected right to have functioning utility services on the Property, and that Taylor and Shea are responsible for the HVAC System.

88. Upon information and belief, Taylor and Shea assert that Plaintiff must maintain the HVAC system.

89. As the Property's HVAC remains unrepaired as of the date of this Complaint, this issue is ripe for judicial determination.

90. Plaintiff seeks a determination from this Court that it is entitled to have Shea and Taylor perform the maintenance and repairs guaranteed by the CC&R's.

91. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

...

**NINTH CLAIM FOR RELIEF***(Unjust Enrichment against Taylor and Shea)*

92. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

93. Plaintiff has spent thousands of dollars on repairs and inspections to the Property's HVAC system even though responsibility for those repairs and costs belong to Defendants Taylor and Shea.

94. Defendants have appreciated those benefits by not having to spend their own funds on the necessary repairs and inspections furnished by Plaintiff.

95. Defendants accepted and retained those benefits.

96. Defendants' refusal to furnish necessary repairs to the Property's HVAC system, as required by the CC&R's, has forced Plaintiff to spend its own money against the principles of fairness and equity.

97. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

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1           98.     Additionally, it has become necessary for Plaintiff to retain the services of an  
2 attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney  
3 fees and costs.

4                                   **PRAYER FOR RELIEF**

5           **WHEREFORE**, Plaintiff prays for judgment against the Defendants, as follows:

6           1.     For general damages in favor of Plaintiffs in excess of \$15,000.00, each, against all  
7 Defendants;

8           2.     For declaratory relief that Defendants' are obligated under the CC&Rs to make the  
9 repairs necessary so that the Property's HVAC system functions properly.

10          3.     For an award of attorney fees and costs; and

11          4.     For any other relief the Court deems just and proper.

12          Dated this 19 day of July, 2017

13  
14                                   **SHUMWAY VAN**

15  
16  
17                                   By: \_\_\_\_\_

**MICHAEL C. VAN, ESQ.**

Nevada Bar No. 3876

**BRENT D. HUNTLEY, ESQ.**

Nevada Bar No. 12405

**RICHARD A STORMS, ESQ.**

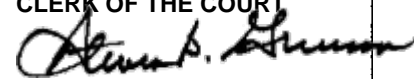
Nevada Bar No. 14283

8985 South Eastern Avenue, Suite 100

Las Vegas, Nevada 89123

*Attorneys for Plaintiff*

# EXHIBIT C



NEOJ  
JOHN T. KEATING  
Nevada Bar No. 6373  
COLIN P. CAVANAUGH  
Nevada Bar No. 13842  
**KEATING** LAW GROUP  
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[ccavanaugh@keatinglg.com](mailto:ccavanaugh@keatinglg.com)  
Attorneys for Defendants  
*TAG HORIZON RIDGE, LLC and*  
*THE ALIGNED GROUP, LLC and*  
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada  
Limited Liability Company

CASE NO.: A-17-758435-C  
DEPT. NO.: 22

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.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Cross-Claimant,

vs.

TAG HORIZON RIDGE, LLC, a Nevada Limited-  
Liability Company; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

NOTICE OF ENTRY OF ORDER

1 Cross-Defendants.

2 FIRST AMERICAN EXCHANGE COMPANY, LLC,  
3 a Foreign Limited-Liability Company,

4 Third-Party Plaintiff,

5 vs.

6 TAG FUND I, LLC, a Nevada Limited-Liability  
7 Company,

8 Third-Party Defendant.

9 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

10 PLEASE TAKE NOTICE that an Order Granting Defendants Tag Horizon Ridge, LLC and  
11 The Aligned Group, LLC's Motion to Dismiss has been entered in the above referenced matter.  
12 A file-stamped copy of said Order is attached.

13 DATED this 2 day of January, 2018.

14 KEATING LAW GROUP

15  
16   
17 COLIN P. CAVANAUGH  
18 Nevada Bar No. 13842  
19 9130 West Russell Road, Suite 200  
20 Las Vegas, Nevada 89148  
21 Attorneys for Defendants  
22 TAG HORIZON RIDGE, LLC and  
23 THE ALIGNED GROUP, LLC and  
24 Third-Party Defendant TAG FUND I, LLC  
25  
26  
27  
28



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 of the Eighth Judicial District Court, I hereby certify that I am an employee of K E A T I N G LAW GROUP and that on the

9th day of January, 2018, I served the above and foregoing NOTICE OF ENTRY OF ORDER

on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

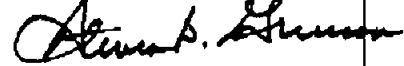
MICHAEL C. VAN, ESQ, #3876  
BRENT D. HUNTLEY, ESQ, #12405  
RICHARD A STORMS, ESQ, #14283  
SHUMWAY VAN  
8985 South Eastern Avenue, Suite 100  
Las Vegas, Nevada 89123  
Attorneys for Plaintiff

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BRIAN K. WALTERS, ESQ.  
300 S. 4th Street, Suite 150  
Las Vegas, Nevada 89101  
Attorneys for Shea at Horizon Ridge Owners Association  
& Taylor Management Association

*KOLESAR & LEATHAM*  
AARON R. MAURICE, ESQ.  
BRITTANY WOOD, ESQ.  
400 South Rampart Blvd., Suite 400  
Las Vegas, Nevada 89145  
Attorneys for First American Exchange Company, LLC

  
An Employee of K E A T I N G LAW GROUP

KEATING LAW GROUP  
9130 W. RUSSELL RD., SUITE 200  
LAS VEGAS, NEVADA 89148



ORDR  
JOHN T. KEATING  
Nevada Bar No. 6373  
COLIN P. CAVANAUGH  
Nevada Bar No. 13842  
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[ccavanaugh@keatinglg.com](mailto:ccavanaugh@keatinglg.com)  
Attorneys for Defendants  
*TAG HORIZON RIDGE, LLC and*  
*THE ALIGNED GROUP, LLC and*  
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada  
Limited Liability Company

CASE NO.: A-17-758435-C  
DEPT. NO.: 22

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,

ORDER GRANTING DEFENDANTS TAG  
HORIZON RIDGE, LLC and THE ALIGNED  
GROUP, LLC'S MOTION TO DISMISS

Defendants.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Cross-Claimant,

vs.

TAG HORIZON RIDGE, LLC, a Nevada Limited-  
Liability Company; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

KEATING LAW GROUP  
9130 W. RUSSELL RD., SUITE 200  
LAS VEGAS, NEVADA 89148

Cross-Defendants.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-Liability  
Company,

Third-Party Defendant.

Defendants TAG Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss Plaintiff's Complaint, filed September 12, 2017, was heard Tuesday, November 28, 2017 at 10:30 a.m. Colin Cavanaugh, Esq. of KEATING Law Group appeared for Defendants TAG Horizon Ridge, LLC and The Aligned Group, LLC. Michael Van, Esq. and Brent Huntly, Esq. of SHUMWAY VAN, and Catherine Jordan appeared for Plaintiff.

The Court having reviewed the papers and pleadings on file herein and having carefully considered the same; the Court having heard the oral arguments of counsel; the Court being fully advised in the premises, and good cause appearing therefore:

IT IS HEREBY ORDERED that the Motion to Dismiss Plaintiff's Complaint is GRANTED IN ITS ENTIRETY.

More specifically, at the hearing, this Court granted the Motion to Dismiss as it applied to The Aligned Group, LLC in its entirety, but took the matter under advisement regarding the claims brought against TAG Horizon Ridge, LLC.

On December 18, 2017, this Court issued a Minute Order granting the Motion to Dismiss as it applied to TAG Horizon Ridge, LLC in its entirety. The Minute Order, which is attached hereto as Exhibit 1, provides:

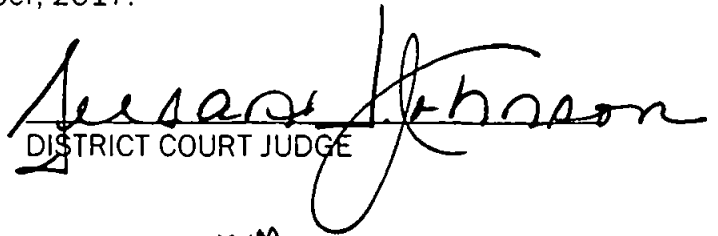
IT IS ORDERED that Defendants' Motion to Dismiss as it relates to the First Cause of Action (Breach of Contract) against TAG Horizon Ridge, LLC is GRANTED. Pursuant to Purchase and Sale Agreement & Escrow Instructions (hereinafter referred to as the "Agreement") entered into by Plaintiff Horizon Holdings 2900, LLC and TAG Horizon Ridge, LLC on November

1 14, 2014, Plaintiff agreed to buy the subject property "as is," with a closing date of February  
2 22, 2015. *See* Section 5 of the Agreement. Given its "as is" condition, Plaintiff and Defendant  
3 understood and agreed the purchase price had been adjusted by prior negotiations; the  
4 parties further noted, in capitalized wording, it was "not contemplated that the purchase price  
5 will be increased if costs to buyer associated with the assets prove to be less than expected  
6 or will the purchase price be reduced if buyer's plan for the assets leads to higher cost  
7 projections. The sole and exclusive remedy of buyer will be to terminate this agreement as  
8 provided herein prior to the closing date." *See* Section 6 of the Agreement. Plaintiff was  
9 accorded a 30-day investigation period in which "to review all aspects of the Property." *See*  
10 Section 7 of the Agreement. If there was a failure of any condition, Plaintiff had the opportunity  
11 to waive them, or have its entire deposit from Defendant (via the title company) refunded. *Id.*;  
12 *also see* Section 14(a) [buyer's sole and exclusive remedies in the event of seller's default is  
13 to (1) enforce specific performance of the agreement or (2) terminate the agreement and  
14 receive a refund of the deposit.] While Plaintiff now claims the HVAC system is not satisfactory  
15 in that it is too small to cool or heat the particular space and such could not have been found  
16 by due diligence inspection, Plaintiff agreed to the "as is" purchase and there would be no  
17 adjustment as to price. Notably, Plaintiff also agreed to release Defendant (again, the Seller)  
18 from any claims it may have for constructional defects, errors, omissions or other conditions,  
19 latent or otherwise affecting the property. *See* Section 6(b) of the Agreement.

20 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss as it relates to the  
21 Second Cause of Action (Breach of Warranty of Suitability) against TAG Horizon Ridge, LLC is  
22 GRANTED. This Court not only incorporates its discussion above concerning the First Cause of  
23 Action, but notes Plaintiff, as Buyer, agreed and acknowledge it was purchasing the property  
24 "as is," and "that Seller shall not be deemed to have made any representations or warranties,"  
25 except as provided in Section 5 of the Agreement. None of these exceptions relate to  
26 constructional deficiencies, errors or other conditions, including the HVAC's capacity or ability  
27 to adequately cool or heat the space.  
28

IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Third Cause of Action (Breach of Covenant of Good Faith and Fair Dealing), Second Third Cause of Action (Non-Disclosure) and Fourth Cause of Action (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.

DATED this 30<sup>th</sup> day of December, 2017.


  
DISTRICT COURT JUDGE  
y.m.

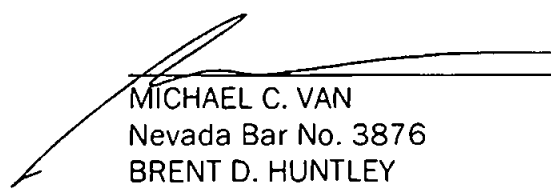
Submitted by:

Approved as to Form and Content:

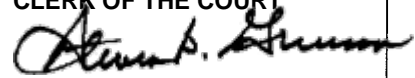
KEATING LAW GROUP

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Attorneys for Defendants  
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*THE ALIGNED GROUP, LLC and*  
Third-Party Defendant *TAG FUND I, LLC*

  
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Nevada Bar No. 12405  
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Attorneys for Plaintiff  
*HORIZON HOLDINGS 2900, LLC*

# EXHIBIT D



1 **NEOJ**  
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2 Nevada Bar No. 006412  
BRITTANY WOOD, ESQ.  
3 Nevada Bar No. 007562  
**KOLESAR & LEATHAM**  
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Facsimile: (702) 362-9472  
6 E-Mail: amaurice@klnevada.com  
bwood@klnevada.com  
7 Attorneys for Defendant  
FIRST AMERICAN EXCHANGE COMPANY,  
8 LLC

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

11 \* \* \*

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

13 Plaintiffs,

14 vs.

15 SHEA AT HORIZON RIDGE OWNERS  
16 ASSOCIATION, a Domestic Non-Profit  
Corporation; TAYLOR MANAGEMENT  
17 ASSOCIATION, a Nevada Limited-Liability  
Company; FIRST AMERICAN EXCHANGE  
18 COMPANY, LLC, a Foreign Limited-Liability  
Company; TAG HORIZON RIDGE, LLC, a  
19 Nevada Limited-Liability Company; and the  
ALIGNED GROUP LLC, a Nevada Limited  
20 Liability Company,

21 Defendants.

22 FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
23 Company,

24 Cross-Claimant,

25 vs.

26 TAG HORIZON RIDGE, LLC, a Nevada  
Limited-Liability Company; DOES I through X;  
27 and ROE CORPORATIONS I through X,  
inclusive,

28 Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

**NOTICE OF ENTRY OF ORDER**

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400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-  
Liability Company,

Third-Party Defendant.

**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order was entered with the above court on the 8<sup>th</sup> day of March,  
2018, a copy of which is attached hereto.

DATED this 8<sup>th</sup> day of March, 2018.

**KOLESAR & LEATHAM**

By

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

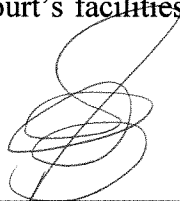
Attorneys for Defendant, FIRST AMERICAN  
EXCHANGE COMPANY, LLC



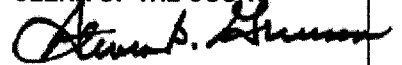
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 8<sup>th</sup> day of March, 2018, I caused to be served a true and correct copy of foregoing **NOTICE OF ENTRY OF ORDER** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

  
An Employee of KOLESAR & LEATHAM

KOLESAR & LEATHAM  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472



1 **SODW**  
2 AARON R. MAURICE, ESQ.  
3 Nevada Bar No. 006412  
4 BRITTANY WOOD, ESQ.  
5 Nevada Bar No. 007562  
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11 E-Mail: amaurice@klnevada.com  
12 bwood@klnevada.com  
13 Attorneys for Defendant  
14 **FIRST AMERICAN EXCHANGE COMPANY,**  
15 **LLC**

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

11 \* \* \*

12 **HORIZON HOLDINGS 2900, LLC, a Nevada**  
13 **limited liability company,**

14 **Plaintiffs,**

15 **vs.**

16 **SHEA AT HORIZON RIDGE OWNERS**  
17 **ASSOCIATION, a Domestic Non-Profit**  
18 **Corporation; TAYLOR MANAGEMENT**  
19 **ASSOCIATION, a Nevada Limited-Liability**  
20 **Company; FIRST AMERICAN EXCHANGE**  
21 **COMPANY, LLC, a Foreign Limited-Liability**  
22 **Company; TAG HORIZON RIDGE, LLC, a**  
23 **Nevada Limited-Liability Company; and the**  
24 **ALIGNED GROUP LLC, a Nevada Limited**  
25 **Liability Company,**

26 **Defendants.**

27 **FIRST AMERICAN EXCHANGE**  
28 **COMPANY, LLC, a Foreign Limited-Liability**  
29 **Company,**

30 **Cross-Claimant,**

31 **vs.**

32 **TAG HORIZON RIDGE, LLC, a Nevada**  
33 **Limited-Liability Company; DOES I through X;**  
34 **and ROE CORPORATIONS I through X,**  
35 **inclusive,**

36 **Cross-Defendants.**

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

**DEPT NO. XXII**

**STIPULATION & ORDER FOR**  
**DISMISSAL WITH PREJUDICE AS TO**  
**DEFENDANT FIRST AMERICAN**  
**EXCHANGE COMPANY, LLC. only**

**KOLESAR & LEATHAM**  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

KOLESAR & LEATHAM  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-  
Liability Company,

Third-Party Defendant.


**STIPULATION & ORDER FOR DISMISSAL WITH PREJUDICE**

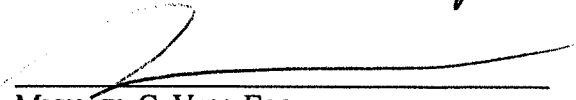
IT IS HEREBY STIPULATED by and between Plaintiff, Horizon Holdings 2900, LLC, by and through its attorneys of record, the law firm of Shumway Van, and Defendant, First American Exchange Company, LLC ("FAEC"), by and through its attorneys of record, the law firm of Kolesar & Leatham, that an order may be entered dismissing this action against FAEC, and each and all of the claims and causes of action asserted herein against FAEC, with prejudice, with each party to bear their own attorney's fees and costs. This Stipulation for Dismissal is limited to Plaintiff's claims against FAEC, and does not dismiss any other party or any claim for relief by Plaintiff against any other party other than FAEC nor does it dismiss any claims FAEC has asserted against any other party.

A Scheduling Order has not been entered. As this Stipulation does not result in the dismissal of all claims asserted herein, no deadlines will be impacted by the entry of this Order.

Dated this 28<sup>th</sup> day of February, 2018

Dated this 27 day of February, 2018

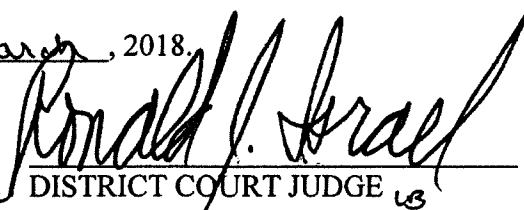
  
AARON R. MAURICE, ESQ.  
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Company, LLC

  
MICHAEL C. VAN, ESQ.  
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Nevada Bar No. 12405  
8985 South Eastern Avenue, Suite 100  
Las Vegas, Nevada 89123  
Attorneys for Horizon Holdings 2900, LLC

**ORDER**

Based upon the stipulation of the parties, and good cause appearing, it is hereby ORDERED that Plaintiff's claims against FAEC are hereby dismissed, with prejudice, with Plaintiff bearing no responsibility for FAEC's fees and costs. This Order is limited to Plaintiff's claims against FAEC, and does not dismiss any other party or any claim for relief by Plaintiff against any party other than FAEC or FAEC's claims against Tag Horizon Ridge, LLC or FAEC's claims against Tag Fund I, LLC.

IT IS SO ORDERED this 19 day of March, 2018.

  
for DISTRICT COURT JUDGE LS  
A-17-758435-C

Submitted by:

**KOLESAR & LEATHAM**

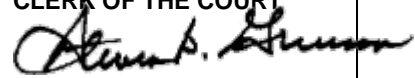
By 

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# EXHIBIT E



NEO  
ROBERT E. SCHUMACHER, ESQ.  
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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 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**

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**NOTICE OF ENTRY OF 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**

PLEASE TAKE NOTICE that on February 4, 2020, an **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** was entered in the above-entitled matter, a copy of  
which is attached hereto as **Exhibit "1."**

DATED this 4<sup>th</sup> day of February 2020.

**GORDON REES SCULLY  
MANSUKHANI LLP**

*/s/ Brian K. Walters*

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

300 South 4th 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 4<sup>th</sup> day of February 2020, I served a true and correct copy of **NOTICE OF ENTRY OF 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** via the Court's Electronic Filing/Service system upon all parties on the E-Service Master List as follows:

Eric Zimbelman, Esq.  
Nevada Bar No. 9407  
**PEEL BRIMLEY, LLP**  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
Email: [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
*Attorneys for Plaintiff*  
**HORIZON HOLDINGS 2900, LLC**

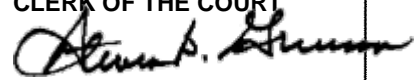
/s/ Andrea Montero

An employee of GORDON REES SCULLY  
MANSUKHANI LLP



# EXHIBIT 1

# EXHIBIT 1



**ORDR**  
ROBERT E. SCHUMACHER, ESQ.  
Nevada Bar No. 7504  
BRIAN K. WALTERS, ESQ.  
Nevada Bar No. 9711  
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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

**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**

**Hearing Date:** January 21, 2020  
**Hearing Time:** 8:30 a.m.

On January 21, 2020, a hearing was conducted in Dept. XXII before the Hon. Susan Johnson on Defendants Taylor Association Management (erroneously named as "TAYLOR MANAGEMENT ASSOCIATION) and Defendant Shea at Horizon Ridge Owners' Association ("Association") (collectively, "Defendants") Motion for Partial Summary Judgment ("Motion"). Brian K. Walters, Esq. of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf of Defendants. Eric Zimbelman, Esq. of PEEL BRIMLEY, LLP appeared on behalf of Plaintiff

1 HORIZON HOLDINGS 2900, LLC. ("Plaintiff").

2 After reviewing the Motion, Plaintiff's Opposition, and Defendant's Reply and  
3 arguments of counsel during the hearing, and for good cause appearing:

4 **THE COURT HEREBY FINDS** that Defendant's Motion requested summary judgment  
5 as to Plaintiff's Fourth Claim for Relief (Negligence) and Fifth Claim for Relief (Negligent  
6 Undertaking) against Defendants based on the economic loss doctrine;

7 **THE COURT FURTHER FINDS** that Plaintiff does not oppose entry of summary  
8 judgment in favor of Defendants as to Plaintiff's Fourth Claim for Relief (Negligence) and Fifth  
9 Claim for Relief (Negligent Undertaking) against Defendants;

10 **THE COURT FURTHER FINDS** that, since Plaintiff's Fourth Claim for Relief  
11 (Negligence) and Fifth Claim for Relief (Negligent Undertaking) are the only causes of action  
12 alleged against TAM, entry of summary judgment in favor of TAM on these claims for relief  
13 results in its complete dismissal from this case;

14 **THE COURT FURTHER FINDS** that Plaintiff may proceed against the Association on  
15 its First Claim for Relief (Breach of Contract); Second Claim for Relief (Breach of the Covenant  
16 of Good Faith and Fair Dealing), and Third Claim for Relief (Declaratory Relief);

17 **THE COURT FURTHER FINDS** that Defendants requested partial summary judgment  
18 with respect to their Eleventh Affirmative Defense ("Plaintiff failed to mitigate its damages.");

19 **THE COURT FURTHER FINDS** that genuine issues of material fact exist as to  
20 Defendants' affirmative defense that Plaintiff failed to mitigate its damages;

21 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendants'  
22 Motion is Granted in Part and Denied in Part;

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Summary  
24 Judgment in favor of Defendants shall be entered with respect to Plaintiff's Fourth Claim for  
25  
26  
27  
28

Relief (Negligence) and Fifth Claim for Relief (Negligent Undertaking);

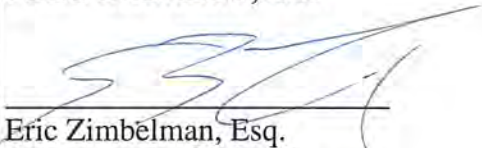
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants' Motion for Partial Summary Judgment is denied without prejudice as it relates to Defendants' Eleventh Affirmative Defense ("Plaintiff failed to mitigate its damages."). Defendants may renew the Motion under NRCP 52(c) at the close of Plaintiff's case in chief.

DATED this 31<sup>st</sup> day of January, 2020

  
DISTRICT COURT JUDGE

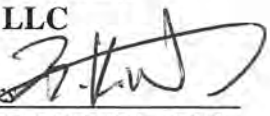
*Approved as to form and content:*

**PEEL BRIMLEY, LLP**

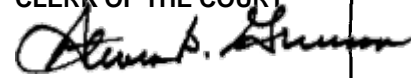
  
Eric Zimbelman, Esq.  
*Attorneys for Plaintiff*  
*Horizon Holdings 2900, LLC*

*Respectfully submitted by:*

**GORDON REES SCULLY  
MANSUKHANI, LLC**

  
/s/ Brian K. Walters  
ROBERT E. SCHUMACHER, ESQ.  
Nevada Bar No. 7504  
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300 South 4<sup>th</sup> Street, Suite 1550  
Las Vegas, Nevada 89101  
*Attorneys for Defendants,*  
*Taylor Association Management,*  
*and Shea at Horizon Ridge Owners' Association*

# EXHIBIT F

**COMP**

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Nevada Bar No. 3876

BRENT D. HUNTLEY, ESQ.

Nevada Bar No. 12405

RICHARD A STORMS, ESQ.

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*Attorneys for Plaintiff***DISTRICT COURT****CLARK COUNTY, NEVADA**HORIZON HOLDINGS 2900, LLC, a Nevada  
limited liability company;

Plaintiffs,

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

**FIRST AMENDED COMPLAINT****FIRST AMENDED COMPLAINT**

Plaintiff HORIZON HOLDINGS 2900, LLC, by and through its counsel of record, the law firm of SHUMWAY VAN, complains, alleges, and avers against Defendants SHEA AT HORIZON RIDGE OWNERS ASSOCIATION, FIRST AMERICAN EXCHANGE

1 COMPANY, LLC, TAYLOR MANAGEMENT ASSOCIATION, TAG HORIZION RIDGE,  
2 LLC, and THE ALIGNED GROUP LLC, as follows:

3 **THE PARTIES**

4 1. At all times relevant hereto, Plaintiff HORIZON HOLDINGS 2900, LLC, is and  
5 was a Nevada limited liability company.

6 2. Upon information and belief, Defendant SHEA AT HORIZON RIDGE OWNERS  
7 ASSOCIATION, is and was at all times material herein, a domestic non-profit association.

8 3. Upon information and belief, Defendant TAYLOR MANAGEMENT  
9 ASSOCIATION, is and was at all times material herein, a domestic limited-liability company.

10 4. Upon information and belief, Defendant FIRST AMERICAN EXCHANGE  
11 COMPANY, LLC, is and was at all times material herein, a foreign limited-liability company.

12 5. Upon information and belief, Defendant TAG HORIZON RIDGE, LLC, is and was  
13 at all times material herein, a Nevada limited-liability company.

14 6. Upon information and belief, Defendant THE ALIGNED GROUP LLC, is and was  
15 at all times material herein, a Nevada limited-liability company.

16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction over this matter and venue is proper because the acts,  
18 transactions, and operations giving rise to this First Amended Complaint took place in Clark  
19 County, Nevada.

20 **GENERAL ALLEGATIONS**

21 8. Horizon Holdings 2900, LLC ("Horizon Holdings" or "Plaintiff") is the owner of  
22 Suite 101 on the property located at 2900 West Horizon Ridge Parkway, Henderson, Nevada  
23 89002 (the "Property").

24 9. Horizon Holdings purchased the Property from TAG Horizon Ridge, LLC ("TAG")  
25 on February 12, 2015, through its qualified intermediary First American Exchange Company, LLC  
26 ("First American").

27 10. Upon information and belief, The Aligned Group LLC ("Aligned Group") also  
28 assisted in the sale of the Property.

1           11.     Horizon Holdings purchased the Property under the good faith belief that it was  
2 properly built according to local, state, and federal codes and that its utilities would adequately  
3 function, such that it could be used and enjoyed for the particular purposes for which it was  
4 purchased.

5           12.     Given Horizon Holdings purchased the Property in February, it was unable to  
6 determine at that time the performance it could expect of the air conditioning system during the  
7 hot summer months.

8           13.     Horizon Holdings then leased the Property to Quality Nursing, LLC.

9           14.     Horizon Holdings and Quality Nursing, LLC are both managed by Catherine  
10 Jordan.

11           15.     Soon after purchase, Horizon Holdings began to experience issues with the heating,  
12 ventilation and air conditioning ("HVAC") systems on the Property.

13           16.     Temperatures would fluctuate wildly between 81 degrees Fahrenheit in the summer  
14 and 65 degrees Fahrenheit in the winter and cause excessive discomfort to staff and clientele within  
15 the Property.

16           17.     During Summer months, Horizon Holdings offices would routinely reach  
17 temperatures between 78 degrees Fahrenheit and 81 degrees Fahrenheit despite every effort to  
18 regulate and stabilize the temperature both for clients and staff.

19           18.     When Horizon Holdings reported these problems to Shea at Horizon Ridge  
20 Owners' Association ("Shea") and the Shea's management company, Taylor Management  
21 Association ("Taylor"), it was told that Shea and Taylor were both aware of the HVAC problems,  
22 and that Shea's Board had considered revamping the entire HVAC system of the Property, but  
23 opted for smaller, less costly, and less effective repairs instead.

24           19.     After months of continued HVAC failures, and inactivity from Shea and Taylor to  
25 address the problem, Horizon Holdings hired an expert to investigate why the HVAC at the  
26 Property was having so many problems.



20. Horizon Holdings' expert determined that the HVAC system of the Property was improperly sized and not adequate to properly serve the needs of the office space due to the VAV capacity not meeting the system demand.

21. Upon information and belief, the Property's HVAC system was not ever properly commissioned, sized or balanced according to industry standards.

22. Upon being confronted with this report, Shea and Taylor both responded that any HVAC issues were entirely the fault of Horizon Holdings and only Horizon Holdings was responsible for any costs, repairs, or maintenance associated with the HVAC system.

23. Horizon Holdings, as well as Catherine Jordan and Quality Nursing, LLC, has had to spend thousands of dollars to make repairs, obtain expert reports, and address these and other HVAC related issues.

24. Notwithstanding such efforts, the HVAC system requires additional service, which can only be provided by Shea and Taylor.

#### **FIRST CLAIM FOR RELIEF**

*(Breach of Contract Against TAG, First American, and Aligned)*

25. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

26. Defendants TAG, First American, and Aligned, entered into a valid and binding contract, namely the agreement to sell and purchase the Property.

27. Upon information and belief, TAG, First American, and Aligned knowingly or unknowingly sold the Property under false pretenses, namely that the HVAC system was properly commissioned, sized, balanced and functioned adequately to cool and heat the Property.

28. As a result, Plaintiff agreed to the purchase of the Property under these false pretenses.

29. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

30. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SECOND CLAIM FOR RELIEF**

*(Breach of the Warranty of Suitability against all Defendants)*

31. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

32. Plaintiff entered into a contract with TAG, First American and Aligned to purchase the Property.

33. Tag, First American and Aligned knew, or should have known, Plaintiff intended to utilize the Property for commercial purposes where employees and clients would expect a certain level of comfort.

34. Plaintiff relied on Tag, First American and Aligned's knowledge of the Property in that they had a duty to disclose any facts relevant to the suitability of the Property.

35. Defendants Shea and Taylor are contractually obligated to provide services to Plaintiff, ensuring the Property is fit for use in its intended purpose.

36. Shea and Taylor knew, or should have known, Plaintiff utilizes the Property for commercial purposes where employees and clients would expect a certain level of comfort.

37. Plaintiff relied on Shea and Taylor's experience and expertise to ensure the Property, and the building in which it is located, would be maintained in such a manner that it would be suitable for its intended purpose.

38. Shea and Taylor have been notified the Property is performing in a manner suitable to its intended purpose, but have failed to remedy the situation.

39. Due to the failures of Defendants to ensure the suitability of the Property, Plaintiff has been damaged in that it cannot offer its employees and clients a comfortable experience, which directly impacts Plaintiff's ability to function.

40. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to exceed \$15,000, but which amount will be determined at trial.

41. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**THIRD CLAIM FOR RELIEF**

*(Breach of Covenant of Good Faith and Fair Dealing Against TAG, First American, and Aligned)*

42. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

43. Each and every contract in the State of Nevada carries an implied covenant of good faith and fair dealing.

44. Defendants TAG, First American, Aligned and Plaintiff entered into a valid and binding contract, namely the agreement to sell and purchase the Property.

45. Upon information and belief, TAG, First American, and Aligned knowingly sold the Property under false pretenses, namely that the HVAC system was properly commissioned and functioned adequately to cool and heat the property.

46. TAG, First American, and Aligned acted in bad faith by intentionally or negligently misleading Plaintiff as to the condition of the Property.

47. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

48. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**THIRD CLAIM FOR RELIEF**

*(Non-Disclosure against TAG, First American, and Aligned)*

49. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

50. Upon information and belief, Defendants TAG, First American, and Aligned either had or should have had knowledge of the inadequacy of the Property's HVAC system.



61. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**FIFTH CLAIM FOR RELIEF**  
*(Negligence against Taylor and Shea)*

62. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

63. Defendants Taylor and Shea have a duty of care to Plaintiff to act on an informed basis, in good faith, and in the honest belief that their actions are in the best interest of the association.

64. Defendants breached their duty of care by failing to act to rectify the deficiencies of the Property's HVAC system, opting instead for cheaper, but ineffective, solutions.

65. As a result of Defendant's actions, Plaintiff has been forced to spend thousands of dollars on repairs and expert opinions, and additional repairs are still required.

66. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

67. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SIXTH CLAIM FOR RELIEF**  
*(Negligent Undertaking against Taylor)*

68. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

69. Defendant Taylor operates as the management association for Defendant Shea.

70. Upon information and belief, Defendant Taylor has rendered services for consideration on behalf of Defendant Shea.

71. These services, including managing the Shea Owners' Association, have been necessary for the protection of Plaintiff and the Property.

72. Defendant Taylor failed to exercise reasonable care in managing the owners' association and arranging for the servicing and repair of the Property's inadequate HVAC system.

73. Plaintiff has thus been harmed in the amount of several thousand dollars for repair and expert analysis and continues to occupy the Property with inefficient and ineffective HVAC performance, because of their reliance upon Taylor.

74. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

75. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**SEVENTH CLAIM FOR RELIEF**  
*(Negligence Per Se against Taylor and Shea)*

76. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

77. Taylor and Shea had a duty to exercise due care with respect to Plaintiff and the common elements of the Property as defined by NRS 116.

78. Plaintiff, as a member of the Owner's Association, belongs to the class of persons NRS 116 was designed to protect.

79. Taylor and Shea breached the duty by violating NRS 116.3107 by failing to abide by the terms of the recorded CC&Rs for the Owners' Association with require Taylor and Shea to perform necessary repairs to common elements and utilities, such as the HVAC system.

80. Because Taylor and Shea have refused to perform necessary repairs, Plaintiff has been forced to spend thousands of dollars on repairs and inspections, and additional repairs are still required.

81. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

82. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**EIGHTH CLAIM FOR RELIEF**  
*(Declaratory Relief against Taylor and Shea)*

83. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

84. The Covenants, Conditions & Restrictions ("CC&R's") obligate the Owners' Association for the control, installation, maintenance and repair of utility services association with the common elements of the Property.

85. Defendants have refused to fulfill this obligation because they have deemed it too costly, and/or because they claim it is Plaintiffs' responsibility.

86. The refusal of Defendants to complete necessary repairs constitutes a justiciable controversy between Defendants and Plaintiffs regarding Plaintiffs' rights pursuant to the CC&R's.

87. Plaintiff asserts the CC&R's give it a legally protected right to have functioning utility services on the Property, and that Taylor and Shea are responsible for the HVAC System.

88. Upon information and belief, Taylor and Shea assert that Plaintiff must maintain the HVAC system.

89. As the Property's HVAC remains unrepaired as of the date of this First Amended Complaint, this issue is ripe for judicial determination.

90. Plaintiff seeks a determination from this Court that it is entitled to have Shea and Taylor perform the maintenance and repairs guaranteed by the CC&R's.

91. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

...

**NINTH CLAIM FOR RELIEF**  
*(Unjust Enrichment against Taylor and Shea)*

92. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

93. Plaintiff has spent thousands of dollars on repairs and inspections to the Property's HVAC system even though responsibility for those repairs and costs belong to Defendants Taylor and Shea.

94. Defendants have appreciated those benefits by not having to spend their own funds on the necessary repairs and inspections furnished by Plaintiff.

95. Defendants accepted and retained those benefits.

96. Defendants' refusal to furnish necessary repairs to the Property's HVAC system, as required by the CC&R's, has forced Plaintiff to spend its own money against the principles of fairness and equity.

97. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount in excess of \$15,000, but which amount will be determined at trial.

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98. Additionally, it has become necessary for Plaintiff to retain the services of an attorney to prosecute this matter and Plaintiff is entitled to an award of her reasonable attorney fees and costs.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment against the Defendants, as follows:

1. For general damages in favor of Plaintiffs in excess of \$15,000.00, each, against all Defendants;
2. For declaratory relief that Defendants' are obligated under the CC&Rs to make the repairs necessary so that the Property's HVAC system functions properly.
3. For an award of attorney fees and costs; and
4. For any other relief the Court deems just and proper.

Dated this \_\_\_\_ day of July, 2017

**SHUMWAY VAN**

By: 

MICHAEL C. VAN, ESQ.

Nevada Bar No. 3876

BRENT D. HUNTLEY, ESQ.

Nevada Bar No. 12405

RICHARD A STORMS, ESQ.

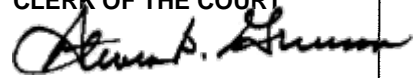
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8985 South Eastern Avenue, Suite 100

Las Vegas, Nevada 89123

*Attorneys for Plaintiff*

# EXHIBIT G



1 **ACOM**  
2 ERIC ZIMBELMAN, ESQ.  
3 Nevada Bar No. 9407  
4 **PEEL BRIMLEY LLP**  
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10 *Attorneys for Plaintiff*  
11 **HORIZON HOLDINGS 2900, LLC**

12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**  
15

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

18 Plaintiff,

19 vs.

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

25 Defendants.  
26

CASE NO.: A-17-758-435-C  
DEPT. NO.: XXII

27 **HORIZON HOLDINGS 2900, LLC'S**  
28 **SECOND AMENDED COMPLAINT**

1 Plaintiff, HORIZON HOLDINGS 2900, LLC ("Horizon), by and through its counsel of  
2 record the law firm of PEEL BRIMLEY LLP, complains, alleges, and avers against Defendants  
3 SHEA AT HORIZON RIDGE OWNERS ASSOCIATION, and TAYLOR MANAGEMENT  
4 ASSOCIATION as follows:

5 **THE PARTIES**

6 1. At all times relevant hereto, Plaintiff HORIZON HOLDINGS 2900, LLC, is and was  
7 a Nevada limited liability company.

8 2. Upon information and belief, Defendant SHEA AT HORIZON RIDGE OWNERS  
9 ASSOCIATION ("the Association"), is and was at all times material herein, a domestic non-profit  
10 association. Upon information and belief, Defendant TAYLOR MANAGEMENT ASSOCIATION

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
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1 (“Taylor”), is and was at all times material herein, a domestic limited-liability company. As more fully  
2 discussed below, the Association and Taylor, by and through the powers and obligations the  
3 Association has granted to Taylor and Taylor has accepted and exercised, govern and control  
4 operations of the Project and Property (defined below).

### 5 **JURISDICTION AND VENUE**

6 3. This Court has jurisdiction over this matter and venue is proper because (i) the acts,  
7 transactions, and operations giving rise to this First Amended Complaint took place in Clark County  
8 Nevada, (ii) the Defendants reside in and/or conduct business in Clark County Nevada and (iii) the  
9 subject matter of this action relates to real property in Clark County, Nevada.

### 10 **GENERAL ALLEGATIONS**

11 4. Horizon Holdings 2900, LLC ("Horizon Holdings" or "Plaintiff") is the owner of Suite  
12 101 (“the HH Unit”) on the property located at 2900 West Horizon Ridge Parkway, Henderson, Nevada  
13 89002 (the "Property"). The Property, and an adjacent property and building known as 2904 West  
14 Horizon Ridge Parkway, Henderson, Nevada 89002 were developed together and are subject to and  
15 defined by the Declaration (defined below) as “the Project.”

16 5. The Project, and all units within the Property, is subject to a Declaration of Commercial  
17 Office Subdivision Covenants, Conditions & Restrictions recorded in the Clark County Records as  
18 Instrument No. 20050613-0001310 (“the Declaration”). The covenants, conditions, restrictions,  
19 reservations, easements, and equitable servitudes set forth in the Declaration are binding upon and may  
20 be enforced by the Association and each Unit owner, successors and assigns, including Horizon  
21 Holdings.

22 6. Among other things, the Declaration assures each Unit Owner an "undivided pro-rata  
23 fractional interest as tenant in common in the common elements" and the "use and enjoyment of all  
24 other common elements." “Common Elements” are defined by the Declaration as “all portions of the  
25 Project, other than the Units, and all improvements thereon.” Common Elements are more specifically  
26 defined to include the “heating, ventilation and air conditioning, as installed by Declarant for common  
27 use of Units within each Building (but not including HVAC which serves a single Unit exclusively).”  
28

1 "HVAC" is defined by the Declaration as "heating, ventilation, and/or air conditioning equipment and  
2 systems."

3 7. Horizon Holdings purchased the Property on February 12, 2015 under the good faith  
4 belief that (i) it was properly built according to local, state, and federal codes and that its utilities would  
5 adequately function, such that it could be used and enjoyed for the particular purposes for which it was  
6 purchased and (ii) that Horizon Holdings would receive the full benefit of the uses, rights and privileges  
7 afforded it by the Declaration, including the HVAC.

8 8. Inspections conducted by or for Horizon Holdings before closing indicated that the  
9 HVAC appeared to be operating but because Horizon Holdings purchased the Property in February it  
10 was impossible to replicate and determine the precise performance it could expect of the air  
11 conditioning system during the hot summer months.

12 9. Horizon Holdings leased the Property to Quality Nursing, LLC ("Quality Nursing"),  
13 Physicians To Home, LLC ("Physicians") and Jordan Medical Aesthetics, LLC ("Jordan Medical").

14 10. Soon after purchase, Horizon Holdings and its tenants began to experience issues  
15 with the heating, ventilation and air conditioning ("HVAC") systems on the Property.

16 11. Temperatures fluctuate wildly between 89 degrees Fahrenheit in the summer and 45  
17 degrees Fahrenheit in the winter and cause excessive discomfort to tenants, staff and clientele  
18 within the Property.

19 12. During Summer months, Horizon Holdings offices would routinely reach  
20 temperatures as high as 89 degrees Fahrenheit despite every effort to regulate and stabilize the  
21 temperature.

22 13. When Horizon Holdings reported these problems to the Association and Taylor it  
23 was told they were aware of the HVAC problems and that the Association's Board had considered  
24 revamping the entire HVAC system of the Property, but opted for smaller, less costly, and less  
25 effective repairs instead.

26 14. After months of continued HVAC failures, and inactivity from the Association and  
27 Taylor to address the problem, Horizon Holdings hired an expert to investigate why the HVAC at  
28 the Property was having so many problems.

1           15.     Horizon Holdings' expert determined that the Building HVAC was not directing  
2 sufficient air to the HH Unit. In fact, the HH Unit was and is experiencing a massive 6-ton shortfall of  
3 cool air ("the HVAC Shortfall") because the Building's HVAC is not properly balanced. The HVAC  
4 Shortfall is caused by and associated with a Common Element problem and is not caused by any portion  
5 of the HVAC that is an Exclusive Use Area as defined by the Declaration.

6           16.     As a direct result of the HVAC Shortfall, the HH Unit has insufficient cool air to  
7 maintain a climate suitable to any reasonable commercial tenant, including and especially Plaintiff's  
8 tenants, or some of them. One or more of Plaintiff's tenants has exercised its right to abate rental  
9 payments unless and until the HVAC Shortfall is remedied, resulting in substantial and continuing  
10 damages to Plaintiff, which Plaintiff is unable to mitigate without the support and cooperation of the  
11 Association and Taylor who have refused the same.

12           17.     Upon information and belief, the Building HVAC system was not ever properly  
13 commissioned, sized or balanced according to industry standards.

14           18.     Upon being confronted with this report, Shea and Taylor both responded that any  
15 HVAC issues were entirely the fault of Horizon Holdings and only Horizon Holdings was responsible  
16 for any costs, repairs, or maintenance associated with the HVAC system.

17           19.     Horizon Holdings has been forced to spend thousands of dollars to make repairs, obtain  
18 expert reports, and address these and other HVAC related issues.

19           20.     Notwithstanding such efforts, the HVAC system requires additional service to remedy  
20 the HVAC Shortfall - specifically balancing and commissioning - which can only be provided with the  
21 support and cooperation of the Association and Taylor who have refused the same.

22                           **FIRST CLAIM FOR RELIEF**

23                           *(Breach of Contract – Against the Association)*

24           21.     Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set  
25 forth herein.

26           22.     Plaintiff is entitled to the rights and privileges inuring to Plaintiff by way of the  
27 Declaration, including but not limited to the full benefit of all Common Elements, including the cool  
28

1 air provided by the HVAC. The Association, for itself or through Taylor, has repeatedly failed or  
2 refused to ensure and provide Plaintiff with a pro rata share of cool air despite repeated demands  
3 therefore and in spite of clear evidence presented to the Association and Taylor that the HVAC  
4 Shortfall is caused by an unbalanced HVAC system.

5 23. The Association has thereby breached the obligations imposed on it by the Declaration,  
6 other governing documents and Nevada law. Plaintiff has, and by this Complaint asserts, the right to  
7 enforce the terms of the Declaration. The Association's actions herein constitute breach of contract  
8 and have resulted in damages to Plaintiff in an amount to be proved at trial but no less than \$50,000.

9 24. Plaintiff has been required to engage the services of an attorney to enforce its rights  
10 and collect damages is entitled to recover its reasonable costs, attorney's fees and interest therefor.

11  
12 **SECOND CLAIM FOR RELIEF**

13 *(Breach of Implied Covenant of Good Faith & Fair Dealing – Against the Association)*

14 25. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set  
15 forth herein.

16 26. There is a covenant of good faith and fair dealing implied in every agreement,  
17 including the Declaration.

18 27. Defendants breached their duty to act in good faith by acting in a manner that was  
19 unfaithful to the purpose of the Declaration, thereby denying Plaintiff's justified expectations.

20 28. Due to the Association and Taylor's actions, Plaintiff has suffered damages in an  
21 amount to be proved at trial but no less than \$50,000.

22 29. Plaintiff has been required to engage the services of an attorney to enforce its rights  
23 and collect damages is entitled to recover its reasonable costs, attorney's fees and interest therefor.

24 **THIRD CLAIM FOR RELIEF**

25 *(Declaratory Relief – Against the Association)*

26 30. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set  
27 forth herein.

28 ///





### **FIFTH CLAIM FOR RELIEF**

Page 7 of 9

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. For damages in favor of Plaintiff against all Defendants in an amount to be proved at trial but in no event less than \$50,000.
2. For the declaratory relief requested herein;
3. For an award of attorney's fees and costs; and
4. For such other relief at the Court deems just and proper.

Dated this 28<sup>th</sup> day of November, 2018.

**PEEL BRIMLEY LLP**

  
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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 1<sup>st</sup> day of November, 2018, I caused the above and foregoing document, **SECOND AMENDED COMPLAINT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/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:**

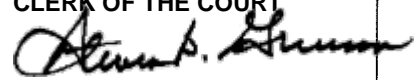
Robert E. Schumacher, Esq. ([rschumacher@grsm.com](mailto:rschumacher@grsm.com))  
Cristina B. Pagaduan ([cpagaduan@grsm.com](mailto:cpagaduan@grsm.com))  
Chelsey J. Holland ([cjholland@grsm.com](mailto:cjholland@grsm.com))  
Sean Owens ([sowens@grsm.com](mailto:sowens@grsm.com))  
Andrea C. Montero ([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))

  
An employee of **PEEL BRIMLEY, LLP**

# EXHIBIT H



**AACR/TPC**

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BRITTANY WOOD, ESQ.  
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Attorneys for Defendant, Cross-Claimant and  
Third Party Plaintiff, FIRST AMERICAN  
EXCHANGE COMPANY, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

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.

FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company,

Cross-Claimant,

vs.

TAG HORIZON RIDGE, LLC, a Nevada  
Limited-Liability Company; DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,

Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

**FIRST AMERICAN EXCHANGE  
COMPANY, LLC'S ANSWER TO  
FIRST AMENDED COMPLAINT,  
CROSS-CLAIM AND THIRD PARTY  
COMPLAINT**

**KOLESAR & LEATHAM**  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

FIRST AMERICAN EXCHANGE  
COMPANY, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-  
Liability Company,

Third-Party Defendant.

**FIRST AMERICAN EXCHANGE COMPANY, LLC'S ANSWER TO  
FIRST AMENDED COMPLAINT, CROSS-CLAIM AND THIRD PARTY COMPLAINT**

Defendant, FIRST AMERICAN EXCHANGE COMPANY ("FAEC"), by and through its counsel, Kolesar & Leatham, for its Answer to the First Amended Complaint filed by Plaintiffs HORIZON HOLDINGS 2900, LLC, ("Plaintiff"), respectfully answer as follows:

1. In answering Paragraph 1 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

2. In answering Paragraph 2 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

3. In answering Paragraph 3 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

4. In answering Paragraph 4 of the Amended Complaint, FAEC admits the allegations.

5. In answering Paragraph 5 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

6. In answering Paragraph 6 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

7. In answering Paragraph 7 of the Amended Complaint, FAEC admits the allegations.

8. In answering Paragraph 8 of the Amended Complaint, FAEC admits the allegations.

9. In answering Paragraph 9 of the Amended Complaint, FAEC admits that Horizon Holdings purchased the Property from TAG Horizon Ridge, LLC ("TAG") on February 12, 2015. FAEC denies the remaining allegations.

10. In answering Paragraph 10 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

11. In answering Paragraph 11 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

12. In answering Paragraph 12 of the Amended Complaint, FAEC denies the allegations.

13. In answering Paragraph 13 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

14. In answering Paragraph 14 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

15. In answering Paragraph 15 of the Amended Complaint, FAEC is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

1           16. In answering Paragraph 16 of the Amended Complaint, FAEC is without  
2 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
3 contained therein and therefore denies said allegations.

4           17. In answering Paragraph 17 of the Amended Complaint, FAEC is without  
5 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
6 contained therein and therefore denies said allegations.

7           18. In answering Paragraph 18 of the Amended Complaint, FAEC is without  
8 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
9 contained therein and therefore denies said allegations.

10          19. In answering Paragraph 19 of the Amended Complaint, FAEC is without  
11 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
12 contained therein and therefore denies said allegations.

13          20. In answering Paragraph 20 of the Amended Complaint, FAEC is without  
14 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
15 contained therein and therefore denies said allegations.

16          21. In answering Paragraph 21 of the Amended Complaint, FAEC is without  
17 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
18 contained therein and therefore denies said allegations.

19          22. In answering Paragraph 22 of the Amended Complaint, FAEC is without  
20 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
21 contained therein and therefore denies said allegations.

22          23. In answering Paragraph 23 of the Amended Complaint, FAEC is without  
23 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
24 contained therein and therefore denies said allegations.

25          24. In answering Paragraph 24 of the Amended Complaint, FAEC is without  
26 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations  
27 contained therein and therefore denies said allegations.  
28



**FIRST CLAIM FOR RELIEF**

(Breach of Contract Against TAG, First American, and Aligned)

25. In answering Paragraph 25 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

26. In answering Paragraph 26 of the Amended Complaint, FAEC denies the allegations.

27. In answering Paragraph 27 of the Amended Complaint, FAEC denies the allegations.

28. In answering Paragraph 28 of the Amended Complaint, FAEC denies the allegations.

29. In answering Paragraph 29 of the Amended Complaint, FAEC denies the allegations.

30. In answering Paragraph 30 of the Amended Complaint, FAEC denies the allegations.

**SECOND CLAIM FOR RELIEF**

(Breach of the Warranty of Suitability against all Defendants)

31. In answering Paragraph 31 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

32. In answering Paragraph 32 of the Amended Complaint, FAEC denies the allegations.

33. In answering Paragraph 33 of the Amended Complaint, FAEC denies the allegations.

34. In answering Paragraph 34 of the Amended Complaint, FAEC denies the allegations.

35. In answering Paragraph 35 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said

1 allegations.

2 36. In answering Paragraph 36 of the Amended Complaint, the allegations are  
3 directed to a separate defendant and require no response by FAEC. However, to the extent that  
4 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
5 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
6 allegations.

7 37. In answering Paragraph 37 of the Amended Complaint, the allegations are  
8 directed to a separate defendant and require no response by FAEC. However, to the extent that  
9 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
10 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
11 allegations.

12 38. In answering Paragraph 38 of the Amended Complaint, the allegations are  
13 directed to a separate defendant and require no response by FAEC. However, to the extent that  
14 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
15 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
16 allegations.

17 39. Answering Paragraph 39 of the First Amended Complaint, FAEC denies the  
18 allegations.

19 40. Answering Paragraph 40 of the First Amended Complaint, FAEC denies the  
20 allegations.

21 41. Answering Paragraph 41 of the First Amended Complaint, FAEC denies the  
22 allegations.

23 **THIRD CLAIM FOR RELIEF**

24 (Breach of Covenant of Good Faith and Fair Dealing Against TAG, First American and Aligned)

25 42. In answering Paragraph 42 of the Amended Complaint, FAEC repeats and  
26 realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

1           43.     In answering Paragraph 43 of the Amended Complaint includes a legal conclusion  
2 to which no answer is required. To the extent that an answer is required, FAEC denies the  
3 allegations.

4           44.     In answering Paragraph 44 of the Amended Complaint, FAEC denies the  
5 allegations.

6           45.     In answering Paragraph 45 of the Amended Complaint, FAEC denies the  
7 allegations.

8           46.     In answering Paragraph 46 of the Amended Complaint, FAEC denies the  
9 allegations.

10          47.     In answering Paragraph 47 of the Amended Complaint, FAEC denies the  
11 allegations.

12          48.     In answering Paragraph 48 of the Amended Complaint, FAEC denies the  
13 allegations.

### 14                                   THIRD CLAIM FOR RELIEF<sup>1</sup>

15                               (Non-Disclosure against TAG, First American and Aligned)

16          49.     In answering Paragraph 49 of the Amended Complaint, FAEC repeats and  
17 realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

18          50.     In answering Paragraph 50 of the Amended Complaint, FAEC denies the  
19 allegations.

20          51.     In answering Paragraph 51 of the Amended Complaint, FAEC denies the  
21 allegations.

22          52.     In answering Paragraph 52 of the Amended Complaint, FAEC denies the  
23 allegations.

24          53.     In answering Paragraph 53 of the Amended Complaint, FAEC denies the  
25 allegations.

26 \_\_\_\_\_  
27

28                   <sup>1</sup> The Amended Complaint includes two claims entitled "Third Claim for Relief."



67. In answering Paragraph 67 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

(Negligent Undertaking against Taylor)

69. In answering Paragraph 69 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as

1 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
2 allegations.

3 70. In answering Paragraph 70 of the Amended Complaint, the allegations are  
4 directed to a separate defendant and require no response by FAEC. However, to the extent that  
5 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
6 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
7 allegations.

8 71. In answering Paragraph 71 of the Amended Complaint, the allegations are  
9 directed to a separate defendant and require no response by FAEC. However, to the extent that  
10 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
11 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
12 allegations.

13 72. In answering Paragraph 72 of the Amended Complaint, the allegations are  
14 directed to a separate defendant and require no response by FAEC. However, to the extent that  
15 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
16 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
17 allegations.

18 73. In answering Paragraph 73 of the Amended Complaint, the allegations are  
19 directed to a separate defendant and require no response by FAEC. However, to the extent that  
20 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
21 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
22 allegations.

23 74. In answering Paragraph 74 of the Amended Complaint, the allegations are  
24 directed to a separate defendant and require no response by FAEC. However, to the extent that  
25 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
26 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
27 allegations.

(Negligence Per Se against Taylor and Shea)

76. In answering Paragraph 76 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

77. In answering Paragraph 77 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

78. In answering Paragraph 78 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

79. In answering Paragraph 79 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

80. In answering Paragraph 80 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as

1 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
2 allegations.

3 81. In answering Paragraph 81 of the Amended Complaint, the allegations are  
4 directed to a separate defendant and require no response by FAEC. However, to the extent that  
5 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
6 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
7 allegations.

8 82. In answering Paragraph 82 of the Amended Complaint, the allegations are  
9 directed to a separate defendant and require no response by FAEC. However, to the extent that  
10 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
11 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
12 allegations.

### 13 EIGHTH CLAIM FOR RELIEF

14 (Declaratory Relief against Taylor and Shea)

15 83. In answering Paragraph 83 of the Amended Complaint, FAEC repeats and  
16 realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

17 84. In answering Paragraph 84 of the Amended Complaint, the allegations are  
18 directed to a separate defendant and require no response by FAEC. However, to the extent that  
19 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
20 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
21 allegations.

22 85. In answering Paragraph 85 of the Amended Complaint, the allegations are  
23 directed to a separate defendant and require no response by FAEC. However, to the extent that  
24 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
25 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
26 allegations.

27 86. In answering Paragraph 86 of the Amended Complaint, the allegations are  
28 directed to a separate defendant and require no response by FAEC. However, to the extent that



1 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
2 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
3 allegations.

4 87. In answering Paragraph 87 of the Amended Complaint, the allegations are  
5 directed to a separate defendant and require no response by FAEC. However, to the extent that  
6 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
7 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
8 allegations.

9 88. In answering Paragraph 88 of the Amended Complaint, the allegations are  
10 directed to a separate defendant and require no response by FAEC. However, to the extent that  
11 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
12 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
13 allegations.

14 89. In answering Paragraph 89 of the Amended Complaint, the allegations are  
15 directed to a separate defendant and require no response by FAEC. However, to the extent that  
16 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
17 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
18 allegations.

19 90. In answering Paragraph 90 of the Amended Complaint, the allegations are  
20 directed to a separate defendant and require no response by FAEC. However, to the extent that  
21 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
22 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
23 allegations.

24 91. In answering Paragraph 91 of the Amended Complaint, the allegations are  
25 directed to a separate defendant and require no response by FAEC. However, to the extent that  
26 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
27 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
28 allegations.

**NINTH CLAIM FOR RELIEF**

(Unjust Enrichment against Taylor and Shea)

92. In answering Paragraph 92 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

93. In answering Paragraph 93 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

94. In answering Paragraph 94 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

95. In answering Paragraph 95 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

96. In answering Paragraph 96 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

97. In answering Paragraph 97 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as

1 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
2 allegations.

3 98. In answering Paragraph 98 of the Amended Complaint, the allegations are  
4 directed to a separate defendant and require no response by FAEC. However, to the extent that  
5 an Answer is required, FAEC is without sufficient knowledge or information to form a belief as  
6 to the truth or falsity of the remaining allegations contained therein and therefore denies said  
7 allegations.

8 WHEREFORE, FAEC prays for relief as follows:

- 9 1. That Plaintiff takes nothing by way of its Complaint;  
10 2. For an award of the attorney's fees and costs incurred in the defense of this  
11 litigation; and  
12 3. For such further and other relief as this Court deems just and proper.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 Each and every cause of action in Plaintiff's Amended Complaint fails to allege sufficient  
16 facts to state a cause of action upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 FAEC's duties to Plaintiff, if any, are limited to the terms of the Exchange Agreement.

19 **THIRD AFFIRMATIVE DEFENSE**

20 FAEC complied with the express terms of the Exchange Agreement.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 The express terms of the Exchange Agreement specifically provided: "Exchangor shall  
23 assign to Intermediary [FAEC] all of Exchangor's rights, but not its obligations, in an agreement  
24 or agreements to sell Relinquished Property (the "Relinquished Property Agreement"), together  
25 with Exchangor's rights, but not its obligations under any escrow transaction in connection with  
26 the Relinquished Property Agreement (the Relinquished Property Escrow") to the buyer therein  
27 (the "Buyer"), which Relinquished Property and Agreement and Relinquished Property Escrow  
28 has been or will be negotiated by Exchangor. Intermediary accepts the Exchangor's assignment

1 and assumes Exchangor's rights, but not its obligations, under the Relinquished Property  
2 Agreement and Relinquished Property Escrow, subject to the terms and conditions of this  
3 Agreement. The foreclosing assignment shall not relieve Exchangor of any of its duties and  
4 obligations under the Relinquished Property Agreement and Relinquished Property Escrow."

5 **FIFTH AFFIRMATIVE DEFENSE**

6 The Seller did not assign its obligations under the Relinquished Property Agreement or  
7 the Relinquished Property Escrow to FAEC.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 FAEC did not agree to be assume any of the Seller's obligations under the Relinquished  
10 Property Agreement and Relinquished Property Escrow

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 The damages suffered by Plaintiff, if any, were caused in whole or in part by the acts of a  
13 third party over which FAEC had no control.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 Plaintiff's delay in asserting this claim against FAEC has prejudiced FAEC's ability to  
16 defend this action so that Plaintiff's Amended Complaint should be barred by the doctrine of  
17 laches.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred by the statute of frauds.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Plaintiff ratified, approved or acquiesced in the actions of FAEC.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 Plaintiff's Complaint fails as a matter of law under the doctrine of unclean hands.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 Plaintiff, by its actions, deeds and conduct, has released FAEC from any and all claims  
26 that it might otherwise have been able to assert against FAEC.

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 FAEC, at all times relevant herein, acted in accordance with reasonable standards, in

1 good faith, with reasonable care and did not contribute to the alleged damages.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 Plaintiff's damages, if any, were not proximately or legally caused by any of the actions  
4 of FAEC.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's Amended Complaint fails, as a matter of law, under the doctrines of waiver,  
7 economic loss, release and failure to mitigate.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's conduct has forced FAEC to retain the services of an attorney and FAEC is  
10 entitled to be compensated for the reasonable attorneys' fees and costs incurred in the defense of  
11 this action.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 FAEC hereby incorporates by reference those affirmative defenses enumerated in Rule 8  
14 of the Nevada Rules of Civil Procedure as though fully set forth herein.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein  
17 insofar as sufficient facts were not available after reasonable inquiry upon the filing of the  
18 Answer, and therefore, FAEC reserves the right to amend its Answer to allege additional  
19 affirmative defenses if warranted during the course of discovery or further investigation.

20 **CROSS-CLAIM AGAINST TAG HORIZON RIDGE, LLC**

21 Cross-Claimant, FIRST AMERICAN EXCHANGE COMPANY, LLC, by and through  
22 its attorneys of record, the law firm of Kolesar & Leatham, hereby asserts its claim against  
23 Cross-Defendant TAG HORIZONG RIDGE, LLC, as follows:

24 **PARTIES**

25 1. First American Exchange Company, LLC ("FAEC"), is a Delaware limited  
26 liability company, duly authorized to conduct business in the State of Nevada.

27 2. Upon information and belief, TAG Horizon Ridge, LLC ("THR") is a dissolved  
28

1 Nevada limited liability company, formerly authorized to conduct business in the State of  
2 Nevada.

3 3. Upon information and belief, on or about February 23, 2015, THR filed articles of  
4 dissolution with the Nevada Secretary of State.

5 4. The cause of action giving rise to the claim against THR did not accrue until  
6 FAEC was served with the Amended Complaint in this action in or about July of 2017.

7 5. Accordingly, this action has been timely filed within three years after the date of  
8 THR's dissolution pursuant to NRS 86.505.

9 6. Upon information and belief, Tab Fund I, LLC ("Tab") is a Nevada limited  
10 liability company, duly authorized to conduct business in the State of Nevada.

11 7. Upon information and belief, Tab was the sole member of THR.

#### 12 JURISDICTION AND VENUE

13 8. Jurisdiction and venue are proper in the Eighth Judicial District Court of Clark  
14 County, Nevada pursuant to NRS 13.010 because THR is a former owner of the real property  
15 located in Clark County which is the subject of this action. The indemnity agreement that is the  
16 subject of this claim was executed by THR and Tab in connection with the transfer of the  
17 property.

#### 18 GENERAL ALLEGATIONS

19 9. This action arises from a like kind exchange of commercial real property  
20 commonly known as 2900 West Horizon Ridge Unite No. 101, Henderson, Nevada ("Property").

21 10. On or about January 26, 2015, THR, Tag, and FAEC entered into and Exchange  
22 Agreement ("Agreement") in which FAEC agreed to act as an intermediary to facilitate a like  
23 kind exchange of property pursuant to IRC § 1031.

24 11. THR was the owner of the Property.

25 12. Tag, as the sole member of THR, was identified as a party to the Agreement.

26 13. The Agreement defined FAEC as the "Intermediary" and THR, collectively with  
27 its sole member Tag, as "Exchangor."  
28

14. The Agreement provides in pertinent part:

Exchangor shall assign to Intermediary [FAEC] all of Exchangor's rights, but not its obligations, in an agreement or agreements to sell Relinquished Property (the "Relinquished Property Agreement"), together with Exchangor's rights, but not its obligations under any escrow transaction in connection with the Relinquished Property Agreement (the Relinquished Property Escrow") to the buyer therein (the "Buyer"), which Relinquished Property and Agreement and Relinquished Property Escrow has been or will be negotiated by Exchangor. Intermediary accepts the Exchangor's assignment and assumes Exchangor's rights, but not its obligations, under the Relinquished Property Agreement and Relinquished Property Escrow, subject to the terms and conditions of this Agreement. The foreclosing assignment shall not relieve Exchangor of any of its duties and obligations under the Relinquished Property Agreement and Relinquished Property Escrow.

15. The Agreement further provides that THR and Tag will indemnify FAEC.

Specifically, the Agreement provides:

Exchanger agrees to indemnify and hold Intermediary and its officers, directors, shareholders, employees, agents and attorneys, and its and their heirs, executors, administrators, successors and assigns harmless from any and all claims, liabilities, damages, suits, actions, causes of action, penalties, costs, fees (including court costs and reasonable attorneys' fees) and expenses, whether foreseen or unforeseen, incurred by or asserted against the Intermediary, or Its officers, directors, shareholders, employees, agents and attorneys, and Its and their heirs, executors, administrators, successors and assigns, arising out of, in any way relating to and to the extent caused, In whole or in part, whether directly or Indirectly, by:

(a) Intermediary's acquisition, holding, transfer or conveyance of Relinquished or Replacement Property;

(b) Intermediary's holding of Exchange Proceeds or any other funds pursuant to this Agreement;

(c) Intermediary's participation in any closing as provided herein;

(d) Performance by Intermediary of any of Its obligations under this Agreement or Intermediary's participation in any transaction contemplated hereby;

(e) Intermediary's execution of any agreements or documents In connection with the Replacement Property, the Relinquished Property or this exchange;

...

The indemnity provided in this section shall include all costs and reasonable fees of attorneys hired by Intermediary In Intermediary's defense, whether or not there

1 is a lawsuit, for participation In this exchange, Including, without limitation, all  
2 costs and fees incurred in tax audit, bankruptcy or appeal proceedings. The  
3 defense of Intermediary pursuant to this paragraph shall be by counsel selected by  
the Intermediary.

...

4 16. On or about July 24, 2017, FAEC was served with the Amended Complaint  
5 (“Complaint”) in this matter filed by Horizon Holdings 2900, LLC (“Horizon Holdings”).

6 17. The Complaint asserted claims against FAEC related to FAEC’s performance as  
7 an Intermediary pursuant to the Agreement.

8 **FIRST CLAIM FOR RELIEF**

9 **(Express Indemnity)**

10 18. FAEC refers to and incorporates herein by reference each of the preceding  
11 allegations as though fully set forth herein.

12 19. Pursuant to the Agreement, FAEC is contractually entitled to indemnity from  
13 THR and Tag for all claims, liabilities, damages, suits, actions, causes of action, penalties, costs,  
14 fees (including court costs and reasonable attorneys’ fees) and expenses, incurred by or asserted  
15 against FAEC arising out of or in any way related to FAEC’s actions as an Intermediary.

16 20. The Complaint in this matter filed by Horizon Holdings directly asserts claims  
17 against FAEC arising out of FAEC’s actions as an Intermediary pursuant to the Agreement.

18 21. It has been necessary for FAEC to retain the services of counsel to represent them  
19 in this action.

20 22. Pursuant to the express provisions of the Agreement, NRS 18.010, and Nevada  
21 law, FAEC is entitled to recover from THR and Tag, the attorneys’ fees and costs incurred by  
22 FAEC in the defense of the claims asserted by Horizon Holdings.

23 23. Pursuant to the express provisions of the Indemnity Agreement, NRS 18.010, and  
24 Nevada Law, FAEC is also entitled to recover from TGR and Tag, any and all damages and/or  
25 economic losses FAEC becomes obligated to pay by way of judgment, order, settlement or  
26 compromise in connection with the claims asserted by Horizon Holdings.

27 WHEREFORE, FAEC prays for judgment against THG and Tag as follows:

28 1. For indemnity for all attorneys’ fees and costs incurred by FAEC in the defense of



1 the claims asserted by Horizon Holdings;

2 2. For indemnity for any and all damages and/or economic losses FAEC becomes  
3 obligated to pay by way of judgment, order, settlement or compromise in connection with the  
4 claims asserted by Horizon Holdings;

5 3. For reasonable attorneys' fees, costs, expert costs and expenses pursuant to  
6 statutory law, common law and contractual law; and

7 4. For other such further relief as this Court may deem just equitable and proper.

8 DATED this 5<sup>th</sup> day of September, 2017.

9 KOLESAR & LEATHAM

10  
11 By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

12  
13  
14  
15 Attorneys for Defendant, Cross-Claimant and  
16 Third-Party Plaintiff, FIRST AMERICAN  
EXCHANGE COMPANY, LLC  
17  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 5<sup>th</sup> day of  
3 September, 2017, I caused to be served a true and correct copy of foregoing FIRST AMERICAN  
4 EXCHANGE COMPANY, LLC'S ANSWER TO FIRST AMENDED COMPLAINT, CROSS-  
5 CLAIM AND THIRD PARTY COMPLAINT in the following manner:

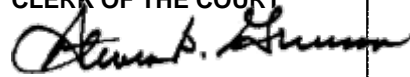
6 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-  
7 referenced document was electronically filed on the date hereof and served through the Notice of  
8 Electronic Filing automatically generated by the Court's facilities to those parties listed on the  
9 Court's Master Service List.

10  
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12 \_\_\_\_\_

13 An Employee of KOLESAR & LEATHAM  
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KOLESAR & LEATHAM  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

# EXHIBIT I



NEOJ  
JOHN T. KEATING  
Nevada Bar No. 6373  
COLIN P. CAVANAUGH  
Nevada Bar No. 13842  
**KEATING** LAW GROUP  
9130 West Russell Road, Suite 200  
Las Vegas, Nevada 89148  
Phone: (702) 228-6800  
Fax: (702) 228-0443  
[jkeating@keatinglg.com](mailto:jkeating@keatinglg.com)  
[ccavanaugh@keatinglg.com](mailto:ccavanaugh@keatinglg.com)  
Attorneys for Defendants  
*TAG HORIZON RIDGE, LLC and*  
*THE ALIGNED GROUP, LLC and*  
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada  
Limited Liability Company

CASE NO.: A-17-758435-C  
DEPT. NO.: 22

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.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Cross-Claimant,

vs.

TAG HORIZON RIDGE, LLC, a Nevada Limited-  
Liability Company; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

NOTICE OF ENTRY OF ORDER

Cross-Defendants.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-Liability  
Company,

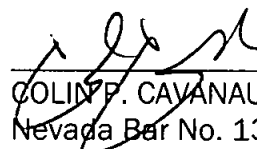
Third-Party Defendant.

TO: ALL PARTIES AND THEIR COUNSEL,

PLEASE TAKE NOTICE that a Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice has been entered in the above referenced matter, a file-stamped copy of which is attached hereto.

DATED this 22 day of March, 2018.

KEATING LAW GROUP

  
COLINNE P. CAVANAUGH  
Nevada Bar No. 13842  
9130 West Russell Road, Suite 200  
Las Vegas, Nevada 89148  
Attorneys for Defendants  
*TAG HORIZON RIDGE, LLC and  
THE ALIGNED GROUP, LLC and  
Third-Party Defendant TAG FUND I, LLC*

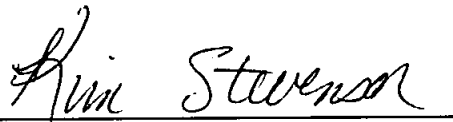
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 of the Eighth Judicial District Court, I hereby certify that I am an employee of K E A T I N G LAW GROUP and that on the 22<sup>nd</sup> day of March, 2018, I served the above and foregoing NOTICE OF ENTRY OF ORDER on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

MICHAEL C. VAN, ESQ, #3876  
BRENT D. HUNTLEY, ESQ, #12405  
RICHARD A STORMS, ESQ, #14283  
SHUMWAY VAN  
8985 South Eastern Avenue, Suite 100  
Las Vegas, Nevada 89123  
Attorneys for Plaintiff

*GORDON & REES SCULLY MANSUKHANI LLP*  
ROBERT E. SCHUMACHER, ESQ.  
BRIAN K. WALTERS, ESQ.  
300 S. 4th Street, Suite 150  
Las Vegas, Nevada 89101  
Attorneys for Shea at Horizon Ridge Owners Association  
& Taylor Management Association

*KOLESAR & LEATHAM*  
AARON R. MAURICE, ESQ.  
BRITTANY WOOD, ESQ.  
400 South Rampart Blvd., Suite 400  
Las Vegas, Nevada 89145  
Attorneys for First American Exchange Company, LLC



An Employee of K E A T I N G LAW GROUP

*Steven D. Grierson*

SODW  
JOHN T. KEATING  
Nevada Bar No. 6373  
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[ccavanaugh@keatinglg.com](mailto:ccavanaugh@keatinglg.com)  
Attorneys for Defendants  
*TAG HORIZON RIDGE, LLC and*  
*THE ALIGNED GROUP, LLC and*  
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada  
Limited Liability Company

CASE NO.: A-17-758435-C  
DEPT. NO.: 22

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,

STIPULATION AND ORDER FOR  
DISMISSAL OF CROSS-CLAIM AND  
THIRD-PARTY COMPLAINT WITH  
PREJUDICE

Defendants.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Cross-Claimant,

vs.

TAG HORIZON RIDGE, LLC, a Nevada Limited-  
Liability Company; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

Cross-Defendants.

FIRST AMERICAN EXCHANGE COMPANY, LLC,  
a Foreign Limited-Liability Company,

Third-Party Plaintiff,

vs.

TAG FUND I, LLC, a Nevada Limited-Liability  
Company,

Third-Party Defendant.


IT IS HEREBY STIPULATED AND AGREED, by and between Cross-Claimant and Third Party Plaintiff, FIRST AMERICAN EXCHANGE COMPANY, LLC, and its counsel, KOLESAR & LEATHAM, and Cross-Defendant and Third-Party Defendant, TAG HORIZON RIDGE, LLC and TAG FUND I, LLC, by and through their counsel, KEATING LAW GROUP, that the above entitled Cross-Claim and Third-Party Complaint be dismissed in their entirety, with prejudice, each party to bear its own attorney's fees, costs, and interest.

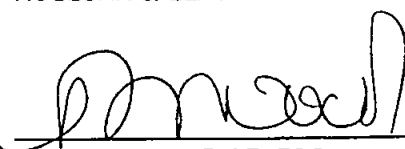
A Scheduling Order has not been entered. As this Stipulation does not result in the dismissal of all parties' claims asserted in this action, no deadlines will be impacted by the entry of this Order.

DATED this 19 day of March, 2018. Dated this 19<sup>th</sup> day of March, 2018.

KEATING LAW GROUP

KOLESAR & LEATHAM

  
COLIN P. CAVANAUGH  
Nevada Bar No. 13842  
9130 West Russell Road, Suite 200  
Las Vegas, Nevada 89148  
Attorneys for Cross-Defendant  
TAG HORIZON RIDGE, LLC and  
Third Party Defendant TAG FUND I, LLC

  
AARON R. MAURICE, ESQ.  
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Attorneys for Cross-Claimant/Third Party Plaintiff  
FIRST AMERICAN EXCHANGE COMPANY, LLC

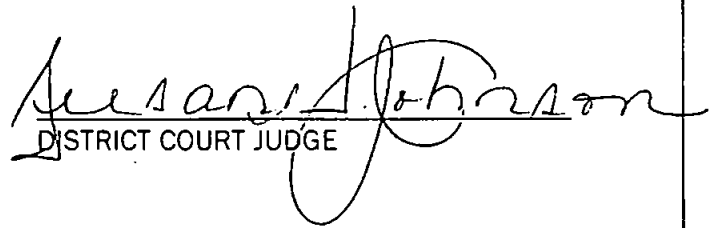


HORIZON HOLDINGS 2900, LLC v. SHEA AT HORIZON RIDGE, ET AL.  
SAO TO DISMISS CROSS-CLAIM AND THIRD-PARTY COMPLAINT  
CASE NO. A-17-758435-C

ORDER

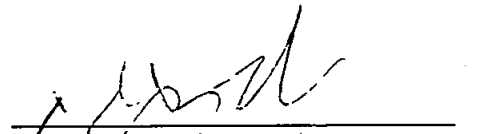
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above entitled Cross-Claim and Third-Party Complaint be dismissed in their entirety, with prejudice, each party bearing its own attorney's fees, costs, and interest.

DATED this 20<sup>th</sup> day of March, 2018.

  
DISTRICT COURT JUDGE

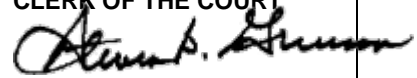
Submitted by:

KEATING LAW GROUP

  
COLIN P. CAVANAUGH  
Nevada Bar No. 13842  
9130 W. Russell Road  
Suite 200  
Las Vegas, Nevada 89148  
Attorneys for Cross-Defendant  
*TAG HORIZON RIDGE, LLC and*  
Third Party Defendant *TAG FUND I, LLC*

y.m

# EXHIBIT J



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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*

ROBERT E. SCHUMACHER  
Nevada State Bar No. 7504  
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Nevada State Bar No. 9711  
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*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 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4  
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  
7 **FINDINGS OF FACT**

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
- 7 (5) Negligent undertaking against TAM.

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

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

23 ...

24 ...

---

25  
26 <sup>4</sup>The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge  
27 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will  
28 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

---

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

---

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>

20 10. In late July 2015, MS. JORDAN contacted MR. BURFORD regarding HVAC issues  
21 relating to Plaintiff's office unit. According to MS. JORDAN, MR. BURFORD related three  
22 controller units "were out," and such could be replaced at a cost of \$3,800.00. Given what she  
23

24  
25 <sup>19</sup>See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted  
26 into evidence.

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

28 <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  
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  
and 2.10.

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

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

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

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

---

25 <sup>33</sup>*Id.*

26 <sup>34</sup>*Id.*

27 <sup>35</sup>*Id.*

28 <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  
26 enabled. I may have to come back and completely relocate the pitot tube but for now the  
27 heat on this unit is fairly reliable.

28 <sup>39</sup>See Defendant's Trial Exhibit 588, PRIME HVAC, LLC'S Service Proposal 15-108 dated November 4, 2015,  
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.

---

<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 completed 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.

---

<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  
22  
23  
24  
25

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

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

<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

Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving the Unit, subject to the original appearance and condition thereof as originally installed by 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)

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

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

Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, Association, ARC, Declarant and/or Association, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any 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)

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

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

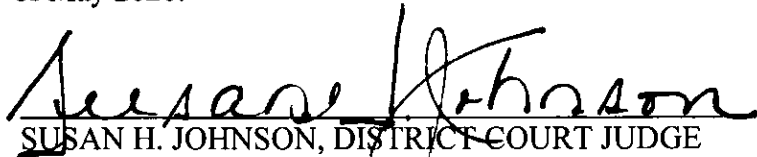
8       16.     HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied  
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair  
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of  
11 America, 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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