

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

DIRECT GRADING & PAVING,  
L.L.C., a Nevada limited liability  
company,

Petitioner,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT, in and for the  
County of Clark, State of Nevada,  
and THE HONORABLE ROB  
BARE, District Judge,

Respondents,

and

CENTURY COMMUNITIES OF  
NEVADA, L.L.C., a Nevada limited  
liability company,

Real Party in Interest.

) Case No.

)  
) Electronically Filed  
) Oct 14 2020 08:56 a.m.  
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) Clerk of Supreme Court

) Dist. Court Case No.  
) A-18-773139-C

) Dept. No. XXXII

**PETITION**

**From the Eighth Judicial District Court  
The Honorable Rob Bare, District Judge**

**PETITIONER'S APPENDIX VOLUME VI**

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1 The particulars of the Lakes Las Vegas Lien are as follows:

2 10. On or about September 3, 2015, Direct Grading and Century entered into an  
3 agreement for Direct Grading to complete Mobilization - Rough, Normal Excavation, Over  
4 Excavation, Hard Dig, Channel Excavation, Import Placement, Slope Excavation, Slope Finish,  
5 Retaining wall cut back, Pad Finish, Sub Grade Prep Parking Areas, and Rip Rap  
6 (D50=6"@12) on the Lakes Las Vegas Property.

7 11. The original amount of Lakes Las Vegas Contract was \$1,369,799.60.

8 12. The total amount of additional or changed work, materials, and equipment was  
9 \$288,713.92.

10 13. The total amount of all payments received by Direct Grading for work  
11 performed pursuant to the Lakes Las Vegas Contract was \$1,357,469.92.

12 14. The amount of the Lakes Las Vegas Lien, after deducting all just credits and  
13 offsets, is \$301,043.48.

14 **C. Freeway 50/Parkview**

15 15. On April 10, 2017, Direct Grading recorded a certain Notice of Lien in Book  
16 Number 20170410, Instrument Number 0000603 in the office of the Clark County Recorder  
17 (the "Freeway 50 Lien").

18 16. Direct Grading claimed the Freeway 50 Lien upon the property known as  
19 Freeway 50/Parkview, located at the North side of Maule at El Capitan, APN 176-05-222-001  
20 through 176-05-222-076, 176-05-715-001 through 176-05-715-006, 176-05-223-001 through  
21 176-05-223-037, 176-05-613-001 through 176-05-613-062, 176-05-117-001 through 176-05-  
22 117-025, 176-05-610-001 through 176-05-610-029, 176-05-611-001 through 176-05-611-049,  
23 176-05-612-001 through 176-05-612-003, 176-05-511-001 through 176-05-511-034, and 176-  
24 05-202-002 (the "Freeway 50 Property"). Pursuant to NRS 108.2413 and NRS 108.2415,  
25 Century posted a bond, bond number SUR0040822, of which Argonaut is the surety ("Freeway  
26 50 Bond").

27 The particulars of the Freeway 50 Lien are as follows:  
28

17. Between October 7, 2014 and June 27, 2016, Direct Grading and Century entered into a series of agreements for Direct Grading to complete the following on the Freeway 50 Property:

- A. Phase 1: mobilize, subgrade reprep curb, curb grade type II, subgrade reprep onsite, subgrade reprep offsite Maule, 4" type II onsite, 4" type II offsite Maule, sawcut ac haul off, 2" ac paving onsite, and 3" ac paving offsite Maule
- B. Phase 2: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, 2" A/C Paving Onsite
- C. Phase 3: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite
- D. Phase 4: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite
- E. Phases 6: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite
- F. Phase 7: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite On or about April 12, 2016, Direct Grading and Century entered into an agreement for Direct Grading to complete Mobilization - Finish, Sub Grad Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II onsite, and 2" A/C Paving Onsite.

18. The original amount of Freeway 50 Contract was \$2,244,232,64.

19. The total amount of additional or changed work, materials, and equipment was \$397,766.80.

20. The total amount of all payments received by Direct Grading for work performed pursuant to the Freeway 50 Contract was \$1,906,136.29.

21. The amount of the Freeway 50 Lien, after deducting all just credits and offsets, is \$735,863.15.

**D. Rhodes Ranch Phase 5**

22. On June 9, 2017, Direct Grading recorded a certain Notice of Lien in Book Number 20170609, Instrument Number 0002317 in the office of the Clark County Recorder (the "Rhodes Lien").

23. Direct Grading claimed the Rhodes Lien upon the property known as Rhodes Ranch Phase 5, located at the North East corner at S. Fort Apache Rd and Access Seeliger St., APN 176-17-314-001 through 176-17-314-021, 176-17-314-023 through 176-17-314-024, 176-17-314-027 through 176-17-314-034, and 176-17-415-001 through 176-17-415-013 (the "Rhodes Property"). Pursuant to NRS 108.2413 and NRS 108.2415, Century posted a bond, bond number SU1125385, of which Arch is the surety. ("Arch Bond").

The particulars of the Rhodes Lien are as follows:

24. On or about April 23, 2015, Direct Grading and Century entered into an agreement for Direct Grading to complete Normal Excavation, Over Excavation, Hard Dig, Pad Finish (49 lots), Sub Grade Prep Parking Areas, Sub Grade Reprep Curb, Curb grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, 2" A/C Paving Onsite, and Sawcut/AC Haul Off on the Rhodes Property.

25. The original amount of Rhodes Contract was \$344,988.46.

26. The total amount of additional or changed work, materials, and equipment was \$0.00.

27. The total amount of all payments received by Direct Grading for work performed pursuant to the Rhodes Contract was \$0.00.

28. The amount of the Rhodes Lien, after deducting all just credits and offsets, is \$344,988.46.

29. Inspirada Lien, Lakes Las Vegas Lien, Freeway 50 Lien and Rhodes Lien are collectively known as the "Liens". The Inspirada Property, Lakes Las Vegas Property, Freeway 50 Property, and Rhodes Property are collectively known as the "Properties".

30. The Inspirada Bond, the Lakes Las Vegas Bond, and the Freeway 50 Bond are collectively known as the "Argonaut Bonds."

**WHEREFORE**, Direct Grading prays as follows:

1. That Direct Grading's Liens be enforced, including interest thereon and Direct Grading's attorney fees and costs;

2. That payment from the aforementioned bonds be made, to pay for the Liens.

3. That Direct Grading's Liens be determined to be superior in priority, if applicable, to any claims on the aforementioned bonds; and

4. For such other relief deemed appropriate by the Court.

**COMPLAINT**

**NOW COMES** Direct Grading, by and through its attorneys, of JOHNSON & GUBLER, P.C., and complains against the Defendants to support and enforce its Mechanic's Liens, to collect certain bonds, recorded with the Clark County Recorder's office as described below.

**PARTIES**

31. Direct Grading is a Nevada limited-liability company, properly doing business in Nevada.

32. CENTURY COMMUNITIES OF NEVADA, LLC ("Century") is a Nevada limited liability company, doing business and owning some interest in real property, described herein in Clark County, Nevada.

33. ARGONAUT INSURANCE COMPANY("Argonaut") was and is a surety licensed to provide bonds to release real property for certain notices of liens under the conditions of NRS 108.2413 to NRS 108.2425, inclusive, as well as under NRS 108.237 and

1 any other applicable statute, and did provide the Argonaut Bonds, for Defendant Century, in  
2 order to compensate entities like Plaintiff;

3 34. ARCH INSURANCE COMPANY ("Arch") was and is a surety licensed to  
4 provide bonds to release real property for certain notices of liens under the conditions of NRS  
5 108.2413 to NRS 108.2425, inclusive, as well as under NRS 108.237 and any other applicable  
6 statute, and did provide the Arch Bond for Defendant Century, in order to compensate entities  
7 like Plaintiff;

8 35. Upon information and belief, defendants were and are at all times relevant to this  
9 action, the principals and sureties in those certain bonds identified herein, as well as the owner  
10 in those certain real Properties or portions thereof located in Clark County, Nevada, described  
11 herein, upon which Defendants caused or allowed to be constructed certain improvements.

12 36. The true names and capacities, whether individual, corporate, associate, or  
13 otherwise, of Defendants DOES 1 through X, inclusive, and of Defendants ROE  
14 CORPORATIONS 1 through X, inclusive, are unknown to Plaintiff, who therefore sues these  
15 Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that  
16 each of the Defendants designated herein as a Does 1 through X, inclusive, and as Roe  
17 Corporations 1 through X, inclusive, are responsible in some manner for the events and  
18 happenings herein referred to and caused injury and damages proximately thereby to Plaintiff as  
19 herein alleged, and Plaintiff will ask leave of this Court to amend this Complaint to insert the  
20 true names and capacities of defendants DOE and ROE CORPORATIONS when the same have  
21 been ascertained by Plaintiff, together with appropriate charging allegations, and adjoin such  
22 defendants in this action.

23 37. Upon information and belief of Direct Grading, and at all relevant times herein,  
24 each defendant was acting as an agent, servant or representative of each of said other  
25 defendants, or was at all times mentioned herein acting within the scope and course of such  
26 agency, servitude or representation, and that all acts of the defendant, and each of them, were  
27 authorized, directed and ratified by each of the remaining defendants.

28 38. This Court has personal jurisdiction over all the parties.

39. This Court has subject matter jurisdiction over this action pursuant to NRS 4.370(1), as the matter in controversy exceeds \$15,000.

40. Venue is appropriate in this Court because multiple defendants reside in this jurisdiction.

### GENERAL ALLEGATIONS

#### **A. Inspirada**

41. On or about April 12, 2016, Direct Grading and Century entered into an agreement for Direct Grading to complete Mobilization - Finish, Sub Grad Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II onsite, and 2" A/C Paving Onsite (the "Inspirada Work") on the project known as Inspirada, located at the South East Corner of Bicentennial Pkwy and Via Firenze, APN 191-23-515-001 through 191-23-515-082 and 191-23-516-001 through 191-23-516-086 (the "Inspirada Project").

42. The initial agreement to complete the Inspirada Work totaled \$928,573.84.

43. In addition to the initial agreement, Century submitted change orders for additional or changed work, materials and equipment for an additional \$1,480,020.55.

44. Initially, Century paid Direct Grading for the Inspirada Work performed by Direct Grading, but eventually stopped paying Direct Grading. Century has failed to pay Direct Grading for the Inspirada Work under the agreements described herein, in an amount in excess of \$15,000.

45. Direct Grading has, in good faith, fully performed all conditions, covenants and obligations required on its part to be performed under the agreements, except for those conditions, covenants and obligations it has been prevented from performing or excused from performing by the contracting defendant.

46. Pursuant to a field meeting with Century, Direct Grading was supposed to be onsite at the Inspirada Project on November 28, 2016. Direct Grading mobilized on November 28, 2016. However, Direct Grading was not able to begin work because Western States was still not complete with the back filling of power trenches and still screening material in the streets. Direct Grading informed Todd Winner with Century of such on November 28, 2016.

47. Regardless, Century submitted a "3-Day Notice" of default to Direct Grading on December 12, 2016. The letter stated that "Direct Grading [was] in default of the [Master Subcontract Agreement] for failure to timely perform its obligations under the Agreement." Without any other description, the letter stated that "Direct Grading must cure such default within three (3) days after receipt of this letter." A true and correct copy of the letter is attached hereto as Exhibit "1" and incorporated herein by reference.

48. All contractual obligations were completed at the Inspirada Project on or before December 13, 2016.

49. The contracting defendant has failed to pay for the Inspirada Work and other services contracted for by Direct Grading in an amount of \$203,049.35, exclusive of interests, fees, and costs, despite demands by Direct Grading.

50. Defendant benefitted by the Inspirada Work and other services contracted for by Direct Grading.

51. Pursuant to Nevada Revised Statute (NRS) Chapter 108, Direct Grading has a right to a lien on the Inspirada Bond for the Inspirada Project for which work, materials, or equipment were contracted for improvement of the Inspirada Property.

52. On or about April 10, 2017, Direct Grading recorded and duly served a Notice of Lien. A true and correct copy of the Notice of Lien is attached hereto as Exhibit "2" and incorporated herein by reference. The bond for the lien was recorded as instrument number 20170418-0001071. The extension agreement for the bond was recorded as instrument number 20171208-0000595, which extends the bringing of the action against the surety and principal to September 18, 2018, and which was previously brought.

**B. Lakes Las Vegas**

53. On or about September 3, 2015, Direct Grading and Century entered into an agreement for Direct Grading to complete Mobilization - Rough, Normal Excavation, Over Excavation, Hard Dig, Channel Excavation, Import Placement, Slope Excavation, Slope Finish, Retaining wall cut back, Pad Finish, Sub Grade Prep Parking Areas, and Rip Rap (D50=6" @ 12) (the "Lakes Las Vegas Work") on the project known as Lakes Las Vegas,

1 located at the South East corner of Lake Las Vegas Pkwy and Grand Mediterra Blvd, APN 160-  
2 27-119-001 through 160-27-119-011, 160-27-215-001 through 160-27-215-002, 160-27-614-  
3 001 through 160-27-614-009, 160-27-511-001 through 160-27-511-004, 160-27-214-001  
4 through 160-27-214-013, 160-27-612-001 through 160-27-612-005, 160-27-612-008 through  
5 160-27-612-013, and 160-27-214-016 (the "Lakes Las Vegas Project").

6 54. The initial agreement to complete the Lakes Las Vegas Work totaled  
7 \$1,369,799.60.

8 55. In addition to the initial agreement, Century submitted change orders for  
9 additional or changed work, materials and equipment for an additional \$288,713.92.

10 56. A substantial portion of the change orders was part of Change Order #5,  
11 submitted to Century on or about October 25, 2016, for an estimated price of \$220,000, for the  
12 "Haul Off of Excess Material."

13 57. No Change Order was ever signed by Century. Nevertheless, on or before  
14 November 11, 2017, Todd Winner contacted Direct Grading and authorized Direct Grading to  
15 begin the Haul Off of Excess Material, pursuant to Change Order #5. Further, NRS 624.610  
16 increased the value of the Lakes Las Vegas Work.

17 58. Under the direction of Todd Winners, Direct Grading began performance under  
18 Change Order #5, and performed approximately \$71,445.00 of the work in Change Order #5.

19 59. On or about November 29, 2016, Tim Wyatt of Century contacted Direct  
20 Grading and told Direct Grading to stop hauling at the end of the week to allow Century to  
21 perform a cost projection. Direct Grading stopped hauling material related to Change Order #5  
22 on December 2, 2016.

23 60. On December 6, 2017, Century hired another subcontractor to haul off the  
24 materials that were contracted for under Change Order #5.

25 61. Initially, Century paid Direct Grading for the Lakes Las Vegas Work performed  
26 by Direct Grading, but eventually stopped paying Direct Grading. Further, Century has never  
27 paid Direct Grading any amounts under Change Order #5. Century has failed to pay Direct  
28

1 Grading for the Lakes Las Vegas Work under the agreements described herein, in an amount in  
2 excess of \$15,000.

3 62. Direct Grading has, in good faith, fully performed all conditions, covenants and  
4 obligations required on its part to be performed under the agreements, except for those  
5 conditions, covenants and obligations it has been prevented from performing or excused from  
6 performing by the contracting defendant.

7 63. Pursuant to a field meeting with Century on or about November 21, 2016,  
8 Century and Direct Grading discussed the completion times for storm drains and sewer lines. At  
9 the time, it was discussed that the underground would need until December 6, 2016, to give  
10 access to Direct Grading to complete channel excavation and East side slope. Direct Grading  
11 informed Century that would need 6 business days to complete this work.

12 64. Direct Grading was scheduled to return to the Lakes Las Vegas Project on  
13 December 7, 2016 to complete channel excavation and slope work.

14 65. Direct Grading mobilized on December 7, 2016, but was unable to perform the  
15 work because Freedom Underground was not completed with the storm drain manholes.

16 66. On December 8, 2016, Direct Grading continued to complete the channel  
17 excavation and slope work at the Lakes Las Vegas Project.

18 67. Regardless, Century submitted a "3-Day Notice" of default to Direct Grading on  
19 December 12, 2016. The letter stated that "Direct Grading [was] in default of the [Master  
20 Subcontract Agreement] for failure to timely perform its obligations under the Agreement."  
21 Without any other description, the letter stated that "Direct Grading must cure such default  
22 within three (3) days after receipt of this letter." A true and correct copy of the letter is attached  
23 hereto as Exhibit "1" and incorporated herein by reference.

24 68. All work was on schedule at the Lakes Las Vegas Project on December 12, 2016  
25 – the date of the notice of default.

26 69. The contracting defendant has failed to pay for the Lakes Las Vegas Work and  
27 other services contracted for by Direct Grading in an amount of \$301,043.48, exclusive of  
28 interests, fees, and costs, despite demands by Direct Grading.

70. Defendant benefitted by the Lakes Las Vegas Work and other services contracted for by Direct Grading.

71. Pursuant to Nevada Revised Statute (NRS) Chapter 108, Direct Grading has a right to a lien on the Lakes Las Vegas Bond for the Lakes Las Vegas Project for which work, materials, or equipment were contracted for improvement of the Lakes Las Vegas Property.

72. On or about April 10, 2017, Direct Grading recorded and duly served a Notice of Lien. A true and correct copy of the Notice of Lien is attached hereto as Exhibit "3" and incorporated herein by reference. The bond for the lien was recorded as instrument number 20170419-0002001. The extension agreement for the bond was recorded as instrument number 20171208-0000594, which extends the bringing of the action against the surety and principal to September 19, 2018, and which was previously brought.

**C. Freeway 50/Parkview**

73. Between October 7, 2014 and June 27, 2016, Direct Grading and Century entered into a series of work agreements for Direct Grading to complete the following on the project known as Freeway 50/Parkview, located at the North side of Maule at El Capitan, APN 176-05-222-001 through 176-05-222-076, 176-05-715-001 through 176-05-715-006, 176-05-223-001 through 176-05-223-037, 176-05-613-001 through 176-05-613-062, 176-05-117-001 through 176-05-117-025, 176-05-610-001 through 176-05-610-029, 176-05-611-001 through 176-05-611-049, 176-05-612-001 through 176-05-612-003, 176-05-511-001 through 176-05-511-034, and 176-05-202-002 (the "Freeway 50 Project").:

- A. Phase 1: mobilize, subgrade reprep curb, curb grade type II, subgrade reprep onsite, subgrade reprep offsite Maule, 4" type II onsite, 4" type II offsite Maule, sawcut ac haul off, 2" ac paving onsite, and 3" ac paving offsite Maule
- B. Phase 2: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, 2" A/C Paving Onsite

C. Phase 3: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite

D. Phase 4: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite

E. Phases 6: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite

F. Phase 7: Mobilize - Finish, Sub Grade Reprep Curb, Curb Grade Type II, Sub Grade Reprep Onsite, 4" Type II Onsite, Saw Cut/AC Haul Off, and 2" A/C Paving Onsite

74. The agreement to complete the Freeway 50 Work totaled \$2,244,232.64.

75. In addition to the initial agreement, Century submitted change orders for additional or changed work, materials and equipment for an additional \$397,766.80.

76. Initially, Century paid Direct Grading for the Freeway 50 Work performed by Direct Grading, but eventually stopped paying Direct Grading. Century has failed to pay Direct Grading for the Freeway 50 Work under the agreements described herein, in an amount in excess of \$15,000.

77. Direct Grading has, in good faith, fully performed all conditions, covenants and obligations required on its part to be performed under the agreements, except for those conditions, covenants and obligations it has been prevented from performing or excused from performing by the contracting defendant.

78. All work was on schedule at the Freeway 50 Project on December 12, 2016.

79. Regardless, Century submitted a "3-Day Notice" of default to Direct Grading on December 12, 2016. The letter stated that "Direct Grading [was] in default of the [Master Subcontract Agreement] for failure to timely perform its obligations under the Agreement." Without any other description, the letter stated that "Direct Grading must cure such default

1 within three (3) days after receipt of this letter.” A true and correct copy of the letter is attached  
2 hereto as Exhibit “1” and incorporated herein by reference.

3 80. In response, Direct Grading attempted to learn what matters were not timely  
4 performed at the Freeway 50 Project. However, Century failed to give any further information.

5 81. The contracting defendant has failed to pay for the Freeway 50 Work and other  
6 services contracted for by Direct Grading in an amount of 735,863.15, exclusive of interests,  
7 fees, and costs, despite demands by Direct Grading.

8 82. Defendant benefitted by the Freeway 50 Work and other services contracted for  
9 by Direct Grading.

10 83. Pursuant to Nevada Revised Statute (NRS) Chapter 108, Direct Grading has a  
11 right to a lien on the Freeway 50 Bond for the Freeway 50 Project for which work, materials, or  
12 equipment were contracted for improvement of the Freeway 50 Property.

13 84. On or about April 10, 2017, Direct Grading recorded and duly served a Notice of  
14 Lien. A true and correct copy of the Notice of Lien is attached hereto as Exhibit “4” and  
15 incorporated herein by reference. The bond for the lien was recorded as instrument number  
16 20170417-0001549. The extension agreement for the bond was recorded as instrument number  
17 20171208-0000596, which extends the bringing of the action against the surety and principal to  
18 September 19, 2018, and which was previously brought.

19 **D. Rhodes Ranch Phase 5**

20 85. On or about April 23, 2015, Direct Grading and Century entered into work  
21 agreements for Direct Grading to complete Normal Excavation, Over Excavation, Hard Dig,  
22 Pad Finish (49 lots), Sub Grade Prep Parking Areas, Sub Grade Reprep Curb, Curb grade Type  
23 II, Sub Grade Reprep Onsite, 4" Type II Onsite, 2" A/C Paving Onsite, and Sawcut/AC Haul  
24 Off (the “Rhodes Work”) on the project known as Rhodes Ranch Phase 5, located at the North  
25 East corner at S. Fort Apache Rd and Access Seeliger St., APN 176-17-314-001 through 176-  
26 17-314-021, 176-17-314-023 through 176-17-314-024, 176-17-314-027 through 176-17-314-  
27 034, and 176-17-415-001 through 176-17-415-013 (the “Rhodes Project”).

28 86. The initial agreement to complete the Rhodes Work totaled \$344,988.46.

1 87. Century never notified Direct Grading to proceed with the Rhodes Work, as  
2 Century previously had done through scheduling meetings.

3 88. Instead, unknown to Direct Grading, Century hired a contractor to perform the  
4 Rhodes Work at the Rhodes Project.

5 89. Century never paid Direct Grading for the Rhodes Work under the agreements  
6 described herein, in an amount in excess of \$15,000.

7 90. Direct Grading has been ready, willing, and able to perform under the  
8 agreements described herein. Alternatively, Direct Grading has, in good faith, fully performed  
9 all conditions, covenants and obligations required on its part to be performed under the  
10 agreements, except for those conditions, covenants and obligations it has been prevented from  
11 performing or excused from performing by the contracting defendant.

12 91. The contracting defendant has failed to pay for the Rhodes Work and other  
13 services contracted for by Direct Grading in an amount of \$344,988.46, exclusive of interests,  
14 fees, and costs, despite demands by Direct Grading.

15 92. Pursuant to Nevada Revised Statute (NRS) Chapter 108, Direct Grading has a  
16 right to a lien on the Arch Bond for the Rhodes Project for which work, materials, or equipment  
17 were contracted for improvement of the Rhodes Property.

18 93. On or about June 9, 2017, Direct Grading recorded and duly served a Notice of  
19 Lien. A true and correct copy of the Notice of Lien is attached hereto as Exhibit "5" and  
20 incorporated herein by reference. The bond for the lien was recorded as instrument number  
21 20180927-0001807. The extension agreement for the lien was recorded as instrument number  
22 20171208-0000597, which extends the bringing of this action on the lien, and which was  
23 previously brought. However, Century recently provided to Direct Grading's counsel a copy of  
24 the Arch Bond, and Direct Grading now amends its claim on the Arch Bond, pursuant to NRS  
25 108.2421.

26 **FIRST CAUSE OF ACTION**  
27 (Breach of Contract)

28 94. Direct Grading repeats and realleges all of the allegations set forth above.

1           95.     As set forth above, Direct Grading and Century entered into the agreements  
2 described above whereby Direct Grading agreed to provide the defendant with the Inspirada  
3 Work, Lakes Las Vegas Work, Freeway 50 Work, and Rhodes Work, including services,  
4 materials, and deliverables, and Century agreed to certain monetary obligations.

5           96.     Direct Grading has performed all conditions, covenants, and promises required  
6 on its part to be performed in accordance with the terms and conditions of the agreements.

7           97.     Direct Grading has demanded payment for the Inspirada Work, Lakes Las Vegas  
8 Work, Freeway 50 Work, and Rhodes Work, and services it has rendered pursuant to the terms  
9 and conditions of the agreements described herein, but the demanded amount has not been paid.

10          98.     Century has breached the agreements by failing to pay amounts owed under the  
11 agreement. As a result of Century's breaches of the agreements, Direct Grading has been  
12 damaged in an amount in excess of \$15,000, based on the facts alleged herein.

13          99.     As a result and cause of Century's breaches of contracts, Direct Grading has  
14 been forced to retain counsel to prosecute this action.

15                               **SECOND CAUSE OF ACTION**  
16                               (Breach of Covenant of Good Faith and Fair Dealing)

17          100.    Direct Grading repeats and realleges all of the allegations set forth above.

18          101.    Pursuant to Nevada law, the agreements described herein include an implied  
19 covenant of good faith and fair dealing.

20          102.    Century has breached the covenant of good faith and fair dealing by failing to  
21 give proper notice of any alleged defaults, by removing Direct Grading from the various  
22 Properties to complete the work, and by failing to pay Direct Grading all moneys owed to  
23 Direct Grading per the agreements described herein.

24          103.    As a result and cause of Century's breach of the covenant of good faith and fair  
25 dealing, implied in the agreements, Direct Grading has been damaged in excess of \$15,000,  
26 plus interest, attorney fees and costs.

104. As a result and cause of Century's breaches of the covenant of good faith and fair dealing implied in the agreements described herein, Direct Grading has been forced to retain counsel to prosecute this action.

**THIRD CAUSE OF ACTION**  
(Unjust Enrichment)

105. Direct Grading repeats and realleges all of the allegations set forth above.

106. The Defendants benefitted from the Inspirada Work, Lakes Las Vegas Work, and Freeway 50 Work performed by Direct Grading on the various described projects above, which amount has not been paid to Direct Grading.

107. Direct Grading has a reasonable expectation of being compensated in full for the Inspirada Work, Lakes Las Vegas Work, and Freeway 50 Work and services on the various applicable projects described herein, and Century has been unjustly enriched should they be permitted to retain the benefit of Direct Grading's work and services without payment in full to Direct Grading.

108. Defendants accepted, used, and enjoyed the benefit of the Inspirada Work, Lakes Las Vegas Work, and Freeway 50 Work and services by Direct Grading in excess of \$15,000, and knew or should have know that Direct Grading expected to be paid for its Work and services.

109. Direct Grading has been forced to retain counsel to prosecute this action.

**FOURTH CAUSE OF ACTION**  
(Enforcement of Lien)

110. Direct Grading repeats and realleges all of the allegations set forth above.

111. Pursuant to the agreements described herein with Century, Direct Grading provided or was to provide services, materials, and/or equipment for the Inspirada Project, Lakes Las Vegas Project, Freeway 50 Project, and Rhodes Project, on the various applicable properties.

112. The Inspirada Work, Lakes Las Vegas Work, Freeway 50 Work and Rhodes Work, and services and materials performed/provided or to be performed/provided by Direct

1 Grading were actually integrated or contemplated to have been integrated into the various  
2 applicable projects by the parties herein.

3 113. Pursuant to the agreements between Direct Grading and Century, Direct Grading  
4 was to be paid \$928,573.84, plus an additional \$1,480,020.55 for additional or changed work,  
5 materials and equipment for the Inspirada Work, but to date, Direct Grading has only been paid  
6 \$2,118,575.84.

7 114. Pursuant to the agreements between Direct Grading and Century, Direct Grading  
8 was to be paid \$1,369,799.60, plus an additional \$288,713,.92 for additional or changed work,  
9 materials and equipment for the Lakes Las Vegas Work, but to date, Direct Grading has only  
10 been paid \$1,357,469.92.

11 115. Pursuant to the agreements between Direct Grading and Century, Direct Grading  
12 was to be paid \$2,244,232.64, plus an additional \$397,766.80 for additional or changed work,  
13 materials and equipment for the Freeway 50 Work, but to date, Direct Grading has only been  
14 paid \$735,863.15.

15 116. Pursuant to the agreements between Direct Grading and Century, Direct Grading  
16 was to be paid \$344,988.46, plus an additional \$0.00 for additional or changed work, materials  
17 and equipment for the Rhodes Work, but to date, Direct Grading has only been paid \$0.00.

18 117. Direct Grading has demanded payment.

19 118. To protect its lien rights, on or about April 10, 2017, Direct Grading recorded a  
20 Notice of Lien against the various properties for the Inspirada Work, Lakes Las Vegas Work,  
21 and Freeway 50 Work. Further, on or about June 9, 2017, Direct Grading recorded a Notice of  
22 Lien against the above-described property for the Rhodes Work. Thereafter, Century posted  
23 bonds for the work on the Properties.

24 119. Direct Grading has perfected the lien per the Nevada statutes.

25 120. The agreed price and reasonable value of the services performed by Direct  
26 Grading is in excess of \$15,000, according to proof, which is now due and owing to Direct  
27 Grading.  
28

121. Direct Grading is entitled to compensation from the Argonaut Bonds and Arch Bond, pursuant to NRS Chapter 108, to satisfy the liens.

122. The Argonaut Bonds and Arch Bond are necessary and required to satisfy the claims and liens set forth herein.

123. There may be lien claimants whose liens may be subordinate to the liens recorded by Direct Grading.

124. Direct Grading has been forced to retain counsel to prosecute this action.

#### **FIFTH CAUSE OF ACTION**

(Claim Against Argonaut Insurance Company and Arch Insurance Company)

125. Direct Grading repeats and realleges all of the allegations set forth above.

126. After the above-referenced notices of lien were recorded for the applicable Rhodes Property, Arch issued the Arch Bond in order to compensate entities like Plaintiff, in the amount of \$517,482.69, for the Rhodes Property.

127. After the above-referenced notices of liens were recorded for the applicable remaining properties, Argonaut issued the Argonaut Bonds in order to compensate entities like Plaintiff, in the amount of \$1,990,387.780, for the Inspirada Property, Lakes Las Vegas Property, and the Freeway 50 Property.

128. Pursuant to the terms of the Argonaut Bonds and Arch Bond, Argonaut and Arch, respectively, obligated themselves to Plaintiff under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, as well as under NRS 108.237.

129. Demand for payment is made by Plaintiff to Argonaut and Arch in the amount of the Argonaut Bonds and Arch Bond, together with any amounts due and owing to Plaintiff, pursuant to NRS 108.237 and any other applicable statute.

130. Under the terms of the Argonaut Bonds and Arch Bond, Argonaut and Arch, respectively, are obligated to pay to Plaintiff the outstanding debt in the amount of the Argonaut Bonds and Arch Bond, together with any amounts due and owing to Plaintiff, pursuant to NRS 108.237, which exceeds \$15,000.

131. Direct Grading has been forced to retain counsel to prosecute this action.

**PRAYER**

**WHEREFORE**, Direct Grading prays for judgment in its favor as follows:

**FOR THE FIRST CAUSE OF ACTION**

1. For damages in excess of \$15,000.00; plus
2. For prejudgment interest;
3. For attorney fees and costs;
4. For such other relief as this Court deems proper.

**FOR THE SECOND CAUSE OF ACTION**

1. For damages in excess of \$15,000.00; plus
2. For prejudgment interest;
3. For attorney fees and costs;
4. For such other relief as this Court deems proper.

**FOR THE THIRD CAUSE OF ACTION**

1. For damages in excess of \$15,000.00; plus
2. For prejudgment interest;
3. For attorney fees and costs;
4. For such other relief as this Court deems proper.

**FOR THE FOURTH CAUSE OF ACTION**

1. For judgment in favor of Direct Grading and against Defendant for compensation on Direct Grading's liens from the Argonaut Bonds and Arch Bond, as well as on the sum and costs for preparation, verification, service, filing and enforcement of the lien;
2. That this Court declare, if applicable, the rank and priority of all lien claims on the aforementioned bonds, and that Direct Grading's lien be ascertained and adjudged to be a valid lien, if applicable;
3. That Direct Grading's lien be enforced according to law;
4. That this Court direct payment from the Argonaut Bonds and Arch Bond, and that said payment be applied to the sums found due and owing to Direct Grading;

5. That this Court enter such deficiency judgment against the Defendant, and each of them as may be proper;

6. For prejudgment interest;

7. For attorney fees and costs;

8. For such other relief as this Court deems proper.

**FOR THE FIFTH CAUSE OF ACTION**

1. For judgment adjudging the penal sum of the Argonaut Bonds and Arch Bond and for an order from the Court mandating said sum be paid directly to Plaintiff, which exceeds \$15,000;

2. For prejudgment interest;

3. For attorney fees and costs;

4. For any amounts due and owing to Plaintiff, pursuant to NRS 108.237.

5. For such other relief as this Court deems proper.

DATED this 3rd day of April, 2020.

JOHNSON & GUBLER, P.C.

Matthew L. Johnson (6004)

Russell G. Gubler (10889)

Ashveen S. Dhillon (14189)

Lakes Business Park

8831 W. Sahara Ave.

Las Vegas, NV 89117

Attorneys for Plaintiff,

Direct Grading & Paving, L.L.C.

JOHNSON & GUBLER, P.C.

LAKES BUSINESS PARK

8831 WEST SAHARA

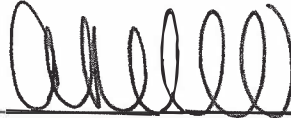
LAS VEGAS, NEVADA 89117

(702) 471-0065

(702) 471-0075

CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of April, 2020, I electronically served a true and correct copy of the foregoing DIRECT GRADING & PAVING'S FIRST AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT to all parties registered in the Court's filing system for this matter.



An Employee of JOHNSON & GUBLER, P.C.

# EXHIBIT "1"

DIRECT001271



December 12, 2016

**BY CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

Direct Grading & Paving, L.L.C.  
Attn: Melvin Westwood

3741 Civic Center Drive  
N. Las Vegas, NV 89030

**Re: Master Subcontract Agreement ("Agreement") dated June 29, 2010, between Direct Grading & Paving, L.L.C. ("Direct Grading") and Century Communities of Nevada, LLC ("Century")—Default Notice**

Dear Mr. Westwood:

Please be advised that Direct Grading is in default of the Agreement for failure to timely perform its obligations under the Agreement.

This letter constitutes the "3-Day Notice" described in Section 2.5 of the Agreement. Pursuant to the Agreement, Direct Grading must cure such default within three (3) days after receipt of this letter. If Direct Grading fails to cure the default within such period, Century will be entitled to exercise the rights and remedies granted by the Agreement and by applicable law.

Sincerely,

Rick Barron  
Vice President of Land

# EXHIBIT "2"

(3)

APN:

191-23-515-001 through 191-23-515-082

191-23-516-001 through 191-23-516-086

Recording requested by and mail documents  
and tax statements, if applicable, to:  
Name: Direct Grading & Paving, LLC  
Address: 2222 W. Cheyenne Avenue  
City/State/Zip: North Las Vegas, NV 89032

Inst #: 20170410-0000601

Fees: \$19.00

N/C Fee: \$0.00

04/10/2017 10:12:28 AM

Receipt #: 3054047

Requestor:

DIRECT GRADING & PAVING LLC

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

**NOTICE OF LIEN**  
(Mechanic Lien)

The undersigned, Direct Grading & Paving, L.L.C. hereby claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$928,573.84.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$1,480,020.55.
3. The total amount of all payments received to date is: \$2,118,575.84.
4. The amount of the lien, after deducting all just credits and offsets is: \$290,018.55.
5. The name of the owner(s), if known, of the property is/are: Century Communities of Nevada, LLC, R/A National Registered Agents, Inc. of Nevada, 701 S. Carson St., Ste. 200, Carson City, Nevada 89701.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Century Communities of Nevada, LLC, 6345 S. Jones, Suite 400, Las Vegas, NV 89118.
7. A brief statement of the terms of payment of the lien claimant's contract: Net 30

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8. A description of the property to be charged with the lien is: See Exhibit A.

DIRECT GRADING & PAVING, L.L.C.

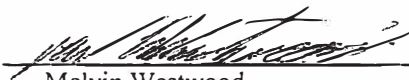
By:   
Melvin Westwood  
Its: Managing Member

State of Nevada       )  
                                  ) ss  
County of Clark       )

Melvin Westwood, Managing Member of Direct Grading & Paving, L.L.C., being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

DIRECT GRADING & PAVING, L.L.C.

By:   
Melvin Westwood  
Its: Managing Member

Subscribed and sworn to before me  
this 10 day of April, 2017.

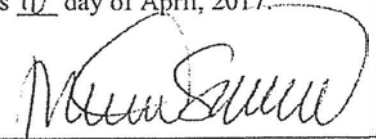
  
Notary Public in and for  
the County and State Nevada



Exhibit A

Parcel 1:

Lot One (1) through Thirty (30), inclusive; and Lots One Hundred Seventeen (117) through One Hundred Sixty-Eight (168), inclusive of FINAL MAP OF INSPIRADA POD 3-2 UNIT 1 as shown by map thereof on file in Book 151 of Plats, Page 7, in the Office of the County Recorder, Clark County, Nevada.

Parcel 2:

Lots Thirty-One (31) through One Hundred Sixteen (116), inclusive of FINAL MAP OF INSPIRADA POD 3-2 UNIT 2 as shown by map thereof on file in Book 151 of Plats, Page 8, in the Office of the County Recorder, Clark County, Nevada.

# EXHIBIT "3"

DIRECT001277

3

APN:

160-27-119-001 through 160-27-119-011  
160-27-215-001 through 160-27-215-002  
160-27-614-001 through 160-27-614-009  
160-27-511-001 through 160-27-511-004  
160-27-214-001 through 160-27-214-013  
160-27-612-001 through 160-27-612-005  
160-27-612-008 through 160-27-612-013  
160-27-214-016

Recording requested by and mail documents  
and tax statements, if applicable, to:  
Name: Direct Grading & Paving, LLC  
Address: 2222 W. Cheyenne Avenue  
City/State/Zip: North Las Vegas, NV 89032

Inst #: 20170410-0000602

Fees: \$19.00

N/C Fee: \$0.00

04/10/2017 10:12:28 AM

Receipt #: 3054047

Requestor:

DIRECT GRADING & PAVING LLC

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

NOTICE OF LIEN  
(Mechanic Lien)

The undersigned, Direct Grading & Paving, L.L.C. hereby claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

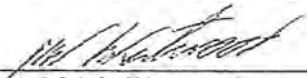
1. The amount of the original contract is: \$1,369,799.60.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$288,713.92.
3. The total amount of all payments received to date is: \$1,357,469.92.
4. The amount of the lien, after deducting all just credits and offsets is: \$301,043.48.
5. The name of the owner(s), if known, of the property is/are: Century Communities of Nevada, LLC, R/A National Registered Agents, Inc. of Nevada, 701 S. Carson St., Ste. 200, Carson City, Nevada 89701.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Century Communities of Nevada, LLC, 6345 S. Jones, Suite 400, Las Vegas, NV 89118.
7. A brief statement of the terms of payment of the lien claimant's contract: Net 30

////

////

8. A description of the property to be charged with the lien is: See Exhibit A.

DIRECT GRADING & PAVING, L.L.C.

By:   
Melvin Westwood  
Its: Managing Member

State of Nevada           )  
                                  ) ss  
County of Clark         )

Melvin Westwood, Managing Member of Direct Grading & Paving, L.L.C., being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

DIRECT GRADING & PAVING, L.L.C.

By:   
Melvin Westwood  
Its: Managing Member

Subscribed and sworn to before me  
this 10 day of April, 2017.

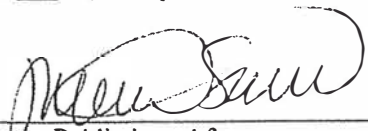
  
Notary Public in and for  
the County and State Nevada



Exhibit A

Parcel 1:

Lots Ten (10) through Twenty (20), inclusive; and Lots 25A and 26A of AMENDED PLAT OF A PORTION OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 152 of Page 5, in the Office of the County Recorder, Clark County, Nevada.

Parcel 2:

Lots 32A, 33A, 44A through 49A, inclusive and Common Elements D and E of FINAL MAP OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 150 of Plats, Page 74, in the Office of the County Recorder, Clark County, Nevada.

Parcel 3:

Lots 1 (One) through Nine (9), inclusive, Lots Twenty-One (21) through Twenty-Four (24), inclusive, Lots Twenty-Seven (27) through Thirty-One (31), inclusive, Lot Thirty-Four (34), Lots Thirty-Five (35) through Forty-Three (43), inclusive of of FINAL MAP OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 150 of Plats, Page 74, in the Office of the County Recorder, Clark County, Nevada.

# EXHIBIT "4"

DIRECT001281

4

APN: 176-05-222-001 through 176-05-222-076  
176-05-715-001 through 176-05-715-006  
176-05-223-001 through 176-05-223-037  
176-05-613-001 through 176-05-613-062  
176-05-117-001 through 176-05-117-025  
176-05-610-001 through 176-05-610-029  
176-05-611-001 through 176-05-611-049  
176-05-612-001 through 176-05-612-003  
176-05-511-001 through 176-05-511-034  
176-05-202-002

Inst #: 20170410-0000603  
Fees: \$20.00  
N/C Fee: \$0.00  
04/10/2017 10:12:28 AM  
Receipt #: 3054047  
Requestor:  
DIRECT GRADING & PAVING LLC  
Recorded By: MAYSM Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

Recording requested by and mail documents  
and tax statements, if applicable, to:  
Name: Direct Grading & Paving, LLC  
Address: 2222 W. Cheyenne Avenue  
City/State/Zip: North Las Vegas, NV 89032

#### NOTICE OF LIEN (Mechanic Lien)

The undersigned, Direct Grading & Paving, L.L.C. hereby claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$2,244,232.64.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$397,766.80.
3. The total amount of all payments received to date is: \$1,906,136.29.
4. The amount of the lien, after deducting all just credits and offsets is: \$735,863.15.
5. The name of the owner(s), if known, of the property is/are: Century Communities of Nevada, LLC, R/A National Registered Agents, Inc. of Nevada, 701 S. Carson St., Ste. 200, Carson City, Nevada 89701.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Century Communities of Nevada, LLC, 6345 S. Jones, Suite 400, Las Vegas, NV 89118.
7. A brief statement of the terms of payment of the lien claimant's contract: Net 30

////

////

8. A description of the property to be charged with the lien is: See Exhibit A.

DIRECT GRADING & PAVING, L.L.C.

By:   
Melvin Westwood  
Its: Managing Member

State of Nevada            )  
                                      ) ss  
County of Clark            )

Melvin Westwood, Managing Member of Direct Grading & Paving, L.L.C., being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

DIRECT GRADING & PAVING, L.L.C.

By:   
Melvin Westwood  
Its: Managing Member

Subscribed and sworn to before me  
this 10 day of April, 2017

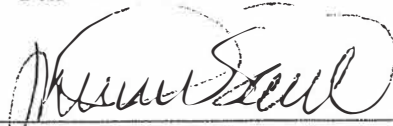
  
Notary Public in and for  
the County and State Nevada



Exhibit A

Parcel 1:

Lots One (1) through Thirty-Four (34), inclusive; Lots Fifty-Four (54) through Sixty-Three (63), inclusive and Lots Sixty-Five (65) through Ninety-Four (94), inclusive of FINAL MAP OF FREEWAY 50 PHASE 1 as shown by map thereof on file in Book 151 of Plats, Page 29, in the Office of the County Recorder, Clark County, Nevada.

Parcel 2:

Lots One Hundred Twenty (120) through One Hundred Twenty-Five (125), inclusive of FINAL MAP OF FREEWAY 50 PHASE 2 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 3:

Lots One Hundred Sixty-One (161) through One Hundred Ninety-Seven (197), inclusive of FINAL MAP OF FREEWAY 50 PHASE 3 as shown by map thereof on file in Book 151 of Plats, Page 52, in the Office of the County Recorder, Clark County, Nevada.

Parcel 4:

Lots Two Hundred Thirty (230) through Two Hundred Ninety-One (291), inclusive of FINAL MAP OF FREEWAY 50 PHASE 5 & 7 as shown by map thereof on file in Book 151 of Plats, Page 92, in the Office of the County Recorder, Clark County, Nevada.

Parcel 5:

Lot Three Hundred Nine (309) through Three Hundred Thirty-Three (333), inclusive of FINAL MAP OF FREEWAY 50 PHASE 6 as shown by map thereof on file in Book 152 of Plats, Page 24, in the Office of the County Recorder, Clark County, Nevada.

Parcel 6:

Lot Thirty-Five (35) through Fifty-Three (53), inclusive; Lot Sixty Four (64); and Lots Ninety-Five (95) through One Hundred Three (103), inclusive of FINAL MAP OF FREEWAY 50 PHASE 1 as shown by map thereof on file in Book 151 of Plats, Page 29, in the Office of the County Recorder, Clark County, Nevada.

Parcel 7:

Lots One Hundred Four (104) through One Hundred Nineteen (119), inclusive; and Lots One Hundred Twenty-Six (126) through One Hundred Fifty-Eight (158), inclusive of FINAL MAP OF FREEWAY 50 PHASE 2 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 8:

Lots One Hundred Fifty-Nine (159), One Hundred Sixty (160) and One Hundred Ninety-Eight (198) of FINAL MAP OF FREEWAY 50 PHASE 3 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 9:

Lots Two Hundred Ninety-Two (292) through Three Hundred Eight (308), inclusive; and Lots Three Hundred Thirty-Four (334) through Three Hundred Fifty (350), inclusive of FINAL MAP OF FREEWAY 50 PHASE 6 as shown by map thereof on file in Book 152 of Plats, Page 24, in the Office of the County Recorder, Clark County, Nevada.

Parcel 10:

The North Half (N  $\frac{1}{2}$ ) of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 4, Township 22 South, Range 60 East, M.D.M.

# EXHIBIT "5"

DIRECT001286

3

APN:

176-17-314-001 through 176-17-314-021  
176-17-314-023 through 176-17-314-024  
176-17-314-027 through 176-17-314-034  
176-17-415-001 through 176-17-415-013

Inst #: 20170609-0002317

Fees: \$19.00

N/C Fee: \$0.00

06/09/2017 12:05:22 PM

Receipt #: 3108544

Requestor:

DIRECT GRADING & PAVING LLC

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording requested by and mail documents

And tax statements, if applicable, to:

Name: Direct Grading & Paving, LLC

Address: 2222 W. Cheyenne Avenue

City/State/Zip: North Las Vegas, NV 89032

#### NOTICE OF LIEN

(Mechanic Lien)

The undersigned, Direct Grading & Paving, L.L.C. hereby claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$344,988.46
2. The Total amount of all additional or changed work, materials and equipment, if any, is:  
\$0.00
3. The total amount of all payments received to date is: \$0.00
4. The amount of the lien, after deducting all just credits and offsets is: \$344,988.46
5. The name of the owner(s), if know, of the property is/are: Century Communities of Nevada, LLC, R/A National Registered Agents, Inc. of Nevada 701 S. Carson St., Ste. 200, Carson City, Nevada 89701.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Century Communities of Nevada, LLC, 6345 S. Jones, Suite 400, Las Vegas, NV 89118
7. A brief statement of terms of payment of the lien claimants contract: Net 30

////

////

DIRECT001287

8. A description of the property to be charged with the lien is: See Exhibit A.  
DIRECT GRADING & PAVING, L.L.C.

By:   
Don Mayhall

State of Nevada )

) ss

County of Clark )

Don Mayhall, of Direct Grading & Paving, L.L.C., being first duly sworn on oath according to law,  
deposes and says:

I have read the foregoing Notice if Lien, know the contents thereof and state that the  
same is true of my own personal knowledge, except those matters stated upon information and  
belief, and, as to those matters, I believe them to be true.

DIRECT GRADING & PAVING, L.L.C.

By:   
Don Mayhall

Subscribed and sworn to before me

This 17<sup>th</sup> day of June 2017.



Notary Public in and for Clark,

The County and State of Nevada



DIRECT001288

Exhibit A

Phase 5:

Lot One (1) through Forty-Four (44), inclusive; inclusive of FINAL MAP OF RHOADES RANCH SOUTH PHASE 5, as shown by map thereof on file in Book 153 of plats, Page 049, in the Office of the County Recorder, Clark County, Nevada.

JOHNSON & GUBLER, P.C.  
LAKES BUSINESS PARK  
8831 WEST SAHARA  
LAS VEGAS, NEVADA 89117  
(702) 471-0065  
(702) 471-0075

**SUMM**

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
Ashveen S. Dhillon (14189)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 W. Sahara Ave.  
Las Vegas, NV 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
Email: rgubler@mjohnsonlaw.com  
*Attorneys for Plaintiff,*  
*Direct Grading & Paving, L.L.C.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIRECT GRADING & PAVING,  
L.L.C.,

Plaintiff,

vs.

CENTURY COMMUNITIES OF  
NEVADA, LLC, a Nevada limited  
liability company; ARGONAUT  
INSURANCE COMPANY; ARCH  
INSURANCE COMPANY; DOES I  
through X, and ROE  
CORPORATIONS I through X,  
inclusive,

Defendant.

Case No.: A-18-773139-C

Dept. No.: XXXII

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU FILE A RESPONSE WITH THE  
COURT WITHIN 21 DAYS. READ THE INFORMATION BELOW CAREFULLY.**

TO: ARCH INSURANCE COMPANY

A civil complaint has been filed by the Plaintiff against you. Plaintiff is seeking to  
recover the relief requested in the complaint, which could include a money judgment against  
you or some other form of relief.

If you intend to defend this lawsuit, within 21<sup>1</sup> days after this Summons is served on you  
(not counting the day of service), you must:

<sup>1</sup>The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members,  
and legislators each have 45 days after service of this Summons within which to file a response to Plaintiff's complaint.

DIRECT001290

1. File with the Clerk of the Court, whose address is shown below, a formal written response (typically a legal document called an “answer,” but potentially some other response) to Plaintiff’s complaint.
2. Pay the required filing fee to the court, or file an Application to Proceed *In Forma Pauperis* and request a waiver of the filing fee.
3. Serve (by mail or hand delivery) a copy of your response upon the Plaintiff whose name and address is show below.

**Information and forms to assist you are available, free of charge, at the Civil Law Self-Help Center at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, and on the center’s website at [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).**

If you fail to respond, the Plaintiff can request your default. The court can then enter judgment against you for the relief demanded by the Plaintiff in the complaint, which could

...


...

JOHNSON & GUBLER, P.C.  
LAKES BUSINESS PARK  
8831 WEST SAHARA  
LAS VEGAS, NEVADA 89117  
(702) 471-0065  
(702) 471-0075

1 result in money or property being taken from you or some other relief requested in Plaintiff's  
2 complaint.

3 If you intend to seek an attorney's advice, do it quickly so that your response can be  
4 filed on time.  
5

6 STEVEN D. GRIERSON, CLERK OF COURT

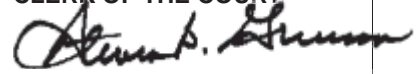
7  
8 By:  Date: 4/3/2020  
9 Deputy Clerk  
10 Michelle McCarthy  
11 Regional Justice Center  
12 200 Lewis Avenue  
13 Las Vegas, Nevada 89155

14 Issued at the request of:  
15 JOHNSON & GUBLER, P.C.

16 

17 Matthew L. Johnson (6004)  
18 Russell G. Gubler (10889)  
19 Lakes Business Park  
20 8831 West Sahara Avenue  
21 Las Vegas, Nevada 89117  
22 Phone: (702) 471-0065  
23 Fax: (702) 471-0075  
24 Email: rgubler@mjohnsonlaw.com

25 *Attorneys for Plaintiff*  
26  
27  
28



**AACC**  
NICHOLAS J. SANTORO, ESQ.  
Nevada Bar No. 0532  
OLIVER J. PANCHERI, ESQ.  
Nevada Bar No. 7476  
**SANTORO WHITMIRE**  
10100 W. Charleston Blvd., Suite 250  
Las Vegas, Nevada 89135  
Tel.: (702) 948-8771 / Fax: (702) 948-8773  
Email: [nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com)  
[opancheri@santoronevada.com](mailto:opancheri@santoronevada.com)

*Attorneys for Century Communities of Nevada, LLC and  
Argonaut Insurance Company*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DIRECT GRADING & PAVING, LLC, a  
Nevada limited liability company,

Plaintiff,

v.

CENTURY COMMUNITIES OF NEVADA,  
LLC, a Delaware limited liability company;  
ARGONAUT INSURANCE COMPANY;  
ARCH INSURANCE COMPANY; DOES I  
through X; and ROE CORPORATIONS I  
through X, inclusive,

Defendant.

CENTURY COMMUNITIES OF NEVADA,  
LLC, a Delaware limited liability company,

Counterclaimant,

v.

DIRECT GRADING & PAVING, LLC, a  
Nevada limited liability company; MELVIN  
WESTWOOD, an individual; LINDA  
MIDDLETON, an individual; DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Counterdefendants.

Case No.: A-18-773139-C

Dept. No.: XXXII

**ANSWER TO FIRST AMENDED  
COMPLAINT, COUNTERCLAIM, AND  
THIRD-PARTY COMPLAINT**

CENTURY COMMUNITIES OF NEVADA,  
LLC, a Delaware limited liability company,

Third-Party Plaintiff,

v.

SCOTT PROKOPCHUK, an individual; DOES  
I through X; and ROE CORPORATIONS I  
through X, inclusive,

Third-Party Defendant.

Defendants CENTURY COMMUNITIES OF NEVADA, LLC ("*Century*") and ARGONAUT INSURANCE COMPANY ("*Argonaut*") (collectively the "*Defendants*"), by and through their undersigned counsel, submit the following (1) Answer to the First Amended Statement of Facts Constituting Lien and Complaint (the "*Amended Complaint*") submitted by Direct Grading & Paving, LLC ("*Direct*"); (2) Century's Counterclaim against Direct and Melvin Westwood ("*Westwood*") and Linda Middleton ("*Middleton*"); and (3) Century's Third-Party Complaint against Scott Prokopchuk ("*Prokopchuk*") and alleges as follows:

**STATEMENT OF THE FACTS**

1. Responding to Paragraphs 1, 2, 8, 9, 15, 16, 22, and 23 of the Amended Complaint, Century and Argonaut admit that Direct recorded Notices of Lien (the "*Liens*") against Century's Inspirada Property, Lake Las Vegas Property, Freeway 50 Property, and Rhodes Property (as these properties are defined in the Amended Statement of Facts). Century denies that it owes the sums to Direct set forth in the Liens or that Direct had any valid basis to record the Liens. Argonaut joins in that denial.

2. Responding to Paragraphs 3-7, 10-14, 17-21, and 24-30 of the Amended Complaint, Direct failed to include copies of the so-called agreements identified in the Amended Complaint. Accordingly, these allegations are impermissibly vague and Defendants are compelled to deny these allegations. Further, Century counter-alleges that on or about June 29, 2010, Las Vegas Land Contracting, LLC, a Delaware limited liability company, dba Dunhill Homes, as contractor, and Direct, as subcontractor, entered into that certain Master Subcontract

Agreement (the “**Agreement**”), which Agreement sets forth the general terms and conditions which would become part of future construction contracts between the parties. Century is a successor-in-interest to the Agreement. Pursuant to the Agreement, Century and Direct entered into several Project Work Authorizations (each, a “**PWA**”) detailing, among other things, the applicable project of Century and scope of work to be formed by Direct in respect to the applicable project. Among others, Century and Direct entered into a PWA for grading and related work at Lake Las Vegas, Inspirada and Parkway 50 (the “**Projects**”). Direct defaulted under the Agreement and the PWAs for the Projects due to, among other things, the failure of Direct to timely perform the scope of work required under the PWAs for the Projects. Accordingly, Century owes Direct nothing under the Agreement or the PWAs (or under any other agreement or claim asserted by Direct). To the contrary, Century has been damaged by Direct’s defaults and is entitled to a damage award in its favor as a result of Direct’s breaches.

3. Additionally, Century has caused the Liens to be removed by recording and serving the following bonds: (1) a bond in the amount of \$1,103,794.73 relating to the Freeway 50 Property, which was recorded on April 17, 2017; (2) a bond in the amount of \$435,027.83 relating to the Inspirada Property, which was recorded on April 18, 2017; (3) a bond in the amount of \$451,565.22 relating to the Lake Las Vegas Property, which was recorded on April 19, 2017; and (4) a bond in the amount of \$517,482.69 relating to the Rhodes Ranch Property, which was recorded on September 27, 2018 (collectively the “**Bonds**”).<sup>1</sup>

4. Direct is not entitled to any relief under the Liens and Direct’s continued pursuit of a remedy of foreclosure after the posting of the Bonds is contrary to Nevada law. Direct is not entitled to any relief whatsoever in connection with the wrongfully recorded Liens or the Bonds.

### **RESPONSE TO THE COMPLAINT**

Defendants, by and through their attorneys of record, respond to the Amended Complaint as follows:

5. Responding to Paragraphs 31, 35, 36, 37, 94, 100, 105, 110 and 125 of the Amended Complaint, Defendants are without sufficient knowledge to form a belief as to the

---

<sup>1</sup> True and correct copies of the Bonds are attached to this pleading as **Exhibit “A.”**

1 truth of the allegations and, therefore, deny the same.

2 6. Responding to Paragraphs 44–45, 47–52, 56–62, 64–66, 68–72, 76–78, 80–83,  
3 88–93, 95–99, 101–104, 106–109, 111–124, and 126–131 of the Amended Complaint,  
4 Defendants respond that the allegations contained in these paragraphs fail to accurately  
5 characterize the facts and agreements at issue in this matter. As such, Century denies the  
6 allegations contained in those paragraphs.

7 7. Responding to Paragraph 32 of the Amended Complaint, Defendants respond that  
8 Century is a limited liability company formed and existing under the laws of the State of  
9 Delaware and is qualified to do business as a foreign limited liability company in the State of  
10 Nevada.

11 8. Responding to Paragraph 33 of the Amended Complaint, Defendants respond that  
12 Argonaut is a surety licensed to provide bonds and did provide bonds identified as  
13 SUR0040822–SUR0040824. Defendants deny that Direct has demonstrated any basis to recover  
14 on the Bonds.

15 9. Responding to Paragraph 34 of the Amended Complaint, Defendants respond that  
16 Arch is a surety licensed to provide bonds and did provide a bond identified as SU1125385.  
17 Defendants deny that Direct has demonstrated any basis to recover on the Bonds.

18 10. Responding to Paragraph 38–40 of the Amended Complaint, Defendants are  
19 without sufficient knowledge to form a belief as to the truth of the allegations and, therefore,  
20 deny the same.

21 11. Responding to Paragraphs 46 and 63 of the Amended Complaint, Century  
22 responds that there were various field meetings and schedules between the parties. However,  
23 Century further responds that these paragraphs fail to accurately characterize the facts giving rise  
24 to this dispute and Century therefore denies the remaining allegations contained in this  
25 paragraphs.

26 12. Responding to Paragraphs 41–43, 53–55, 73–75, 84–86, and 94 of the Amended  
27 Complaint, Century responds that Direct failed to include copies of the so-called agreements  
28 identified in the Amended Complaint. These allegations are impermissibly vague. Accordingly,

Defendants are compelled to deny these allegations. Further, Defendants repeat and reallege the counter-allegations contained in Paragraphs 2 and 3 above and incorporate the same herein by this reference.

13. Responding to Paragraphs 67 and 79 of the Amended Complaint, Century admits that it sent the Notice of Default letter to Direct as a result of Direct's defaults, which were never cured.

14. Responding to Paragraph 87 of the Amended Complaint, Century responds that Direct did not perform any work whatsoever in relation to Rhodes Ranch phase 5. With regard to Rhodes Ranch phase 4, Direct failed to adequately perform its grading and paving services resulting in a termination of Direct. Century further responds that, as a direct result of Direct's breaches, Century could not reasonably proceed with Direct as a grading contractor for the Rhodes Ranch project. Century further responds that the remainder of this paragraph is impermissibly vague with regard to other "scheduling meetings." While Century admits that there were scheduling meetings between the parties, because Century has failed to identify the particular scheduling meetings referenced (and the contents of those meetings), Century is without sufficient knowledge to form a belief as to the truth of the allegations of the remaining portion of this paragraph and, therefore, Defendants deny the same.

#### **AFFIRMATIVE DEFENSES**

As and for a separate defense, Defendants allege the following affirmative defenses:

1. Direct's Amended Complaint fails to state a claim upon which relief can be granted.

2. The damages suffered by Direct, if any, were the result of negligence and failure to use reasonable diligence in performing the acts of Direct.

3. Any recovery by Direct is barred or must be reduced as a result of Direct's comparative fault.

4. Any recovery by Direct must be set off or reduced, abated, or apportioned to the extent that any other party's actions cause or contributed to damages, if any there were.

5. Direct's claims are barred by the doctrines of laches, waiver and estoppel.

1           6.       By its own actions, Direct has approved and ratified the actions of Century in  
2 connection with the allegations contained in Direct's Amended Complaint.

3           7.       By reason of their own acts, Direct has released and discharged Century from the  
4 claims alleged in Direct's Amended Complaint and from any and all claims of Direct against  
5 Century.

6           8.       Direct has failed to do equity towards Century, and therefore, is not entitled to any  
7 relief from Century.

8           9.       Defendants have statutory defenses under NRS Chapter 108 regarding Direct's  
9 mechanic's liens and the bonds, and therefore, Direct would not be entitled to recover on its lien  
10 foreclosure claim or on any claim to the bonds.

11          10.       Direct breached the relevant agreements. Because its work was substandard, not  
12 workmanlike, defective, incomplete, or untimely, among other breaches, Direct is not entitled to  
13 recover for said work from Century.

14          11.       Direct failed to mitigate its damages.

15          12.       Any damages alleged by Direct were caused or contributed to by Direct's own  
16 actions or omissions thereby barring or reducing the amount the Direct may recover.

17          13.       Any damages alleged by Direct were caused by the actions or omissions of  
18 persons or entities who were not agents or employees of Century and/or who were independent  
19 contractors, and Defendants are not liable for the acts or omissions of such persons. Any such  
20 recover by Direct must set off, reduced, abated or apportioned to the extent that any other  
21 person's actions or omissions caused or contributed to Direct's damages.

22          14.       The damages incurred by Direct as a result of the acts or omissions of Century, if  
23 any, must be set off, reduced or abated.

24          15.       The damages incurred by Direct as a result of the acts or omissions of Century, if  
25 any, must be set off, reduced or abated to the extent that Direct injured the Property, damaged  
26 materials supplied to Century by others, and/or impaired the services rendered by others on  
27 Century's behalf.

28          16.       The damages incurred by Direct as a result of the acts or omissions of Century, if

any, must be set off, reduced or abated to the extent that Direct breached its warranties to Century and/or any person or entity acting on Century's behalf.

17. Direct's lien and bond claims re excessive or overstated and should be reduced and/or discharged.

18. The Amended Complaint is barred by Direct's fraudulent conduct.

19. Defendants hereby incorporate by reference those affirmative defense enumerated in NRCP 11, all possible defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonably inquiry and, therefore, Defendants reserve the right to amend their Answer to allege additional defenses if subsequent investigation warrants.

WHEREFORE, Defendants pray:

1. That Direct takes nothing by way of its Amended Complaint.
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as just and proper.

### **COUNTERCLAIM**

Counterclaimant CENTURY COMMUNITIES OF NEVADA, LLC ("*Century*" or "*Counterclaimant*"), by and through its undersigned counsel, and for its Counterclaim ("*Counterclaim*") against Counterdefendants DIRECT GRADING & PAVING, LLC ("*Direct*") MELVIN WESTWOOD ("*Westwood*"), and LINDA MIDDLETON ("*Middleton*") (collectively, "*Counterdefendants*"), alleges as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Upon information and belief, Direct is a company formed and existing under the laws of the State of Nevada and doing business in Clark County, Nevada.

2. Westwood is a resident of Clark County, Nevada and owns, controls and operates Direct.

3. Middleton is a resident of Clark County, Nevada and the Controller for Direct. As Controller, Ms. Middleton is authorized to act on behalf of Direct and to bind Direct by her conduct.

4. Westwood is the alter ego of Direct. Direct is influenced and governed by

Westwood. There is such unity of interest and ownership that Direct is inseparable from Westwood. Adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice.

5. DOES I-X and ROE CORPORATIONS I through X, inclusive, may be individuals, corporations, associations, partnerships, subsidiaries, holding companies, owners, predecessors or successor entities, joint ventures, parent corporations, shareholders, Officers, Directors, or related entities of the above captioned Counterdefendants, inclusive, whose true names and identities and capacities are unknown to Century at this time. Each fictitiously named counterdefendant participated in some manner, is in some way liable or responsible to Century on the facts hereinafter alleged, and cause injuries and damages proximately thereby. At such time as the DOE/ROE Directs' true names and capacities become known to Century, Century will ask leave of this Court to amend this Complaint to substitute said true names and capacities.

6. The Court has jurisdiction over the instant dispute, and venue is proper in this Court, because the dispute involves a contract entered into in, and an interest in real property located in, Clark County, Nevada.

#### **GENERAL ALLEGATIONS**

7. Century repeats and realleges all preceding Paragraphs of this Counterclaim and by this reference incorporates the same as though fully set forth herein.

8. On or about June 29, 2010, Las Vegas Land Contracting, LLC, a Delaware limited liability company, dba Dunhill Homes, as contractor, and Direct, as subcontractor, entered into that certain Master Subcontract Agreement (the "**Agreement**"), which Agreement sets forth the general terms and conditions which would become part of future construction contracts between the parties.

9. Century is a successor-in-interest to the Agreement as a result of an Asset Purchase Agreement between it and Las Vegas Land Contracting, LLC, a Delaware limited liability company, dba Dunhill Homes (the Contractor under the Agreement).

10. Pursuant to the Agreement, Century and Direct entered into several Project Work Authorizations (each, a "**PWA**") detailing, among other things, the applicable project of Century

1 and scope of work to be formed by Direct in respect to the applicable project.

2 11. Among others, Century and Direct entered into a PWA for grading and related  
3 work at Lake Las Vegas, Inspirada and Parkway 50 (the “**Projects**”).

4 12. Upon information and belief, Direct, at the time of entering into the PWAs for the  
5 Projects, was incapable to timely perform the work required under the PWAs for the Projects.

6 13. Direct has defaulted under the Agreement and the PWAs for the Projects due to,  
7 among other things, the failure of Direct to timely perform the scope of work required under the  
8 PWAs for the Projects.

9 14. Pursuant to the Agreement, Century agreed (among other things): (1) to perform  
10 and complete its work in a prompt and diligent manner (time being of the essence in the  
11 Agreement); and (2) to provide, at its expense, additional workers and/or to work on an overtime  
12 or shift basis if Direct causes delay to the work in any way.

13 15. Pursuant to the Agreement, Direct agreed to designate a competent person to  
14 attend all weekly jobsite meetings relating to the work being performed by Direct.

15 16. Among other meetings, a meeting was held on November 21, 2016, at which  
16 (among other things) Century informed Direct of its deficiencies and defects in the performance  
17 of its work at the Projects.

18 17. A subsequent meeting between Century and Direct was held on December 9,  
19 2016, at which Century further informed Direct of its deficiencies and defects in the performance  
20 of its work at the Projects.

21 18. Century further discovered that Counterdefendants were overbilling Century for  
22 its services.

23 19. The Agreement provides that, among other things, if Direct fails to perform any  
24 of its obligations pursuant to the Agreement or an applicable PWA, then Century may give  
25 Direct a 3-Day Notice to cure such failure and/or default and, if Direct fails to cure such  
26 failure/default within 3-days of the date of such Notice, Century may terminate the Agreement  
27 and the applicable PWA “for cause” and/or complete the remaining scope of work, in which  
28 event Direct shall pay to Century the amount by which Century’s cost to complete the work

(including overhead, profits and attorney's fees) exceeds the unpaid balance of the amount to be paid under the Agreement.

20. In addition, and without limitation, under the Agreement, if Direct fails to perform the work as required by the Agreement and the applicable PWA, Direct shall be liable for actual damages incurred by Century related to Subcontractor's non-performance.

21. Pursuant to the Agreement, Century also had the rights to: (a) terminate the Agreement and/or the PWAs for convenience; or (b) terminate the Agreements and/or the PWAs if Century determined that Direct was not qualified or capable to do all or a portion of the scope of work agreed upon in a PWA.

22. On December 12, 2016, Century hand-delivered Direct a 3-Day Notice of default in accordance with the Agreement. At that time, Century reiterated to Direct the defects, deficiencies and breaches in its performance.

23. As of the time of Century's delivery of the 3-Day Notice of default, Direct was aware of the defects and deficiencies in performance of the work by Direct as a result of, among other things, the field meeting held on November 21, 2016 and the subsequent meeting held on December 9, 2016.

24. Direct failed to remedy its defects and deficiencies within three days after delivery of Century's notice of default. Direct further overbilled Century for the services it provided.

25. Direct disputed Century's assertion of default.

26. Century has engaged third parties to complete the work required to be performed by Direct pursuant to the Agreement and the PWAs.

27. Century and Direct met on February 22, 2017, March 1, 2017 and May 1, 2017 to, among other things, mediate the terms of their dispute, in accordance with the requirements of the Agreement.

28. On or about April 10, 2017, Direct recorded a Notice of Lien (the "***Mechanic's Liens***") upon the Inspirada, Lake Las Vegas and Freeway 50 Projects.

29. Century posted bonds on account of such Mechanic's Liens and recorded and

1 served a copy of such bonds on or about April 17, 18 and/or 19, 2017, all in accordance with the  
2 applicable provisions of the Nevada Revised Statutes.

3 30. Scott Prokopchuk, Century's former Land Development Manager who directly  
4 oversaw Direct's work and authorized Direct's payments, was actually on Direct's payroll during  
5 2016.

6 31. Neither Prokopchuk nor Direct ever disclosed the dual employment to Century.

7 32. Such failure to disclose was material in that Century relied upon the undivided  
8 loyalty of its Land Development Manager, Prokopchuk, in allowing him to oversee Direct's  
9 work and approve Direct's payments.

10 33. Prokopchuk's undisclosed dual agency with Direct constituted a violation of his  
11 obligations to Century which, among other things, are set forth in his Employment Manual.  
12 Such a relationship with a subcontractor – and particularly one which was overseen by the  
13 employee - was prohibited.

14 34. Likewise, Century's Agreement with Direct expressly required Direct "to prevent  
15 any actions or conditions that could result in a conflict with Contractor's best interests. This  
16 obligation shall apply to the activities of the employees and agents of Subcontractor in their  
17 relations with the employees and agents of Contractor and Owner." Agreement, Par. 8.1. Thus,  
18 Counterdefendants were under a duty to disclose any possible conflict of interest to Century.

19 35. The undisclosed dual agency, which Counterdefendants concealed from Century  
20 by using a secret email account for Prokopchuk at Direct (pd@directgrading.com), is an express  
21 violation of Direct's obligations under the Agreement.

22 36. In attempting to somehow justify the prohibited dual agency, Counterdefendants  
23 contend that Prokopchuk performed work for another company owned by Westwood that  
24 purportedly had nothing to do with the operations of Direct. However, Counterdefendants have  
25 failed to produce credible documents to substantiate this claim, which is part of the ruse that they  
26 continue to perpetuate.

27 37. Century is informed and believes and alleges thereon that Counterdefendants  
28 perpetrated billing fraud upon Century during the time that Prokopchuk was overseeing Direct's

work and approving Direct's payments.

38. Much of the information regarding their billing fraud is particularly within the control of Counterdefendants and is uniquely known to them, while concealing the same information from Century.

39. In submitting their invoices to Century for payment, Counterdefendants represented, expressly or impliedly, that the charges contained therein were true, accurate and honest. In actuality, this was not the case.

40. Counterdefendants submitted invoices to Century for import of material from the United States Bureau of Land Management ("**BLM**"). Counterdefendants purported to charge Century for the actual cost Direct incurred from the BLM for the material, as well as additional charges for the hauling and transport of the material to Inspirada. In the aggregate, these charges amounted to \$871,457.40.

41. Century obtained documents directly from the BLM. A comparison of the BLM documents delivered by Direct and the actual documents obtained from the BLM shows that the BLM documents have been altered to show substantially larger quantities (93,120 cubic yards) than Direct actually purchased from the BLM (33,395 cubic yards).

42. The alterations are consistent with the invoices that Direct previously presented to Century, leading to the conclusion that Counterdefendants fraudulently overcharged Century approximately \$550,000 for the BLM materials it represented were hauled to Inspirada.

43. Century believes that these fraudulent bills were approved by Direct's and Westwood's "man on the inside," Prokopchuk.

44. The submission of the altered and false BLM documents as part of the evidentiary record in this case constitutes fraud upon Century and upon the tribunals.

45. Century is informed and believes and thereon alleges that Counterdefendants committed other acts of billing fraud upon Century.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract against Direct)**

46. Century repeats and realleges all preceding Paragraphs of this Counterclaim and

1 by this reference incorporates the same as though fully set forth herein.

2 47. The Agreement and PWAs are binding and enforceable contracts between  
3 Century and Direct.

4 48. Through its actions, Direct materially breached its obligations under the  
5 Agreement and the PWAs.

6 49. Century has duly performed all conditions, covenants, obligations and promises  
7 on its part to be performed, except to the extent excused or waived by Direct's breaches as  
8 described herein.

9 50. Century has placed all necessary demands upon Direct for performance, but  
10 Direct failed or refused to perform, and continues to fail or refuse to perform, its obligations  
11 under the Agreement and the PWAs.

12 51. Direct's defaults are unexcused and constitute material breaches of such  
13 agreements.

14 52. As a direct and proximate result of Direct's breaches of such agreements and  
15 overbilling, Century has been damaged in an amount in excess of \$15,000, the exact amount to  
16 be proven.

17 53. Century has, by reason of the foregoing, been required to utilize the services of an  
18 attorney and is entitled to recover his attorneys' fees and costs from Direct.

19 **SECOND CLAIM FOR RELIEF**

20 **(Breach of Implied Covenant of Good Faith and Fair Dealing against Direct)**

21 54. Century repeats and realleges all preceding Paragraphs of this Counterclaim and  
22 by this reference incorporates the same as though fully set forth herein.

23 55. In every contract or agreement (including, without limitation, the Agreement and  
24 the PWAs), each party thereto makes an implied covenant of good faith and fair dealing to the  
25 other.

26 56. Through its actions described above, including, without limitation, making  
27 payments to Direct in accordance with the Agreement and the PWA, Century performed in  
28 accordance with such agreements.

1           57. Through its actions complained of herein, Direct has breached and continues to  
2 breach said covenant of good faith and fair dealing.

3           58. Direct's conduct is unfaithful to the purpose of such contracts or agreements, and  
4 inconsistent with Century's justified expectations thereof.

5           59. As a direct and proximate result of Direct's breaches of the implied covenant of  
6 good faith and fair dealing, Century has been damaged in an amount in excess of \$15,000, the  
7 exact amount to be proven.

8           60. Century has, by reason of the foregoing, been required to obtain the services of an  
9 attorney and is entitled to recover its reasonable attorneys' fees and costs from Direct.

10                                   **THIRD CLAIM FOR RELIEF**

11                                   **(Unjust Enrichment against Direct)**

12           61. Century repeats and realleges all preceding Paragraphs of this Counterclaim and  
13 by this reference incorporates the same as though fully set forth herein.

14           62. Century conferred a benefit upon Direct by paying Direct's invoices, which  
15 contained overbilling and charges for defective and deficient services.

16           63. Direct accepted said benefits by accepting payments from Century.

17           64. Notwithstanding Century's demands, Direct failed and refused to adequately  
18 perform under the Agreement and PWAs. Direct appreciated and benefited from Century's  
19 actions in a substantial amount, in excess of \$15,000, to the detriment of Century.

20           65. Century has, by reason of the foregoing, been required to obtain the services of an  
21 attorney and is entitled to recover its reasonable attorneys' fees and costs from Direct.

22                                   **FOURTH CLAIM FOR RELIEF**

23                                   **(Fraud/Constructive Fraud against All Counterdefendants)**

24           66. Century repeats and realleges all preceding Paragraphs of this Counterclaim and  
25 by this reference incorporates the same as though fully set forth herein.

26           67. Counterdefendants acted in concert in perpetrating the fraud herein alleged.

27           68. Direct's bills, supporting records and evidence provided in this case were false  
28 when made, as Counterdefendants well knew.

69. Counterdefendants were under a duty to disclose Direct's relationship with Prokopchuk, but failed to do so and instead concealed the relationship in order to continue to prey upon Century.

70. Counterdefendants intended to induce Century's reliance upon its false bills and supporting records and other false representations as set forth herein above.

71. Century did, in fact, rely on the falsity of these representations to its detriment.

72. As a direct and proximate result of the fraud/constructive fraud by Counterdefendants, Century has been damaged in an amount in excess of \$15,000.

73. Counterdefendants are guilty of acting with oppression, fraud and malice and, as a result of the same, Century is entitled to an award of punitive damages.

74. Century has, by reason of the foregoing, been required to obtain the services of an attorney and is entitled to recover its reasonable attorneys' fees and costs from Counterdefendants.

WHEREFORE, Century prays for the following:

1. Century seeks Judgment as follows:

- a. For all damages allowed by law as to each of Century's Claims for Relief;
- b. For pre-judgment and post-judgment interest, at the highest rate permitted by applicable law;
- c. For all costs and expenses, including reasonable attorneys' fees, incurred by Century in connection with the commencement and prosecution of this action;
- d. For punitive damages; and
- e. For such other and further equitable or legal relief deemed just and proper.

2. For judgment on any potential arbitration award.

### **THIRD PARTY COMPLAINT**

Third-Party Plaintiff CENTURY COMMUNITIES OF NEVADA, LLC ("*Century*" or "*Third-Party Plaintiff*"), by and through its undersigned counsel, and for its Third-Party Complaint ("*Third-Party Complaint*") against SCOTT PROKOPCHUK ("*Prokopchuk*" or

1 “*Third-Party Defendant*”), alleges as follows:

2 **PARTIES, JURISDICTION, AND VENUE**

3 1. Century is a limited liability company formed and existing under the laws of the  
4 State of Delaware and is qualified to do business as a foreign limited liability company in the  
5 State of Nevada.

6 2. Upon information and belief, Prokopchuk is an individual who previously resided  
7 in Clark County, Nevada.

8 3. DOES I–X and ROE CORPORATIONS I through X, inclusive, may be  
9 individuals, corporations, associations, partnerships, subsidiaries, holding companies, owners,  
10 predecessors or successor entities, joint ventures, parent corporations, shareholders, officers,  
11 directors, or related entities of the above captioned Third-Party Defendant, inclusive, whose true  
12 names and identities and capacities are unknown to Third-Party Plaintiff at this time. Each  
13 fictitiously named Third-Party Defendant participated in some manner, is in some way liable or  
14 responsible to Third-Party Plaintiff on the facts hereinafter alleged, and cause injuries and  
15 damages proximately thereby. At such time as the DOE/ROE Third-Party Defendants’ true  
16 names and capacities become known to Third-Party Plaintiff, Third-Party Plaintiff will ask leave  
17 of this Court to amend this Third-Party Complaint to substitute said true names and capacities.

18 4. This Court has jurisdiction over the instant dispute, and venue is proper in this  
19 Court, because the dispute involves conduct and actions that took place in, Clark County,  
20 Nevada.

21 **GENERAL ALLEGATIONS**

22 5. Century incorporates by reference Paragraphs 1 through 4 of this Third-Party  
23 Complaint as though fully set forth herein.

24 ***Third-Party Defendant’s Employment with Century***

25 6. Prokopchuk was employed with Las Vegas Land Contracting, LLC, a Delaware  
26 limited liability company, dba Dunhill Homes (“*Dunhill*”) as its Land Development Manager.

27 7. On or about March 9, 2014, Century entered into an Asset Purchase Agreement  
28 with Dunhill pursuant to which Century acquired Dunhill’s Las Vegas home building operations

1 and assets.

2 8. Prokopchuk came to work for Century as a result of Century's acquisition of  
3 Dunhill's Las Vegas operations and assets. Prokopchuk was employed by Century as its Land  
4 Development Manager from April 2014 through September 2016.

5 9. On or about March 28, 2014, Prokopchuk executed an acknowledgment and  
6 receipt of the Century employee manual (the "*Employee Manual*").

7 10. The Employee Manual expressly states that Century employees must have  
8 undivided loyalty to Century, should avoid conflicts of interest and must not engage in any  
9 activity that could create an actual or potential conflict of interest or create the appearance of a  
10 conflict of interest. Further, employees were not to accept gifts or favors from subcontractors  
11 because they may "create the impression of an obligation on the part of [Century] or any  
12 [Century] employee..."

13 11. While employed by the Century, Prokopchuk was responsible for (among other  
14 things) the following: (1) obtaining job costs estimates and bids from contractors; (2)  
15 participated in awarding jobs to contractors; (3) overseeing the work performed by the  
16 contractors; (4) approving any change orders and purchase orders for the contractors; and (5)  
17 authorizing payment to the contractors.

18 12. Because of Prokopchuk's position with Century and as a result of his prior  
19 employment with Dunhill, Century relied extensively on Prokopchuk to discharge his duties with  
20 the utmost care, loyalty and fidelity.

21 *Direct Grading and Paving, LLC's Contracts with Century*

22 13. In 2010, Dunhill, as contractor, and Direct Grading and Paving, LLC ("*Direct*"),  
23 as subcontractor, entered into a Master Subcontract Agreement (the "*Agreement*"), which  
24 Agreement sets forth the general terms and conditions which would become part of certain  
25 construction contracts between the parties. Century is the successor-in-interest to Dunhill under  
26 the Agreement.

27 14. Pursuant to the Agreement, Century and Direct entered into several Project Work  
28 Authorizations (each, a "*PWA*") detailing, among other things, the applicable project of Century

1 and scope of work to be performed by Direct in respect to the applicable project.

2 15. Among others, Century and Direct entered into a PWA for grading and related  
3 work at Lake Las Vegas, Inspirada and Parkway 50 (the “**Projects**”).

4 16. Prokopchuk oversaw the awarding of the Projects to Direct and Direct’s work in  
5 connection with the Projects in addition to all change orders and payment requests from Direct in  
6 connection with the Projects.

7 17. Direct defaulted under the Agreement and the PWAs for the Projects due to,  
8 among other things, the failure of Direct to timely perform the scope of work required under the  
9 PWAs for the Projects.

10 18. However, while Prokopchuk was working for Century, Prokopchuk made every  
11 effort to protect Direct and to shield Direct from scrutiny by Century’s other managing  
12 personnel.

13 19. Prokopchuk was successful in this regard as Direct was able to remain on the  
14 Projects through Prokopchuk’s resignation from Century in September 2016.

15 20. After Prokopchuk was no longer with Century however, Direct no longer had  
16 Prokopchuk to conceal and excuse Direct’s various defaults. Accordingly, Century terminated  
17 Direct in December 2016 from the Projects.

18 ***Direct’s Lawsuit against Century and Liens against the Projects***

19 21. After Century terminated Direct, Direct recorded mechanic’s liens (the “**Liens**”)  
20 against the Projects. Direct claims that approximately \$1,670,000 is owed by Century on the  
21 Projects. Century denies Direct’s claims and contends that Direct caused significant damages to  
22 Century through its late performance, substandard work, and fraudulent billing practices.

23 22. Direct and Century are currently arbitrating their dispute (the “**Arbitration**”) and a  
24 parallel action was filed in the Eighth Judicial District Court (Case No. A773139) as a result of  
25 Direct seeking to foreclose on the Liens (the “**Foreclosure Action**”).

26 ***Third-Party Defendant’s Secret Dual Agency***

27 23. Century was able to uncover that while Prokopchuk was employed with Century,  
28 he was also secretly on Direct’s payroll. Indeed, Prokopchuk received nearly the same amount

of pay from Direct during 2016 as he received from Century.

24. The Agreement expressly prohibited Direct from this type of conduct:

8.1 Good Faith. **Subcontractor shall exercise all reasonable care and diligence to prevent any actions or conditions that could result in conflict with Contractor's best interests.** This obligation shall apply to the activities of the employees and agents of Subcontractor in their relations with the employees and agents of Contractor and Owner. [Emphasis added]

25. Knowing that his dual employment was a violation of duties he owed Century in addition to a violation of duties Direct owed to Century, Prokopchuk concealed his secret employment at Direct from Century.

***Third-Party Defendant's Misconduct***

26. Direct took full advantage of Prokopchuk's compromised loyalty.

27. Prokopchuk ensured that Direct was awarded work for all of the Projects, despite the fact that it did not have the resources or means to timely perform all of the Projects.

28. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he approved approximately \$550,000 in fraudulent invoices just in connection with the Inspirada project over an approximate two-month timeframe while he was being paid by Direct.

29. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he approved change orders without requiring Direct to submit the proper documentation.

30. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he entered into draw schedules after work had already allegedly been performed.

31. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he approved payment of Direct invoicing for work that had not yet been performed.

32. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he attempted to award Direct an additional PWA days after he gave notice of his resignation from Century.

33. Century discovered that Prokopchuk failed to faithfully discharge his duties to

Century as he allowed Direct to continue on the various projects despite being months behind schedule (on average 252 behind schedule for the various projects).

34. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he approved over approximately \$5,000,000 in invoicing from Direct without requiring Direct to submit any back-up or supporting documentation.

35. Century discovered that Prokopchuk failed to faithfully discharge his duties to Century as he shielded Direct from Century discovering its substandard and deficient performance on the Projects.

36. Century denies that it has any liability to Direct. However, to extent Century is found to owe anything to Direct, it would directly and proximately be as a result of the conduct of Prokopchuk.

37. Century has had to incur attorney's fees and costs to defend against Direct's claims and to bond around the Liens. These costs arose as a direct and proximate result of Prokopchuk's conduct. Century is entitled to recover the fees, costs and expenses it has incurred as a result of the litigation with Direct from Prokopchuk in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001).

38. The acts of misconduct by Prokopchuk, and without limitation, the acts and occurrences described herein, constitute breaches of his duties owed to Century as a trusted employee charged with the protection of Century's interests with respect to Direct.

### **FIRST CAUSE OF ACTION**

#### **(Implied Indemnity)**

39. Century repeats and realleges Paragraphs 1 through 38 of the Third-Party Complaint as though fully set forth herein.

40. Century contends that it is in no way responsible for the events giving rise to Direct's causes of action, or legally responsible in any other manner for the damage allegedly sustained by Direct. If Century is held liable to Direct for damages alleged in the Arbitration or the Foreclosure Action, it will be solely, directly and proximately due to the misconduct of

Prokopchuk as herein alleged. Therefore, Century is entitled to be indemnified by Prokopchuk should such liability arise.

41. If Century is held liable to Direct for damages, said liability will be vicarious only and said liability will be the direct and proximate result of the active and affirmative conduct on the part of Prokopchuk.

42. Century has had to incur attorney's fees and costs to defend against Direct's claims and to bond around the Liens. These costs arose as a result of Prokopchuk's misconduct. Century is entitled to recover the fees, costs and expenses it has incurred as a result of the litigation with Direct from Prokopchuk in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001). Century has incurred damages in excess of \$15,000 as a result of the Direct litigation and Century is entitled to a judgment against Prokopchuk for these damages.

43. Century is entitled to complete indemnification by Prokopchuk for any such sum or sums for which it may be adjudicated liable to Direct, together with costs of defense, costs of suit, and reasonable attorneys' fees therefrom.

## **SECOND CAUSE OF ACTION**

### **(Comparative Indemnity)**

44. Century repeats and realleges Paragraphs 1 through 43 of the Third-Party Complaint as though fully set forth herein.

45. Century contends that it is in no way legally responsible for the events giving rise to Direct's causes of action, or legally responsible in any other manner for the damages allegedly sustained by Direct. However, if as a result of the matter alleged by Direct in the Arbitration or the Foreclosure Action, Century is held liable for all or any part of the claim or damages asserted against it by Direct, to the extent that Prokopchuk's misconduct was a proximate cause of Century's liability to Direct, Prokopchuk is responsible for said damages and/or losses in proportion to his comparative liability and Century is entitled to a determination of several liability.

46. Century has had to incur attorney's fees and costs to defend against Direct's

claims and to bond around the Liens. These costs directly and proximately arose as a result of Prokopchuk's misconduct. Century is entitled to recover the fees, costs and expenses it has incurred as a result of the litigation with Direct from Prokopchuk in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001). Century has incurred damages in excess of \$15,000 as a result of the Direct litigation and Century is entitled to a judgment against Prokopchuk for these damages.

47. By reason of the foregoing, Century is entitled to indemnity from Prokopchuk for all costs, fees, expenses, settlements and judgments paid by and incurred by it in connection with the Arbitration and the Foreclosure Action.

### **THIRD CAUSE OF ACTION**

#### **(Equitable Indemnity)**

48. Century repeats and realleges Paragraphs 1 through 47 of the Third-Party Complaint as though fully set forth herein.

49. Century alleges that it is in no way legally responsible for the events giving rise to Direct's actions and is not legally responsible in any manner for the damages allegedly sustained by Direct. If, contrary to the foregoing allegations, Century is held to be liable for all or any part of the claim for damages asserted against Century, it is informed and believes, that Prokopchuk was negligent, misrepresented certain facts, acted outside the scope of his authority, breached duties owed, and breached contracts and/or agreements. Century is informed and believes at this time that the acts of Prokopchuk were the proximate cause of the alleged damages and/or losses to Century.

50. Century has had to incur attorney's fees and costs to defend against Direct's claims and to bond around the Liens. These costs directly and proximately arose as a result of Prokopchuk's misconduct. Century is entitled to recover the fees, costs and expenses it has incurred as a result of the litigation with Direct from Prokopchuk in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001). Century has incurred damages in excess of \$15,000 as a result of the Direct litigation and Century is entitled to a judgment against Prokopchuk for these damages.

51. By reason of the foregoing, Prokopchuk is responsible and liable for any such damages in direct proportion to his misconduct in bringing about said damages. Century is entitled to judgment against Prokopchuk in an amount proportionate to the amount of Century's financial responsibility for such damages that exceed its portion of responsibility, if any.

#### **FOURTH CAUSE OF ACTION**

**(Declaratory Relief)**

52. Century repeats and realleges Paragraphs 1 through 51 of the Third-Party Complaint as though fully set forth herein.

53. As a result of Direct bringing the Foreclosure Action and the Arbitration, an actual justifiable controversy has arisen against Prokopchuk, which is ripe for determination by this Court.

54. Century has had to incur attorney's fees and costs to defend against Direct's claims and to bond around the Liens. These costs directly and proximately arose as a result of Prokopchuk's conduct. Century is entitled to recover the fees, costs and expenses it has incurred as a result of the litigation with Direct from Prokopchuk in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001).

55. Century contends that it was without fault, responsibility or blame for any of the damages which Direct alleges to have suffered. If there were any acts which should give rise to liability to Direct, these acts were committed by Prokopchuk and the result of Prokopchuk's misconduct. Century contends that it is entitled to indemnity from Prokopchuk.

WHEREFORE, Century respectfully requests the following ruling with respect to its Third-Party Complaint against Prokopchuk as follows:

1. That Prokopchuk be required to indemnify Century for any and all amounts that Century is found to be due and owing to Direct;
2. That Prokopchuk be required to indemnify Century for any and all amounts that Century has incurred in defending against the Direct litigation and to remove the Liens from the Projects;

3. That Prokopchuk be required to contribute to the payment of any and all amounts adjudged to be due and owing to Direct by Century;
4. For a declaration of Century's rights and duties;
5. For reasonable attorney's fees and costs in suit incurred herein; and
6. For such other and further relief as this Court deems just.

DATED this 18th day of May, 2020.

**SANTORO WHITMIRE**

*/s/ Oliver J. Pancheri*

NICHOLAS J. SANTORO, ESQ.

Nevada Bar No. 532

OLIVER J. PANCHERI, ESQ.

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*Attorneys for Century Communities of Nevada and  
Argonaut Insurance Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 18th day of May, 2020, a true and correct copy of  
**ANSWER TO AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY  
COMPLAINT** was served electronically using the Eighth Judicial District Court's eFileNV  
system to the following:

**Via Electronic Service & Certified Mail**

Matthew L. Johnson, Esq.  
Russell G. Gubler, Esq.  
Ashveen S. Dhillon, Esq.  
JOHNSON & GUBLER, P.C.  
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**Via Electronic Service**

Stephen M. Dixon, Esq.  
LAW OFFICE OF STEPHEN M. DIXON, LTD.  
10181 W. Park Run Drive, Suite 110  
Las Vegas, Nevada 89145  
Email: steve@stevedixonlaw.com

*Attorney for Linda Middleton and Scott  
Prokopchuk*

*Attorneys for Direct Grading & Paving, LLC*

**Via Certified Mail**

Direct Grading & Paving, LLC  
2222 W. Cheyenne Avenue  
North Las Vegas, Nevada 89032

/s/ Rachel Jenkins

An employee of SANTORO WHITMIRE

# **Exhibit A**

Inst #: 20180927-0001807

Fees: \$40.00

09/27/2018 11:14:52 AM

Receipt #: 3522296

Requestor:

RICK BARRON

Recorded By: DROY Pgs: 7

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: MAIN OFFICE

## RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

APN# 176-17-314-001 thru 021; 176-17-314-023 thru 024;  
176-17-314-027 thru 034; 176-17-415-001 thru 013

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

## TITLE OF DOCUMENT

(DO NOT Abbreviate)

Bond

Document Title on cover page must appear EXACTLY as the first page of the document  
to be recorded.

### RECORDING REQUESTED BY:

Century Communities

RETURN TO: Name Rick Barron

Address 6345 S. Jones Blvd., #400

City/State/Zip Las Vegas, NV 89118

### MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

This page provides additional information required by NRS 111.312 Sections 1-2.

To print this document properly, do not use page scaling.

P:\Common\Forms & Notices\Cover Page Template Oct2017

176-17-314-001 through 176-17-314-021  
176-17-314-023 through 176-17-314-024  
176-17-314-027 through 176-17-314-034  
176-17-415-001 through 176-17-415-013

(Assessor's Parcel Numbers) Bond No. SU 1125385

WHEREAS, Century Communities of Nevada, LLC (name of Principal), located at 6345 S. Jones, Suite 400, Las Vegas, NV 89118 (address of Principal), desires to give a bond for releasing the following described property owned by Century Communities of Nevada, LLC (name of owners) from that certain notice of lien in the sum of Three Hundred Forty Four Thousand Nine Hundred Eighty Eight Dollars and 46/100 Dollars (\$ 344,988.46), recorded June (month) 9th (day) 2017 (year) in the office of the recorder in Clark County (name of county where the property is located):

See Attached Exhibit A

(Legal Description)

NOW THEREFORE, the undersigned Principal and Surety do hereby obligate themselves to the lien claimant named in the notice of lien, Direct Grading & Paving, LLC (name of lien claimant) under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, in the sum of Five Hundred Seventeen Thousand Four Hundred Eighty Two Dollars and 69/100 (\$ 517,482.69,  $\frac{1}{2}$  x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237.

IN TESTIMONY WHEREOF, the Principal and Surety have executed this bond at Birmingham, Alabama on the 31st day of the month of August of the year 2018

Century Communities of Nevada, LLC

By [Signature]  
(Signature of Principal)  
Robert M. Berillo

Arch Insurance Company

Surety Corporation

By [Signature]

Mark W. Edwards, II Attorney-in-Fact

Nevada Non-Resident Agent:

By [Signature]  
Mark W. Edwards, II

**SIGNED IN COUNTERPART**

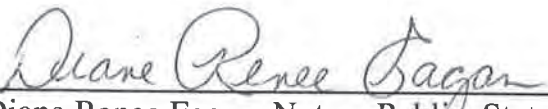
**AFFIDAVIT AND CERTIFICATE OF ACKNOWLEDGEMENT OF  
CORPORATE SURETY**

State of Alabama)

) ss

County of Jefferson)

On this 31st day of August, 2018, before me, appeared Mark W. Edwards, II, to me personally known, who, being by me duly sworn, did say that he is the Attorney-in-Fact of Arch Insurance Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Mark W. Edwards, II, acknowledged said instrument to be the free act and deed of said corporation.

  
Diane Renee Eagan, Notary Public, State at Large

My commission expires: April 5, 2022

Acknowledgement:

STATE OF NEVADA )

) SS

COUNTY OF CLARK )

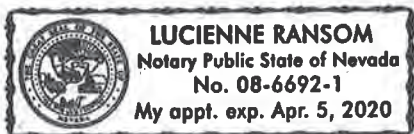
On September 26, 2018 before me, the undersigned, a NOTARY PUBLIC, in and for said County and State, personally appeared Robert M. Beville known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

Lucienne Ransom

Notary Public

My Commission Expires: 4/5/2020



**Exhibit A**

**Phase 5:**

**Lot One (1) through Forty-Four (44), inclusive; inclusive of FINAL MAP OF RHOADES RANCH SOUTH PHASE 5, as shown by map thereof on file in Book 153 of plats, Page 049, in the Office of the County Recorder, Clark County, Nevada.**

CB

Inst #: 20170418-0001071  
Fees: \$21.00  
N/C Fee: \$25.00  
04/18/2017 12:44:40 PM  
Receipt #: 3060789  
Requestor:  
RICK BARRON  
Recorded By: COJ Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

191-23-515-001 thru 082

APN# 191-23-516-001 thru 086

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

**TITLE OF DOCUMENT**

(DO NOT Abbreviate)

Bond

Document Title on cover page must appear EXACTLY as the first page of the document  
to be recorded.

**RECORDING REQUESTED BY:**

Century Communities

RETURN TO: Name Rick Barron

Address 6345 S Jones Blvd., #400

City/State/Zip Las Vegas, NV 89118

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

191-23-515-001 through 191-23-515-082  
191-23-516-001 through 191-23-516-086

(Assessor's Parcel Numbers) Bond No. SUR0040824

WHEREAS, Century Communities of Nevada, LLC (name of Principal), located at 6345 S. Jones, Suite 400, Las Vegas, NV 89118 (address of Principal), desires to give a bond for releasing the following described property owned by Century Communities of Nevada, LLC (name of owners) from that certain notice of lien in the sum of Two Hundred Ninety Thousand Eighteen Dollars and 55/100 Dollars (\$ 290,018.55 ), recorded April (month) 10th (day) 2017 (year) in the office of the recorder in Clark County (name of county where the property is located):  
See attached Exhibit A.

(Legal Description)

NOW THEREFORE, the undersigned Principal and Surety do hereby obligate themselves to the lien claimant named in the notice of lien, Direct Grading & Paving, LLC (name of lien claimant) under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, in the sum of Four Hundred Thirty Five Thousand Twenty Seven Dollars And 83/100--- Dollars (\$ 435,027.83--- ), (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237.

IN TESTIMONY WHEREOF, the Principal and Surety have executed this bond at Denver, CO and Greenwood Village, CO on the 14th day of the month of April of the year 2017.

Century Communities of Nevada, LLC

By [Signature]  
(Signature of Principal) KEVIN CORBETT

Argonaut Insurance Company  
(Surety Corporation)

By [Signature]  
Angela M. Tindol (Its Attorney-in-Fact)

Non-  
Nevada Resident Agent:

By [Signature]  
Angela M. Tindol

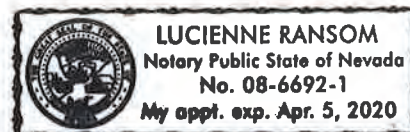
SIGNED IN COUNTERPART

State of Nevada }  
County of Clark } ss.

On April (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared Kevin Corbett who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared N/A known (or satisfactorily proved) to me to be the attorney in fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Lucienne Ransom

(Notary Public in and for the County and State)



State of Colorado }  
County of Denver } ss.

On April (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared N/A who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared Angela M. Tindol known (or satisfactorily proved) to me to be the Attorney-in-Fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Mona D. Weaver

Mona D. Weaver, Notary Public

(Notary Public in and for the County and State)

MONA D. WEAVER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20054039704  
MY COMMISSION EXPIRES 10/27/2017

**Exhibit A**

**Parcel 1:**

Lot One (1) through Thirty (30), inclusive; and Lots One Hundred Seventeen (117) through One Hundred Sixty-Eight (168), inclusive of FINAL MAP OF INSPIRADA POD 3-2 UNIT 1 as shown by map thereof on file in Book 151 of Plats, Page 7, in the Office of the County Recorder, Clark County, Nevada.

**Parcel 2:**

Lots Thirty-One (31) through One Hundred Sixteen (116), inclusive of FINAL MAP OF INSPIRADA POD 3-2 UNIT 2 as shown by map thereof on file in Book 151 of Plats, Page 8, in the Office of the County Recorder, Clark County, Nevada.

C (5)

Inst #: 20170419-0002001  
Fees: \$21.00  
N/C Fee: \$25.00  
04/19/2017 12:34:54 PM  
Receipt #: 3062095  
Requestor:  
RICK BARRON  
Recorded By: DROY Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)  
160-27-119-001 thru 011, 160-27-215-001 thru 002, 160-27-614-001 thru 009  
160-27-511-001 thru 004, 160-27-214-001 thru 013, 160-27-612-001 thru 005  
**APN#** 160-27-612-008 thru 013, 160-27-214-016  
(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

**TITLE OF DOCUMENT**  
(DO NOT Abbreviate)

Bond  
\_\_\_\_\_  
\_\_\_\_\_

Document Title on cover page must appear EXACTLY as the first page of the document  
to be recorded.

**RECORDING REQUESTED BY:**

Century Communities  
\_\_\_\_\_

RETURN TO: Name Rick Barron  
Address 6345 S Jones Blvd., #400  
City/State/Zip Las Vegas NV 89118

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

This page provides additional information required by NRS 111.312 Sections 1-2.  
An additional recording fee of \$1.00 will apply.  
To print this document properly, do not use page scaling.  
Using this cover page does not exclude the document from assessing a noncompliance fee.  
P:\Common\Forms & Notices\Cover Page Template Feb2014

160-27-119-001 through 160-27-119-011  
160-27-215-001 through 160-27-215-002  
160-27-614-001 through 160-27-614-009  
160-27-511-001 through 160-27-511-004  
160-27-214-001 through 160-27-214-013  
160-27-612-001 through 160-27-612-005  
160-27-612-008 through 160-27-612-013  
160-27-214-016

(Assessor's Parcel Numbers)

Bond No. SUR0040823

WHEREAS, Century Communities of Nevada, LLC (name of Principal), located at 6345 S. Jones, Suite 400, Las Vegas, NV 89118 (address of Principal), desires to give a bond for releasing the following described property owned by Century Communities of Nevada, LLC (name of owners) from that certain notice of lien in the sum of Three Hundred One Thousand Forty Three Dollars and 48/100 Dollars (\$ 301,043.48), recorded April (month) 10th (day) 2017 (year) in the office of the recorder in Clark County (name of county where the property is located):  
See attached Exhibit A.

(Legal Description)


NOW THEREFORE, the undersigned Principal and Surety do hereby obligate themselves to the lien claimant named in the notice of lien, Direct Grading & Paving, LLC, (name of lien claimant) under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, in the sum of Four Hundred Fifty One Thousand Five Hundred Sixty Five Dollars and 22/100 Dollars (\$ 451,565.22), (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237.

IN TESTIMONY WHEREOF, the Principal and Surety have executed this bond at Denver, CO & Greenwood Village, CO on the 14th day of the month of April of the year 2017.

Century Communities of Nevada, LLC

By   
(Signature of Principal) ERIC DOME

Argonaut Insurance Company  
(Surety Corporation)

By   
Angela M. Tindol (Its Attorney-in-Fact)

Non-  
Nevada Resident Agent:

By   
Angela M. Tindol

SIGNED IN COUNTERPART

State of COLORADO }  
County of ARAPAHOE } ss.

On APRIL (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared ERIC DOME who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared N/A known (or satisfactorily proved) to me to be the attorney in fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Marcia O'Connor  
(Notary Public in and for the County and State)

MARCIA KAY O'CONNOR  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19994013306  
MY COMMISSION EXPIRES DECEMBER 16, 2018

State of Colorado }  
County of Denver } ss.

On April (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared N/A who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared Angela M. Tindol known (or satisfactorily proved) to me to be the Attorney-in-Fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Janet M. Elwell  
(Notary Public in and for the County and State)

JANET M. ELWELL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20094040416  
MY COMMISSION EXPIRES 12/11/2017

Exhibit A

Parcel 1:

Lots Ten (10) through Twenty (20), inclusive; and Lots 25A and 26A of AMENDED PLAT OF A PORTION OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 152 of Page 5, in the Office of the County Recorder, Clark County, Nevada.

Parcel 2:

Lots 32A, 33A, 44A through 49A, inclusive and Common Elements D and E of FINAL MAP OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 150 of Plats, Page 74, in the Office of the County Recorder, Clark County, Nevada.

Parcel 3:

Lots 1 (One) through Nine (9), inclusive, Lots Twenty-One (21) through Twenty-Four (24), inclusive, Lots Twenty-Seven (27) through Thirty-One (31), inclusive, Lot Thirty-Four (34), Lots Thirty-Five (35) through Forty-Three (43), inclusive of of FINAL MAP OF LAKE LAS VEGAS LOT G-1 as shown by map thereof on file in Book 150 of Plats, Page 74, in the Office of the County Recorder, Clark County, Nevada.

C (6)

Inst #: 20170417-0001549  
Fees: \$22.00  
N/C Fee: \$25.00  
04/17/2017 03:16:16 PM  
Receipt #: 3060137  
Requestor:  
CENTURY COMMUNITIES  
Recorded By: DROY Pgs: 6  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

176-05-610-001 thru 029

176-05-611-001 thru 049

APN# 176-05-222-001 thru 076

176-05-715-001 thru 006

176-05-223-001 thru 031

176-05-613-001 thru 062

176-05-117-001 thru 025

(11 digit Assessor's Parcel Number may be obtained at:

<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

176-05-612-001 thru 003

176-05-511-001 thru 034

176-05-202-002

**TITLE OF DOCUMENT**

(DO NOT Abbreviate)

BOND

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

**RECORDING REQUESTED BY:**

CENTURY COMMUNITIES

**RETURN TO: Name**

RICK BARRON

**Address**

6345 S. JONES BLVD., #400

**City/State/Zip**

LAS VEGAS, NV 89118

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

176-05-222-001 through 176-05-222-076  
176-05-715-001 through 176-05-715-006  
176-05-223-001 through 176-05-223-037  
176-05-613-001 through 176-05-613-062  
176-05-117-001 through 176-05-117-025  
176-05-610-001 through 176-05-610-029  
176-05-611-001 through 176-05-611-049  
176-05-612-001 through 176-05-612-003  
176-05-511-001 through 176-05-511-034  
176-05-202-002

(Assessor's Parcel Numbers)

Bond No. SUR0040822

WHEREAS, Century Communities of Nevada, LLC (name of Principal), located at 6345 S. Jones, Suite 400, Las Vegas, NV 89118 (address of Principal), desires to give a bond for releasing the following described property owned by Century Communities of Nevada, LLC (name of owners) from that certain notice of lien in the sum of Seven Hundred Thirty Five Thousand Eight Hundred Sixty Three Dollars and Dollars (\$ 735,863.15), recorded April (month) 10th (day) 2017 (year) in the office of the recorder in Clark County (name of county where the property is located):  
See attached Exhibit A.

(Legal Description)

NOW THEREFORE, the undersigned Principal and Surety do hereby obligate themselves to the lien claimant named in the notice of lien, Direct Grading & Paving, L.L.C., (name of lien claimant) under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, in the sum of One Million One Hundred Three Thousand Seven Hundred Ninety Four Dollars and 73/100 Dollars (\$1,103,794.73), (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237.

IN TESTIMONY WHEREOF, the Principal and Surety have executed this bond at Denver, CO and Las Vegas, NV on the 14th day of the month of April of the year 2017.

Century Communities of Nevada, LLC

By [Signature]  
(Signature of Principal) ROBERT BEVILLE

Argonaut Insurance Company  
(Surety Corporation)

By [Signature]  
Anuj Jain (Its Attorney-in-Fact)

Non-  
Nevada Resident Agent:

By [Signature]  
Anuj Jain

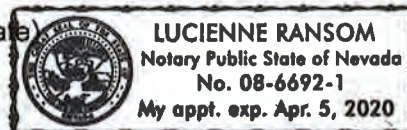
SIGNED IN COUNTERPART

State of Nevada }  
County of Clark } ss.

On April (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared Robert Beville who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared N/A known (or satisfactorily proved) to me to be the attorney in fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Lucienne Ransom

(Notary Public in and for the County and State)



State of Colorado }  
County of Denver } ss.

On April (month) 14<sup>th</sup> (day) 2017 (year) before me, the undersigned, a notary public of this county and state, personally appeared N/A who acknowledged that he executed the foregoing instrument as Principal for the purposes therein mentioned and also personally appeared Anuj Jain known (or satisfactorily proved) to me to be the Attorney-in-Fact of the Surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the Surety therein named, and he acknowledged to me that the Surety executed the foregoing instrument.

Janet M. Elwell  
Janet M. Elwell, Notary Public  
(Notary Public in and for the County and State)

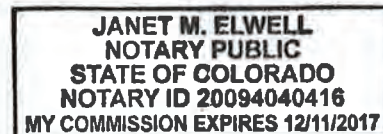


Exhibit A

Parcel 1:

Lots One (1) through Thirty-Four (34), inclusive; Lots Fifty-Four (54) through Sixty-Three (63), inclusive and Lots Sixty-Five (65) through Ninety-Four (94), inclusive of FINAL MAP OF FREEWAY 50 PHASE 1 as shown by map thereof on file in Book 151 of Plats, Page 29, in the Office of the County Recorder, Clark County, Nevada.

Parcel 2:

Lots One Hundred Twenty (120) through One Hundred Twenty-Five (125), inclusive of FINAL MAP OF FREEWAY 50 PHASE 2 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 3:

Lots One Hundred Sixty-One (161) through One Hundred Ninety-Seven (197), inclusive of FINAL MAP OF FREEWAY 50 PHASE 3 as shown by map thereof on file in Book 151 of Plats, Page 52, in the Office of the County Recorder, Clark County, Nevada.

Parcel 4:

Lots Two Hundred Thirty (230) through Two Hundred Ninety-One (291), inclusive of FINAL MAP OF FREEWAY 50 PHASE 5 & 7 as shown by map thereof on file in Book 151 of Plats, Page 92, in the Office of the County Recorder, Clark County, Nevada.

Parcel 5:

Lot Three Hundred Nine (309) through Three Hundred Thirty-Three (333), inclusive of FINAL MAP OF FREEWAY 50 PHASE 6 as shown by map thereof on file in Book 152 of Plats, Page 24, in the Office of the County Recorder, Clark County, Nevada.

Parcel 6:

Lot Thirty-Five (35) through Fifty-Three (53), inclusive; Lot Sixty Four (64); and Lots Ninety-Five (95) through One Hundred Three (103), inclusive of FINAL MAP OF FREEWAY 50 PHASE 1 as shown by map thereof on file in Book 151 of Plats, Page 29, in the Office of the County Recorder, Clark County, Nevada.

Parcel 7:

Lots One Hundred Four (104) through One Hundred Nineteen (119), inclusive; and Lots One Hundred Twenty-Six (126) through One Hundred Fifty-Eight (158), inclusive of FINAL MAP OF FREEWAY 50 PHASE 2 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 8:

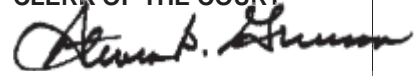
Lots One Hundred Fifty-Nine (159), One Hundred Sixty (160) and One Hundred Ninety-Eight (198) of FINAL MAP OF FREEWAY 50 PHASE 3 as shown by map thereof on file in Book 151 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

Parcel 9:

Lots Two Hundred Ninety-Two (292) through Three Hundred Eight (308), inclusive; and Lots Three Hundred Thirty-Four (334) through Three Hundred Fifty (350), inclusive of FINAL MAP OF FREEWAY 50 PHASE 6 as shown by map thereof on file in Book 152 of Plats, Page 24, in the Office of the County Recorder, Clark County, Nevada.

Parcel 10:

The North Half (N ½) of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼) of Section 4, Township 22 South, Range 60 East, M.D.M.



1 **ANAC**  
2 NICHOLAS J. SANTORO, ESQ.  
3 Nevada Bar No. 0532  
4 OLIVER J. PANCHERI, ESQ.  
5 Nevada Bar No. 7476  
6 **SANTORO WHITMIRE**  
7 10100 W. Charleston Blvd., Suite 250  
8 Las Vegas, Nevada 89135  
9 Tel.: (702) 948-8771 / Fax: (702) 948-8773  
10 Email: [nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com)  
11 [opancheri@santoronevada.com](mailto:opancheri@santoronevada.com)

12 *Attorneys for Century Communities of Nevada, LLC, Arch Insurance Company and*  
13 *Argonaut Insurance Company*

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

16 DIRECT GRADING & PAVING, LLC, a  
17 Nevada limited liability company,

18 Plaintiff,

19 v.

20 CENTURY COMMUNITIES OF NEVADA,  
21 LLC, a Delaware limited liability company;  
22 ARGONAUT INSURANCE COMPANY;  
23 ARCH INSURANCE COMPANY; DOES I  
24 through X; and ROE CORPORATIONS I  
25 through X, inclusive,

26 Defendant.

27 CENTURY COMMUNITIES OF NEVADA,  
28 LLC, a Delaware limited liability company,

Counterclaimant,

v.

DIRECT GRADING & PAVING, LLC, a  
Nevada limited liability company; MELVIN  
WESTWOOD, an individual; LINDA  
MIDDLETON, an individual; DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Counterdefendants.

Case No.: A-18-773139-C

Dept. No.: XXXII

**ARCH INSURANCE COMPANY'S  
ANSWER TO FIRST AMENDED  
COMPLAINT**

CENTURY COMMUNITIES OF NEVADA,  
LLC, a Delaware limited liability company,

Third-Party Plaintiff,

v.

SCOTT PROKOPCHUK, an individual; DOES  
I through X; and ROE CORPORATIONS I  
through X, inclusive,

Third-Party Defendant.

Defendant ARCH INSURANCE COMPANY (“*Arch*”) (and together with Century Communities of Nevada, LLC and Argonaut Insurance, Inc., the “*Defendants*”), by and through its undersigned counsel, submit the following Answer to the First Amended Statement of Facts Constituting Lien and Complaint (the “*Amended Complaint*”) submitted by Direct Grading & Paving, LLC (“*Direct*”).

#### **STATEMENT OF THE FACTS**

1. Responding to Paragraphs 1-2, 8-9, 15-16, 22, and 23 of the Amended Complaint, Arch admits that Direct recorded Notices of Lien (the “*Liens*”) against Century’s Inspirada Property, Lake Las Vegas Property, Freeway 50 Property, and Rhodes Property (as these properties are defined in the Amended Statement of Facts). Century has denied that it owes the sums to Direct set forth in the Liens or that Direct had any valid basis to record the Liens. Argonaut joins in that denial.

2. Responding to Paragraphs 3-7, 10-14, 17-21, and 24-30 of the Amended Complaint, Direct failed to include copies of the agreements identified in the Amended Complaint. Accordingly, these allegations are impermissibly vague and Arch is compelled to deny these allegations. Further, Century has counter-alleged that on or about June 29, 2010, Las Vegas Land Contracting, LLC, a Delaware limited liability company, dba Dunhill Homes, as contractor, and Direct, as subcontractor, entered into that certain Master Subcontract Agreement (the “*Agreement*”), which Agreement sets forth the general terms and conditions which would become part of future construction contracts between the parties. Century contends that it is a

1 successor-in-interest to the Agreement. Pursuant to the Agreement, Century and Direct entered  
2 into several Project Work Authorizations (each, a “**PWA**”) detailing, among other things, the  
3 applicable project of Century and scope of work to be formed by Direct in respect to the  
4 applicable project. Among others, Century and Direct entered into a PWA for grading and  
5 related work at Lake Las Vegas, Inspirada and Parkway 50 (the “**Projects**”). Direct defaulted  
6 under the Agreement and the PWAs for the Projects due to, among other things, the failure of  
7 Direct to timely perform the scope of work required under the PWAs for the Projects.  
8 Accordingly, Century alleges that it owes Direct nothing under the Agreement or the PWAs (or  
9 under any other agreement or claim asserted by Direct). Century further alleged it has been  
10 damaged by Direct’s defaults and is entitled to a damage award in its favor as a result of Direct’s  
11 breaches.

12 3. Century has caused the Liens to be removed by recording and serving the  
13 following bonds: (1) a bond in the amount of \$1,103.794.73 relating to the Freeway 50 Property,  
14 which was recorded on April 17, 2017; (2) a bond in the amount of \$435,027.83 relating to the  
15 Inspirada Property, which was recorded on April 18, 2017; (3) a bond in the amount of  
16 \$451,565.22 relating to the Lake Las Vegas Property, which was recorded on April 19, 2017;  
17 and (4) a bond in the amount of \$517,482.69 relating to the Rhodes Ranch Property, which was  
18 recorded on September 27, 2018 (collectively the “**Bonds**”).

19 4. Defendants contend that Direct is not entitled to any relief under the Liens and  
20 Direct’s continued pursuit of a remedy of foreclosure after the posting of the Bonds is contrary to  
21 Nevada law.

### **RESPONSE TO THE COMPLAINT**

22 Arch, by and through its attorneys of record, responds to the Amended Complaint as  
23 follows:  
24

25 5. Responding to Paragraphs 31, 35-40, 46, 63, 67, 79, 87, 94, 100, 105, 110 and  
26 125 of the Amended Complaint, Arch is without sufficient knowledge to form a belief as to the  
27 truth of the allegations and, therefore, denies the same.

28 6. Responding to Paragraphs 44-45, 47-52, 56-62, 64-66, 68-72, 76-78, 80-83,

1 88–93, 95–99, 101–104, 106–109, 111–124, and 126–131 of the Amended Complaint, Arch  
2 responds that the allegations contained in these paragraphs fail to accurately characterize the  
3 facts and agreements at issue in this matter. As such, Defendants have denied the allegations  
4 contained in those paragraphs.

5 7. Responding to Paragraph 32 of the Amended Complaint, Arch responds that  
6 Century is a limited liability company formed and existing under the laws of the State of  
7 Delaware and is qualified to do business as a foreign limited liability company in the State of  
8 Nevada.

9 8. Responding to Paragraph 33 of the Amended Complaint, Arch responds that  
10 Argonaut is a surety licensed to provide bonds and did provide bonds identified as  
11 SUR0040822–SUR0040824. Defendants have denied that Direct has demonstrated any basis to  
12 recover on the Bonds.

13 9. Responding to Paragraph 34 of the Amended Complaint, Arch responds that it is a  
14 surety licensed to provide bonds and did provide a bond identified as SU1125385. Defendants  
15 have denied that Direct has demonstrated any basis to recover on the Bonds.

16 10. Responding to Paragraphs 41–43, 53–55, 73–75, and 84–86 of the Amended  
17 Complaint, Arch responds that Direct failed to include copies of the agreements identified in the  
18 Amended Complaint. These allegations are impermissibly vague. Accordingly, Defendants are  
19 compelled to deny these allegations.

20 **AFFIRMATIVE DEFENSES**

21 As and for a separate defense, Defendants allege the following affirmative defenses:

22 1. Direct’s Amended Complaint fails to state a claim upon which relief can be  
23 granted.

24 2. The damages suffered by Direct, if any, were the result of negligence and failure  
25 to use reasonable diligence in performing the acts of Direct.

26 3. Direct’s claims are barred by the doctrines of laches, waiver and estoppel.

27 4. Defendants have statutory defenses under NRS Chapter 108 regarding Direct’s  
28 mechanic’s liens and the bonds, and therefore, Direct would not be entitled to recover on its lien

foreclosure claim or on any claim to the bonds.

5. Direct breached the relevant agreements. Because its work was substandard, not workmanlike, defective, incomplete, or untimely, among other breaches, Direct is not entitled to recover for said work from Century.

6. Direct failed to mitigate its damages.

7. Any damages alleged by Direct were caused or contributed to by Direct's own actions or omissions thereby barring or reducing the amount the Direct may recover.

8. The damages incurred by Direct as a result of the acts or omissions of Century, if any, must be set off, reduced or abated.

9. The damages incurred by Direct as a result of the acts or omissions of Century, if any, must be set off, reduced or abated to the extent that Direct injured the Property, damaged materials supplied to Century by others, and/or impaired the services rendered by others on Century's behalf.

10. The damages incurred by Direct as a result of the acts or omissions of Century, if any, must be set off, reduced or abated to the extent that Direct breached its warranties to Century and/or any person or entity acting on Century's behalf.

11. Direct's lien and bond claims re excessive or overstated and should be reduced and/or discharged.

12. The Amended Complaint is barred by Direct's fraudulent conduct.

13. Arch hereby incorporates by reference those affirmative defenses enumerated in NRCP 11, all possible defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry and, therefore, Arch reserves the right to amend its Answer to allege additional defenses if subsequent investigation warrants.

WHEREFORE, Arch prays:

1. That Direct takes nothing by way of its Amended Complaint.

2. For reasonable attorney's fees and costs of suit incurred herein; and

//

//

1           3.       For such other and further relief as just and proper.

2       DATED this 15th day of June, 2020.

3                               **SANTORO WHITMIRE**

4                               /s/ Oliver J. Pancheri

5                               NICHOLAS J. SANTORO, ESQ.

6                               Nevada Bar No. 532

7                               OLIVER J. PANCHERI, ESQ.

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14                             Attorneys for Century Communities of Nevada,  
15                             Arch Insurance Company, and Argonaut Insurance  
16                             Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 15th day of June, 2020, a true and correct copy of  
**ARCH INSURANCE COMPANY'S ANSWER TO FIRST AMENDED COMPLAINT** was  
served electronically using the Eighth Judicial District Court's eFileNV system to the following:

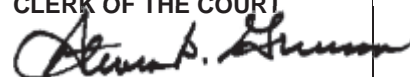
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8 *Attorneys for Century Communities of Nevada, LLC*  
 9 *and Argonaut Insurance Company*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DIRECT GRADING & PAVING, LLC, a  
 Nevada limited liability company;

13 Plaintiff,

14 v.

15 CENTURY COMMUNITIES OF NEVADA,  
 16 LLC, a Delaware limited liability company,  
 17 ARGONAUT INSURANCE COMPANY,  
 18 DOES I through X; and ROE  
 CORPORATIONS I through X, inclusive

19 Defendant.

Case No.: A-18-773139-C  
 Dept. No.: XXXII

**THE PARTIES' JOINT STATUS UPDATE  
 IN RELATION TO EVIDENTIARY  
 HEARING ON CENTURY  
 COMMUNITIES' MOTION FOR  
 DISCOVERY SANCTIONS AGAINST  
 DIRECT FOR: (1) FRAUD UPON THE  
 COURT; (2) FALSIFICATION OF  
 EVIDENCE; (3) SPOILIATION OF  
 EVIDENCE; (4) FAILURE TO COMPLY  
 WITH DISCOVERY ORDERS AND  
 OBLIGATIONS; AND (5) DISCOVERY  
 ABUSES**

**Hearing Date: September 3, 2020  
 Hearing Time: 11:00 AM**

21  
 22  
 23 **AND ALL RELATED MATTERS.**

24 Defendants CENTURY COMMUNITIES OF NEVADA, LLC ("*Century*") and  
 25 ARGONAUT INSURANCE COMPANY ("*Argonaut*") (collectively, as the "*Defendants*"), by  
 26 and through their undersigned counsel, and DIRECT GRADING & PAVING, L.L.C., by and  
 27 through its undersigned counsel of record, hereby jointly submit the following status update in  
 28 connection with the evidentiary hearing to be held on Century's Motion for Discovery Sanctions

DIRECT001344

1 against Direct for: (1) Fraud upon the Court; (2) Falsification of Evidence; (3) Spoliation of  
2 Evidence; (4) Failure to Comply with Discovery Orders and Obligations; and (5) Discovery  
3 Abuses (the “*Motion for Sanctions*”).

4 The parties have exchanged lists of witnesses and documents in anticipation of the hearing  
5 on the Motion for Sanctions. The Parties have also met and conferred on what discovery, if any,  
6 should take place in advance of the evidentiary hearing. However, the parties are unable to come  
7 to an agreement on the appropriate scope for the evidentiary hearing or what discovery, if any,  
8 should be permitted in advance of the hearing. The parties’ respective positions with regard to the  
9 appropriate scope of the hearing and discovery are set forth below.<sup>1</sup>

10 *Century’s Position*

11 Century contends that the evidentiary hearing should be limited to just the issues pertinent  
12 to Direct’s discovery abuses. These issues involve: (1) the alteration of the BLM documents,  
13 which Direct has admitted were intentionally altered by its controller, Linda Middleton; and (2)  
14 Direct’s failure to comply with the Arbitrator’s Orders concerning its communications with Scott  
15 Prokopchuk (“*Prokopchuk*”), Century’s Land Development Manager, who was secretly employed  
16 by Direct at the same time he was responsible for overseeing Century’s work. Both of these  
17 discovery abuses were compounded by Direct’s efforts to conceal the discovery misconduct.  
18 Conversely, Direct seeks to expand the scope of the evidentiary hearing to include the entire  
19 underlying construction dispute, which would mean an evidentiary hearing that would take as long,  
20 or longer, than the ultimate arbitration hearing on the entire case (estimated to take approximately  
21 two weeks). This would undermine part of the Court’s prior ruling in relation to the discovery  
22 sanctions, which addresses the fact that the Court’s decision may impact the scope of the  
23 underlying arbitration hearing. (*See* Feb. 19, 2020 Order at p. 4). Direct’s attempt to improperly  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The parties have independently drafted their respective positions in this joint submission. The  
27 joint submission – as opposed to separate updates – is provided as a more efficient update for the  
28 Court. By submitting this update jointly, the parties’ are not conceding or adopting any assertions  
or arguments made by the other party in their position statement. The parties reserve all rights in  
this regard.

1 expand the scope of the evidentiary hearing is simply an improper attempt to delay this matter  
2 further and to obtain discovery on issues that have no direct bearing on the issues before this Court.

3 Direct contends that because Century's briefs touch on the substantive underlying dispute  
4 between the parties, it should be permitted to conduct discovery and present evidence on all of the  
5 underlying substantive disputes. Considering that the parties' dispute involves four different  
6 construction projects and a host of issues going to the merits of the construction dispute, this could  
7 mean extensive discovery and expanding the evidentiary hearing before this Court from a few days  
8 to several weeks. This is wholly inappropriate and simply another effort by Direct to avoid the  
9 repercussions of its actions. The evidentiary hearing should be limited to the testimony of the  
10 parties involved in the alteration of evidence and the failure by Direct to produce documents in  
11 connection with the Arbitrator's orders. Additionally, the Court should hear testimony from the  
12 forensic computer expert who conducted an investigation into these discovery abuses. If the  
13 parties believe background information would be helpful to the Court, they can provide that  
14 through their briefs, affidavits, documentary evidence or argument (as they have already in their  
15 respective briefs). There is no reason to bring in other witnesses who cannot testify as to the actual  
16 discovery issues before the Court. The issue before this Court is Direct's discovery abuses – not  
17 the merits of the underlying construction dispute.

18 Finally, Direct hopes to call the Arbitrator as a witness, which would be completely  
19 improper. This would be like calling a judge as a witness to testify about rulings he or she made  
20 in an underlying proceeding. The Court should not condone Direct's attempt to delay this matter  
21 or to bring in unnecessary or improper evidence as part of the evidentiary hearing that should be  
22 limited to the discovery issues.

23 **Direct's Position**

24 In preparation of the upcoming status check, the parties have made witness and document  
25 disclosures, but are at an impasse as to the amount of discovery that should be allowed. As this  
26 Court is aware, Direct consolidated numerous projects into one complaint, all which could have  
27 been filed separately but were not for judicial economy. While the parties were arbitrating the  
28 matters with Arbitrator Donald Williams, Linda Middleton altered BLM contract documents,

1 unknown to Direct's manager and owner, Mel Westwood. The BLM documents concerned one  
2 of the projects – Inspirada. Century confronted Direct Grading about the alteration, and upon  
3 investigating the matter, quickly admitted that the documents had been altered. Regardless,  
4 Century has continued to pursue this issue, and in Century's Motion for sanctions filed February  
5 18, 2020 (and subsequent reply), Century seeks to have ALL of Direct's claims on all projects  
6 dismissed because of the BLM documents (under which Century is not obligated), as well as other  
7 issues concerning alleged abuses related to Direct's computers, discovery in arbitration, and Scott  
8 Prokopchuk. In addition, Century claims that the dirt that was supposed to be hauled from BLM  
9 property was actually hauled from another project owned by Century – Rhodes Ranch. Further,  
10 Century claims that Direct falsified truck tickets from the BLM project. Moreover, with respect to  
11 Scott Prokopchuk, Century argues and claims the following: everything should be dismissed  
12 because Prokopchuk approved change orders without requiring Direct to submit the proper  
13 documentation; and Prokopchuk entered into draw schedules after work had already allegedly been  
14 performed. Century further claims that Prokopchuk approved payment of the fraudulent BLM  
15 invoicing; Prokopchuk approved payment of Direct invoicing for work that had not yet been  
16 performed; Prokopchuk awarded projects to Direct without seeking or considering competitive  
17 proposals; Prokopchuk attempted to award Direct an additional Purchase Work Authorizations  
18 days after he resigned from Century; Prokopchuk allowed Direct to continue on the various  
19 projects despite being months behind schedule (on average 252 behind schedule for the various  
20 projects); and Prokopchuk approved over \$5,000,000 in invoicing from Direct without requiring  
21 Direct to submit any back-up or supporting documentation. Direct denies these allegations, but  
22 must be afforded due process to be able to respond to all of these claims. Century's allegations  
23 calls into question all of the projects, and Direct must be afforded due process and the ability to  
24 have full discovery on these projects (which it has yet to be afforded) to show that Direct's claims  
25 are valid and that Direct had no reason to falsify BLM documents. Further, because of Century's  
26 allegations that the Court has now repeatedly read, Direct must be able to show that it provided  
27 the materials and services; that any delay in the projects was because of Century; that anything  
28 approved by Prokopchuck was also approved by someone in upper management; that Prokopchuck

1 was actually working for another company called DGP Holdings on a non-housing project; and  
2 that Century was not harmed in any manner. When Direct presented the concern that Direct is  
3 being forced to enter another hearing on issues which it has not had the opportunity to conduct  
4 discovery, at the previous hearing, the Court stated the following:

5 It makes sense to just leave it to the lawyers to try to work it out. And doing all of  
6 these evidentiary hearings over the years, of course, we all know that the one  
7 horrible of all horrors is when we're at the hearing and somebody tries to produce  
8 evidence or a witness that the -- somebody else doesn't know about and hasn't seen  
9 and doesn't -- you know, not prepared for. So, we don't want to have that. ***We want***  
10 ***to have full, open discovery and exchanging of lists and documents and***  
11 ***everything else ahead of --*** well, ahead of the evidentiary hearing.

12 I mean, there's certainly an opportunity to do that since this hearing's set for  
13 November 9th and here we are on May 14th.

14 Thus, Direct desires to have full discovery before the hearing on all of the projects that Century  
15 seeks to dismiss.

16 In addition, part of the November hearing is based on Direct's motion for reconsideration  
17 of NRS 38.222. The parties entered into an Arbitration Letter Agreement on July 18, 2017,  
18 wherein the parties appointed Donald Williams as the Arbitrator and gave him full authority. At  
19 the hearing, following Century's Motion for Relief, filed in November 2019, the Court considered  
20 whether the arbitrator was not able to act timely or whether the arbitrator could not provide an  
21 adequate remedy. The Court stated that based on the papers and evidence presented, the Arbitrator  
22 appeared to have the authority to act, appeared to be acting with that authority, and that he was in  
23 a position to provide an adequate remedy pursuant to NRS 38.222. Century's counsel agreed with  
24 the statement. Nevertheless, the Court took jurisdiction over the matter and a hearing is set for  
25 November 2020, at the same time as the evidentiary hearing concerning sanctions. In preparation  
26 for the hearing on Direct's motion for reconsideration, Direct seeks to take the deposition of  
27 Donald Williams, the agreed-upon arbitrator, to question him on his authority and his ability to

28 / /

/ /

/ /

/ /

1 provide an adequate remedy, as required under NRS 38.222.

2 Dated this 31st day of August, 2020.

3 **SANTORO WHITMIRE**

**JOHNSON & GUBLER, P.C.**

4 /s/ Oliver J. Pancheri

/s/ Russell G. Gubler

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12 *Attorney for Defendants*

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 31st day of August, 2020, a true and correct copy of  
**THE PARTIES' JOINT STATUS UPDATE IN RELATION TO EVIDENTIARY  
HEARING ON CENTURY COMMUNITIES' MOTION FOR DISCOVERY SANCTIONS  
AGAINST DIRECT FOR: (1) FRAUD UPON THE COURT; (2) FALSIFICATION OF  
EVIDENCE; (3) SPOILIATION OF EVIDENCE; (4) FAILURE TO COMPLY WITH  
DISCOVERY ORDERS AND OBLIGATIONS; AND (5) DISCOVERY ABUSES** was served  
electronically using the Eighth Judicial District Court's Odyssey eFileNV system to the following:

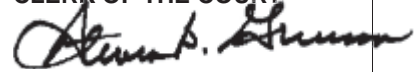
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/s/ Rachel Jenkins  
An employee of SANTORO WHITMIRE



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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DIRECT GRADING & PAVING,  
L.L.C.,

Plaintiff,

vs.

CENTURY COMMUNITIES OF  
NEVADA, L.L.C., a Nevada limited  
liability company; ARGONAUT  
INSURANCE COMPANY; DOES I  
through X, and ROES  
CORPORATIONS I through X,  
inclusive,

Defendant(s).

ALL RELATED MATTERS.

Case No.: A-18-773139-C

Dept. No.: XXXII

**BRIEFING CONCERNING  
DISCOVERY SOUGHT PRIOR TO  
HEARING ON CENTURY'S  
MOTION FOR SANCTIONS AND  
ON DIRECT'S MOTION FOR  
RECONSIDERATION**

**COMES NOW** Plaintiff DIRECT GRADING & PAVING, LLC ("Plaintiff" and/or  
"Direct"), by and through its counsel of record of the law firm Johnson & Gubler, P.C., and  
respectfully files this brief concerning discovery sought prior to the hearing on Century's Motion  
for Sanctions and on Direct's Motion for Reconsideration.

////

////

DIRECT001351

1  
2 This briefing is made and based on the pleadings and papers on file herein, the Points and  
3 Authorities below, and any arguments of counsel entertained by this Court at the time of the  
4 hearing on this matter.

5 DATED this 17<sup>th</sup> day of September, 2020.

7 JOHNSON & GUBLER, P.C.

8 /s/ Russell G. Gubler

9 Matthew L. Johnson

10 Russell G. Gubler

11 Ashveen S. Dhillon

12 Lakes Business Park

13 8831 West Sahara Avenue

14 Las Vegas, Nevada 89117

15 (702) 471-0065

16 *Attorneys for Plaintiff*

17  
18 **POINTS AND AUTHORITIES**

19 **I. FACTS**

20 As this Court is aware, the Court has ordered the parties to meet and confer on several occasions  
21 concerning the discovery that would be allowed prior to the hearing on Century's motion for  
22 sanctions (the "Motion"), which was originally brought before the arbitrator. The parties have met  
23 and conferred, and are still unable to agree on one deposition and several subpoenas that Direct  
24 believes is necessary for the Court to make proper determinations under *Bass-Davis v. Davis*, 122  
25 Nev. 442 (2006) and *Young v. Johnny Ribeiro Bldg.* 106 Nev. 88 (1990).

26 Based on the prior discovery meet and conferences, Direct focuses on the discovery that it seeks  
27 to take, but which Century does not agree. Direct has already filed an objection to certain Century  
28 disclosures that Century seeks to admit into evidence at the time of the hearing, and Direct does not

1 waive the right to those objections and reserves the right to object to them at the hearing.<sup>1</sup>

2 Further, Direct maintains that the hearing is procedurally improper, as Rule 37 generally  
3 authorizes discovery sanctions only if there has been willful noncompliance **with a discovery order**  
4 **of the court**. *Young v. Johnny Ribeiro Bldg.* 106 Nev. 88 (1990). Obviously, Century's motion is  
5 not based on discovery orders issued by this Court, but on orders issued by the arbitrator. Direct  
6 does not waive these rights either.

7 Further, Direct maintains its position provided in its motion for reconsideration that discovery  
8 has not been allowed for Direct to properly respond to many of the allegations. During the meet  
9 and conferences, Century's counsel agreed that not all discovery has been completed and that  
10 there may be evidence related to the BLM materials and other issues. Factors to be considered  
11 by the Court include the degree of willfulness to harm, the extent to which the non-offending  
12 party would be prejudiced by a lesser sanction, whether any evidence has been irreparably lost,  
13 and the fairness of alternative sanctions, among others. *Young v. Johnny Ribeiro Bldg.* 106 Nev.  
14 88 (1990). The arbitrator, who was intimately familiar with the issues, already considered these  
15 factors. Of course, the Court cannot truly consider all of these matters, unless discovery has been  
16 had. Nevertheless, in compliance with the Court's order to provide an offer of proof for discovery  
17 that Direct seeks to introduce as evidence, Direct submits this brief.

18 To provide the context of relevance for the discovery that Direct seeks, Direct provides a list of  
19 arguments that Century has repeatedly made, among others, **which Direct disputes**. Century has  
20 argued and alleged the following in its Motion for sanctions and Reply briefs:

- 21 1. Linda Middleton altered BLM documents, and Century intends to present evidence that  
22 Direct **intended** to produce these altered documents. Motion, pp. 3, 28 (emphasis  
23 added).
- 24 2. There is no question that Direct's conduct has been **willful**. Direct altered BLM  
25 documents in order to conceal its overbilling practices. Motion, p. 14 (emphasis added).

---

26 <sup>1</sup> If the Court desires briefing on all evidence to be submitted at the hearing, Direct will do so.  
27 Direct specifically objects to all hearsay and reserves its rights with respect to all other evidentiary  
28 objections.

3. Actual BLM documents were altered to show larger quantities. Motion, pp. 10, 28-29.
4. Century's purported expert, Rosten, claims that two-thirds of these charges for BLM material were fraudulent. Motion, p. 9. The invoices submitted by Direct for BLM material overbilled Century for \$900,000. Motion, p. 28. Direct overcharged Century for approximately \$550,000 for BLM material. Motion, pp. 16, 29.
5. Direct invented fictitious trucks to pad truck logs to justify overbilling to Century. Motion, p. 10.
6. The dirt procured from the BLM was expensive and was essentially an option of last resort for Century. Motion, p. 16.
7. Direct took advantage of Century by charging as if 93,200 cubic yards of soil had been purchased from the BLM and transported from the BLM site to Inspirada. Motion, p. 16.
8. Direct was apparently hauling dirt from one Century job site to another Century job site and charging Century as if the dirt had been purchased from the BLM. Motion, pages 13, 16.
9. Direct obtained the dirt at no cost. In fact, one of those sites was another Century project. Direct obtained dirt from the **Rhodes Ranch** project and the Southpoint Hotel & Casino, from which Direct imported dirt to the Inspirada job site. The **Rhodes Ranch** site was another Century project. Motion, p. 16.
10. Direct was charging Century for removing the excess dirt from Rhodes Ranch. It is no wonder that Direct wanted to conceal its overbilling scheme. Motion, p. 13.
11. Direct does not provide *any credible evidence* that it did not overbill Century. Reply, p. 12 (emphasis added).
12. It is *unrebutted* that Direct charged Century as if dirt was being purchased from the BLM and hauled across the valley when it was, in fact, coming from sites where Direct obtained the dirt at no cost. Direct obtained dirt from the **Rhodes Ranch** project and the Southpoint Hotel. Reply, p. 12 (emphasis added).
13. Direct failed to produce its communications with Prokopchuk, claiming they either could not be recovered or did not exist. Like the altered BLM documents, Direct has attempted to conceal the truth regarding the true nature of Prokopchuk's relationship with Direct. Motion, pp. 4, 28.
14. Direct did not preserve emails to show that Prokopchuk was actually working for Direct. Motion, p. 24.
15. At Century, Prokopchuk was responsible for (among other things) the following: (1) obtaining job costs estimates and bids from contractors; (2) participating in awarding jobs to contractors; (3) overseeing the actual work performed by the contractors; (4) approving any change orders and purchase orders for the contractors; and (5) authorizing payment to the contractors. In performing these duties for Century, Prokopchuk oversaw Direct in each of these regards. Motion, p. 7.
16. Direct is precluded from making any recovery from Century due to its breach of the MSA caused by the conflict of interest created by employing Prokopchuk. Motion, p. 27. The conflict of interest was material in that Century relied upon the undivided loyalty of its Land Development Manager, Prokopchuk, in allowing him to oversee Direct's work and approve Direct's payments. Motion, p. 28.
17. Everything should be dismissed because Prokopchuk approved change orders without requiring Direct to submit the proper documentation; Reply, p. 9.
18. Century further claims that Prokopchuk approved payment of the fraudulent BLM invoicing. Reply, p. 9.

19. Prokopchuk awarded projects to Direct without seeking or considering competitive proposals. Reply, p. 9.
20. Prokopchuk's signature is the one constant on the contracts, draw schedules, communications and certifications. Prokopchuk, as he states in his Affidavit, oversaw the projects. Reply, p. 10.
21. Prokopchuk allowed Direct to continue on the various projects despite being months behind schedule (on average 252 behind schedule for the various projects); Reply, p. 9.
22. Prokopchuk was clearly in a position to run interference for Direct and to ensure that Direct remained on the Projects despite being – on average – 252 days behind schedule on the various projects. Reply, p. 10.
23. Prokopchuk approved over \$5,000,000 in invoicing from Direct without requiring Direct to submit any back-up or supporting documentation. Reply, pp. 9-10.
24. The evidence presented at the hearing on this Motion will establish the willful, bad faith and fraudulent conduct on the part of Direct. Reply, p. 13.
25. Direct is not entitled to any recovery, whatsoever against Century. Motion, p. 29.
26. Century seeks to dismiss all liens on all projects. Reply, p. 3.
27. Court cannot trust any evidence by Direct., Reply, p. 4.

Direct denies these allegations, but must be afforded due process to be able to respond to all of these claims. Again, Direct was never given the opportunity to conduct discovery on these issues in the arbitration. It is important to note that Century got the dirt required, that Direct provided that dirt, and that Century did not pay Direct for all of the work and materials for that specific site, along with other projects, to the tune of approximately \$1.6 million.

Further, whether Century claims that it only provides these allegations as context for the sanctions, Century undoubtedly uses these allegations in its attempt to show intent. Direct must be afforded due process to even rebut these allegations and to show that it did not intend to harm Century, as the Court must consider.

## **II. ARGUMENT**

If a court is considering dismissal with prejudice, a heightened standard of review applies. *Young v. Johnny Ribeiro Bldg.* 106 Nev. 88 (1990). Factors to be considered include the degree of willfulness, the extent to which the non-offending party would be prejudiced by a lesser sanction, whether any evidence has been irreparably lost, and the fairness of alternative sanctions, among others. *Young v. Johnny Ribeiro Bldg.* 106 Nev. 88 (1990).

1 Again, Century seeks to show that Direct intended to harm Century by hiding or destroying  
2 evidence using the facts set forth above. However, by seeking the discovery below, Direct seeks to  
3 show that it did not intend to harm Century, that it had no motive to intend Century, and that other  
4 evidence does exist<sup>2</sup>, where Century is not harmed.

5 If a court is considering a rebuttable presumption for intentional spoliation, the party in  
6 Century's position must show that Direct intended to suppress/spoliate *and* to harm. *Bass-Davis v.*  
7 *Davis*, 122 Nev. 442 (2006) (emphasis added).  
8

9 If a court is considering negligence for an inference, Century must still show culpability of  
10 mind. *Bass-Davis v. Davis*, 122 Nev. 442 (2006).

11 ***Deposition of Don Boettcher.***

12 Direct seeks to take the deposition of Century's former president, Don Boettcher. Century  
13 argues that Scott Prokopchuk is Direct's star witness, while arguing that the Court cannot trust what  
14 Direct has to say, that Direct has provided no credible evidence of Century's allegations, that  
15 Century's allegations have gone un rebutted, all while fighting to preclude Don Boettcher from  
16 testifying against Century's made-up allegations, claiming that Don Boettcher's testimony will  
17 somehow derail the hearing in November. However, this is the farthest from the truth.  
18

19 With respect to the BLM materials, Century has pleaded much. Century has claimed that  
20 Direct fraudulently billed Century for Dirt from the BLM property to Inspirada; took the dirt from  
21 somewhere else, including another Century project; was told that Century would only allow BLM  
22 dirt on a last resort effort to fill Inspirada; put "ghost trucks" in its loader logs; and told Ms.  
23 Middleton to alter the BLM document to cover it up. Each of these allegations are false. Regardless,  
24 this goes to whether Direct intended to harm Century, and Direct seeks to show that it did not intend  
25 to harm Century and had no motive to harm Century, which is all relevant under *Bass Davis* and  
26

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27  
28 <sup>2</sup> For clarification, the BLM document still does exist, and Direct maintains that there were no  
Prokopchuk emails of which it is aware.

1 *Young* cases, but which Direct has never been given the due process to even respond to these  
2 allegations that Century repeatedly makes, even in briefing.

3 Boettcher is expected to testify that Century needed to procure materials to fill in the  
4 Inspirada project<sup>3</sup>. It is believed that Boettcher is able to verify that about a year from beginning  
5 the Inspirada project, Century was trying to get free dirt hauled to Inspirada. However, at the time  
6 that the project began, the materials were still needed; Century was down to the wire and needed a  
7 source. It is true that Century had some materials at the Rhodes Ranch project, but these materials  
8 were across town from Inspirada, while the BLM property was close to Inspirada. Century found it  
9 significantly less expensive to haul from the BLM and pay for that dirt over hauling its own dirt  
10 from Rhodes Ranch. It is believed that Boettcher would be able to confirm all of this; and would  
11 know that it was cheaper to get the BLM materials. Regardless of where the materials came from,  
12 Boettcher had to approve where the materials came from because it increased costs and would have  
13 knowledge in procuring the materials from the BLM and approving payment to Direct.  
14

15 Similarly, Century's Inspirada project required a certain amount of dirt, not only with what  
16 was required under the plan, but also what was necessary because additional materials were hauled  
17 off of Inspirada after the plan was developed. Again, Boettcher would know this and is expected to  
18 testify that materials did not come from other Century projects, as Century is claiming.  
19

20 Further, despite Century's allegations, it is believed that Boettcher would know that material  
21 belonging to Century at the Rhodes Ranch site was being taken by other contractors for other  
22 projects other than Inspirada. Boettcher would know if Century was paid for those materials by  
23 these other contractors at Rhodes Ranch, or alternatively if Century paid to have it hauled off.  
24

25 Moreover, Scott Prokopchuk submitted in his affidavit that Century kept internal logs,  
26 tracking import and export of all projects, which is believed that Century has not produced.  
27

28 <sup>3</sup> Direct does not go into details about projects. However, the materials procured from the BLM  
property were used for the Inspirada project only.

1 Boettcher would likely know if there were internal log sheets kept, and what they would include. If  
2 Century has these, then they have not been produced, and Century makes false arguments to the  
3 Court to attempt to get Direct sanctioned. The log sheets could dispose of all of the need for what  
4 Direct is requesting. Also, it could show that Century has been jumping up and down all while  
5 Century has been the one that spoliated evidence.

6 Thus, Don Boettcher is expected to give testimony that would confirm that Century's  
7 allegations in its briefing are untrue. Further, it would rebut Century's allegations repeatedly made  
8 in Century's Motion and Reply, showing that Direct did not intend to harm Century, and that Direct  
9 did not even have the motive to cover up false billing.  
10

11 Next, while this seems more of a breach of contract issue than a sanction, Century argues  
12 that it was harmed because Direct failed to produce emails from Prokopchuk, to hide the alleged  
13 fact that Direct was working with Prokopchuk, while Prokopchuk was responsible for overseeing  
14 Direct on (among other things) the following: (1) obtaining job costs estimates and bids from  
15 contractors; (2) participating in awarding jobs to contractors; (3) overseeing the actual work  
16 performed by the contractors; (4) approving any change orders and purchase orders for the  
17 contractors; and (5) authorizing payment to the contractors. However, it is believed that Boettcher  
18 would be able to give general procedures within Century for job bidding/costing estimates,  
19 awarding, change orders approvals, payments, and oversight. Further, Boettcher could likely  
20 confirm what Prokopchuk has submitted in an affidavit, rebutting many of these allegations made  
21 by Century set forth above, including the following:  
22

- 23 1. When Century Communities was interested in developing a parcel of land for residential  
24 homes, Prokopchuk obtained pricing from subcontractors, discuss the pricing with  
25 upper management, including Don Boettcher and Rick Barron, and compared the  
26 pricing against the budget with the upper management, who then authorized Prokopchuk  
27 to process a contract with various subcontractors. Ultimately, Prokopchuk would sign  
28

1 on a contract as to content and Don Boettcher or Rick Barron would execute a contract.  
2 Prokopchuk did not have authority to execute a contract.

- 3 2. The procedure for acquiring competitive bids and whether that was common. Similarly,  
4 that Las Vegas was just recovering from a recession, and there were not many qualified  
5 contractors that could perform the work.
- 6 3. The requirements Century placed on Prokopchuk to award a subcontractor a job.
- 7 4. That Century created established relationships with Subcontractors, so they would  
8 always have someone they could count on to be there on a timely basis, as well as hold  
9 their prices. Upper management's major concern was to stay within Century  
10 Communities budget. Often, Prokopchuk would be authorized to process a contract  
11 without getting a secondary bid, with the approval of the upper management. The project  
12 contracts were always approved as a group. Prokopchuk could not approve or execute a  
13 contract alone.
- 14 5. If change orders for a project were necessary, again, everything was discussed with  
15 upper management before it was even processed. Century Communities had many  
16 checks and balances in place for approval of any phase of its projects. The  
17 Subcontractor's would submit a proposed change order, after which, Prokopchuk would  
18 process a work agreement and have the Subcontractor sign. Ultimately, Boettcher or  
19 Barron would need to approve any payment to a Subcontractor, and the payment would  
20 be submitted to accounting for check processing.
- 21 6. Change orders had a different protocol than original contracts. Prokopchuk would obtain  
22 pricing, and obtain approval from upper management, including Boettcher and Barron,  
23 for a subcontractor to continue working on a project. If a change order was necessary,  
24 calls were made to Boettcher or Barron. All change orders were discussed with one or  
25 both of them. The industry standard for Century was to keep the Subcontractor on the  
26  
27  
28

1 project and to allow the work in the field to continue so as to be completed as soon as  
2 possible. Century Communities did not want a subcontractor to stop working.

3 7. Change orders were handled on a weekly basis for the Inspirada project. Century  
4 Communities required Direct Grading to submit back up before a change order could be  
5 processed. The change order draw schedule was itemized and would reference truck  
6 tickets and other back up. Prokopchuk held continuous meetings with upper  
7 management discussing these items. Direct Grading would sign the change order, after  
8 which Prokopchuk would process the approval, upon obtained approval from upper  
9 management, including Boettcher or Barron. At least once a week, Prokopchuk would  
10 verify that the work had been completed, discuss the project with Boettcher or Barron,  
11 process a change order, and submit it to Direct Grading. Prokopchuk did not have  
12 authority to approve, sign off or prepare a check. All Prokopchuk would verify was that  
13 the work had been completed. No checks were issued unless it was verified and  
14 approved by Boettcher or Barron.  
15

16  
17 Direct does not seek to argue the specifics of jobs, but to find out the procedures. Again,  
18 Direct has not even been given an opportunity for discovery on these issues to even rebut in briefing.  
19 Direct seeks to limit the scope of the deposition to the issues raised in Century's briefing. All of the  
20 expected testimony from Boettcher would be able to counter specific allegations that Century has  
21 made in its briefing and to assure that Direct is afforded Due Process.  
22

23 ***Deposition of Tim Wyatt.***

24 Century has agreed to allow the deposition of Tim Wyatt. Further, Century had even said  
25 that it will produce Tim Wyatt for a deposition. However, for the Court's information, Century  
26 recently informed Direct that Tim Wyatt has changed employment, and that Century cannot  
27 produce Tim Wyatt, all while Century attempts to introduce his affidavit, which is double hearsay,  
28 while Direct has not been able to depose him. Century should be required to produce him or none

1 of his affidavit should be allowed.

2 ***Subpoena to Alpha Landscapes or trucking***

3 Direct seeks to subpoena Alpha for documents related to hauling materials from the BLM  
4 property to Inspirada, and from KB homes property to Inspirada. Century argues that Direct needed  
5 to hide the fact that it was overbilling Century for materials that Century did not need. With the  
6 information from Alpha, Direct intends to show that the Inspirada project required a certain amount  
7 of materials. This subpoena would show how much Alpha actually hauled to contribute to the  
8 amount of materials needed at Inspirada. The remainder amount shows what was still needed at  
9 Inspirada, based on the Century plans. Further, this would show that Century was not overbilled or  
10 been harmed as it claims. This also shows that Direct did not intend to harm Century and had no  
11 motive to hide the BLM contract.  
12

13  
14 ***Subpoena to Western States and Patriot Contractors (or their leased trucks)***

15 Direct seeks to subpoena Western States and Patriot Contractors for documents related to  
16 hauling materials from Rhodes Ranch. Century argues that Direct hauled materials clear across  
17 town from Rhodes Ranch to Inspirada and passed it off as BLM dirt, for which Direct allegedly  
18 billed Century. Direct seeks documents showing where the materials went. This evidence would  
19 show that the materials at Rhodes Ranch were taken by other contractors, who used the materials  
20 for other projects, other than Inspirada. If the dirt went to projects other than Inspirada, then  
21 Century's argument that Direct hauled it to Inspirada and billed Century for it is false. The evidence  
22 would also show that Direct had no reason or motive to hide the BLM document or intent to harm.  
23  
24

25 ***Documents from Century***

26 Direct seeks to have Century produce documents showing what was paid for the materials  
27 at Rhodes Ranch by these other contractors, Western States and Patriot, or alternatively, what  
28 Century paid to have the materials hauled off, like it claims. Century argues that Direct hauled

1 materials clear across town from Rhodes Ranch to Inspirada and passed it off as BLM dirt, for  
2 which Direct allegedly billed Century. Direct believes that these materials were either given to  
3 Western States and Patriot Contractors, or if they weren't, how much Century paid to have it  
4 removed.

5  
6 ***Subpoena to the City of Henderson***

7 Direct seeks documents from the City of Henderson for the bond release, certificate of  
8 occupancy, permits, and inspection reports on Inspirada. Century had originally disclosed William  
9 P. Striegel report, which alleges that Direct was late on various projects. After the meet and confer,  
10 Century removed his report and name from the evidence list for the hearing. Then, Oliver Pancheri  
11 confirmed on 9/15/2020 that that Century intends to submit in briefing and allow for argument the  
12 expert report of William P. Streigel. Direct maintains that it was not the cause of the delay and that  
13 the evidence from the City of Henderson would easily show that Century was delayed in requesting  
14 permits and inspections and plan modifications issued and approved by the City of Henderson at  
15 the Inspirada project. Direct has never been given due process to even collect this information to  
16 even be able to respond to this, even in briefing. Further, the bond release and certificate of  
17 occupancy would show that the project was completed, and that Century received its materials, as  
18 required in the Plan. Century was not overbilled.  
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1     **III.     CONCLUSION**

2             For the reasons stated above and to afford due process to all parties, Direct respectfully  
3 requests that Court allow the discovery set forth herein.  
4

5             DATED this 17<sup>th</sup> day of September, 2020.

6                                     JOHNSON & GUBLER, P.C.

7                                     /s/ Russell G. Gubler

8                                     Matthew L. Johnson

9                                     Russell G. Gubler

10                                    Ashveen S. Dhillon

11                                   Lakes Business Park

12                                   8831 West Sahara Avenue

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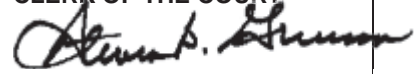
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DATED this 17<sup>th</sup> day of September, 2020.

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*Attorneys for Century Communities of Nevada, LLC  
 and Argonaut Insurance Company*

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

DIRECT GRADING & PAVING, LLC, a  
 Nevada limited liability company;

Plaintiff,

v.

CENTURY COMMUNITIES OF NEVADA,  
 LLC, a Delaware limited liability company,  
 ARGONAUT INSURANCE COMPANY,  
 DOES I through X; and ROE  
 CORPORATIONS I through X, inclusive

Defendant.

AND ALL RELATED MATTERS.

Case No.: A-18-773139-C  
 Dept. No.: XXXII

**RESPONSE TO DIRECT GRADING &  
 PAVING, LLC'S BRIEFING  
 CONCERNING DISCOVERY SOUGHT  
 PRIOR TO THE HEARING ON  
 CENTURY'S MOTION FOR SANCTIONS  
 AND ON DIRECT'S MOTION FOR  
 RECONSIDERATION**

**Hearing Date: September 24, 2020  
 Hearing Time: 1:30 PM**

Defendants CENTURY COMMUNITIES OF NEVADA, LLC ("*Century*") and  
 ARGONAUT INSURANCE COMPANY ("*Argonaut*") (collectively, as the "*Defendants*"), by  
 and through their undersigned counsel, submit the following Response to Direct Grading &  
 Paving, LLC's ("*Direct*") Briefing Concerning Discovery Sought Prior to Hearing on Century's  
 Motion for Sanctions and on Direct's Motion for Reconsideration (the "*Discovery Brief*").

1 This Response is made and based upon the pleadings and papers on file herein, the below  
2 Memorandum of Points and Authorities, the exhibits referenced herein, as well as any argument  
3 of counsel the Court may allow at any hearing.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 As Direct states in the Discovery Brief, the parties were not able to agree on the discovery  
7 that should be permitted in advance of the upcoming hearing on Century’s Discovery Motion.<sup>1</sup>  
8 Century has proposed a resolution to a large portion of the parties’ dispute, but Direct rejected the  
9 proposal. Century’s concern is not so much with the discovery Direct seeks, although Century  
10 contends it is not relevant to the issues of discovery sanctions. Rather, Century’s primary concern  
11 is the scope of the evidentiary hearing, which the Court has already instructed should be limited to  
12 issues relating to the discovery sanctions. Nevertheless, Direct is misinterpreting both Nevada law  
13 and Century’s briefing on the issue of discovery sanctions in order to expand the scope of the  
14 hearing to include the entire underlying dispute. This is wholly improper and should be viewed  
15 for what it really is – an effort to cause further delay and to distract the Court from Direct’s blatant  
16 discovery abuses.

17 **II. THE PROPER SCOPE OF THE HEARING**

18 NRCP 37 authorizes discovery sanctions when a party fails to comply with the district  
19 court’s orders or fails to permit discovery. Further, NRCP 37(e) specifically prohibits the loss of  
20 electronically stored information and authorizes sanctions ranging from jury instructions to  
21 dismissal of the action. Further, “[district] courts have inherent equitable powers to dismiss actions  
22 or enter default judgments for...abusive litigation practices.” *See, e.g., Young v. Johnny Ribeiro*  
23 *Bldg.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Thus, the Court has two sources of authority  
24 for the potential sanctions. When a district court decides to sanction a party based on discovery  
25 abuses, that decision will not be disturbed on appeal absent a showing of abuse of discretion. *Id.*

26  
27 <sup>1</sup> The title for Direct’s Discovery Brief suggests that discovery conducted may relate to Direct’s Motion for  
Reconsideration. This is nonsensical. The evidentiary hearing relates only to Century’s Motion for  
Discovery Sanctions. Direct would have no reason to conduct discovery on its Motion for Reconsideration.

1 The Court has several options to choose from when deciding to impose sanctions. NRCPC  
2 37 expressly states that when a party fails to provide or permit discovery, a district court may strike  
3 pleadings, prohibit the sanctioned party from introducing designated matters into evidence, dismiss  
4 the action in whole or in part, award attorneys' fees and costs, or provide jury instructions to  
5 combat the harm caused by the destruction, alteration, or spoliation of evidence.

6 In deciding what sanctions to impose, the district court should look to the circumstances  
7 surrounding the destruction or alteration of evidence. *See Bass-Davis v. Davis*, 122 Nev. 442, 448-  
8 49, 134 P.3d 103, 106-07 (2006). If evidence is lost or destroyed due to the negligence of a party,  
9 then a lesser sanction—such as an adverse inference in the form of a jury instruction—is proper.  
10 *Bass-Davis*, 122 Nev. at 449-50, 134 P.3d at 107. However, when a party willfully destroys or  
11 alters evidence, the most severe sanctions are at the district court's disposal. *See* NRS 47.250(3)  
12 (stating that when evidence is willfully suppressed, there is a rebuttable presumption that the  
13 evidence would have been harmful if produced); *see also Young*, 106 Nev. at 92, 787 P.2d at 779.

14 In *Young*, Bill Young produced falsified and altered documents in discovery. *Id.* at 90, 787  
15 P.2d at 778. After an evidentiary hearing relating to the fabrication of the evidence, the court  
16 found that Mr. Young had willfully fabricated evidence and sanctioned Mr. Young by dismissing  
17 his entire complaint with prejudice as well as ordering him to pay fees and costs associated with  
18 the discovery motion and related issues. *Id.* Mr. Young appealed the ruling, and the Nevada  
19 Supreme Court affirmed. *Id.*

20 The Nevada Supreme Court in *Young* stated that case-ending sanctions need not be  
21 preceded by less severe sanctions; rather, all that is required is thoughtful consideration of certain  
22 factors. The factors a court may properly consider include, but are not limited to, the degree of  
23 willfulness of the offending party, the extent to which the non-offending party would be prejudiced  
24 by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery  
25 abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative,  
26 less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed  
27 evidence to be admitted by the offending party, the policy favoring adjudication on the merits,

1 whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney,  
2 and the need to deter both the parties and future litigants from similar abuses. *Id.* at 93, 787 P.2d  
3 at 780.<sup>2</sup> Applying these factors, the Nevada Supreme Court found the district court's imposition  
4 of case-ending sanctions to be proper because, among other things, the district court needed to  
5 deter other litigants from similar practices and the fabricated documents were necessary to the  
6 claims asserted. *Id.* at 95, 787 P.2d at 782.

7 The evidentiary hearing and related arguments in this matter will address the factors set  
8 forth in *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 92-93, 787 P.2d 777, 780 (1990). Again,  
9 these factors are considered when the Court is evaluating a terminating sanction. **Finding a basis**  
10 **for a terminating sanction does not require a Court to hear the entire underlying dispute.** In  
11 *Ribeiro*, the lower court heard evidence concerning the alteration of evidence. *See id.* In *Foster*  
12 *v. Dingwall*, 126 Nev. 56, 63, 227 P.3d 1042, 1047 (2010), the lower court held an evidentiary  
13 hearing on the discovery abuses and to consider the *Young v. Ribeiro* factors. It did not hear the  
14 entire case. In fact, after entering a discovery sanction that included a default, the lower court held  
15 a subsequent prove-up hearing to assess damages. *See id.*

16 Century contends that the evidentiary hearing should be limited to just the issues pertinent  
17 to Direct's discovery abuses. These issues involve: (1) the alteration of the BLM documents,  
18 which Direct has admitted were intentionally altered by its controller, Linda Middleton; and (2)  
19 Direct's failure to comply with the Arbitrator's Orders concerning its communications with Scott  
20 Prokopchuk ("**Prokopchuk**"), Century's Land Development Manager, who was secretly employed  
21 by Direct at the same time he was responsible for overseeing Century's work. The evidence  
22 relating to these issues is fairly narrow as it primarily centers on the testimony concerning the  
23 alteration of evidence and the failure to comply with the Arbitrator's Orders relating to the  
24 computer forensic investigation.

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<sup>2</sup> An analysis of these factors should be included in every order of dismissal with prejudice resulting from  
a discovery sanction. *Id.*

***Direct's Willful Alteration of the BLM Evidence***

As Direct concedes in its Discovery Brief, the evidentiary hearing will primarily revolve around the willfulness of Direct's conduct. Here, the willfulness is obvious and uncontroverted. Direct altered BLM documents in order to conceal its overbilling practices. Directed has admitted it altered the BLM evidence. Ms. Middleton testified that she showed Mr. Westwood the alterations shortly after they were made. His failure to correct the alteration serves as a ratification of the alteration. While Mr. Westwood disputes Ms. Middleton's testimony in this regard, he does not deny that Ms. Middleton is still employed with Direct. The fact that she still works for Direct evidences further ratification of Ms. Middleton's conduct. Moreover, the notion that Ms. Middleton would act on her own to alter evidence in order to conceal overbilling perpetrated by Direct is very difficult—if not impossible—to believe. However, even if Mr. Westwood is somehow to be believed that he did not know about the alteration of evidence until it was discovered by Century's counsel, Direct is no less bound by Ms. Middleton's conduct. Companies act through their agents and are bound by the conduct of their agents – even in the discovery context.

Direct hopes the Court will excuse its wrongful conduct by proving that Century was able to complete its Inspirada project so Century must have obtained dirt from some source. This argument is a complete red-herring and misses the point – namely that **Direct overbilled Century for that dirt**. Direct took advantage of Century by charging as if 93,200 cubic yards of soil had been purchased from the BLM and transported from the BLM site. However, Direct was only contracted to remove up to 50,000 cubic yards from the BLM site. More importantly, Direct reported to the BLM that only 33,395 cubic yards were removed from the BLM site. Direct overcharged Century to the tune of approximately \$550,000 just with respect to the BLM dirt. Direct engaged in the fraudulent overbilling scheme in order to defraud Century of hundreds of thousands of dollars. Direct then altered the BLM documents produced in this matter to conceal this overbilling. It is as simple as that.

1 Direct now apparently wants to conduct discovery on matters that have no discernible  
2 bearing on the issue of willfulness. Direct wants to depose Century's former President, Don  
3 Boettcher, in order to establish that (1) dirt was needed for the Inspirada project; and (2) that  
4 Century was aware that dirt was acquired from the BLM site. (Discovery Brief at p. 7, ll. 3-15).  
5 Century does not contest that more dirt was needed for the Inspirada project. Further, Century  
6 obviously knew that Direct was importing dirt from the BLM as Century paid invoices for the  
7 BLM dirt and the hauling of that dirt. What Century did not know was that it was being  
8 fraudulently **overcharged** for that dirt. Direct concealed that from Century by inflating its invoices  
9 and including bogus trucks on its truck logs.<sup>3</sup> Accordingly, the testimony of Mr. Boettcher is  
10 completely irrelevant to the issue of Direct's willful alteration of evidence.

11 Direct next claims that it should be permitted to conduct discovery with Alpha  
12 Landscaping, Western States, and Patriot Contractors in order to establish that dirt was imported  
13 to Inspirada from other sources, other than the BLM. (Discovery Brief at p. 11). This is another  
14 red-herring – dirt obviously came from other sources, but Direct charged Century as if it came  
15 from the BLM. Direct charged Century for 93,200 cubic yards of dirt as if it came from the BLM,  
16 but only paid the BLM for 33,395 cubic yards (and signed certifications to the BLM attesting that  
17 Direct only took 33,395 cubic yards from the BLM).

18 Mr. Westwood admitted in his deposition that Direct procured dirt from the Southpoint  
19 Hotel & Casino because there was a project at this location – unrelated to Century – that had excess  
20 dirt. Century also procured dirt from the job site of another home builder, KB Homes, which was  
21 adjacent to Century's Inspirada project. Finally, additional dirt also potentially came from another  
22 Century project, Rhodes Ranch. Direct charged Century approximately \$47,800 to haul dirt from

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23 <sup>3</sup> Direct suggests Century has its own internal log sheets relating to trucking. Direct makes this allegation  
24 based upon statements apparently made by Mr. Prokopchuk, who was the dual agent who violated his duties  
25 to Century by simultaneously working for Direct. Mr. Prokopchuk's loyalties are no longer in question as  
26 he is clearly advancing Direct's interests against his former employer. He even submitted a Declaration in  
27 support of Direct's Opposition to Century's Motion for Discovery Sanctions. Any internal log sheets that  
Century has would likely only be the product of information provided by Direct and/or Prokopchuk. Direct  
is again seeking to deflect from its own misconduct with irrelevant allegations that have no bearing on the  
issues before the Court.

Rhodes Ranch to Inspirada.<sup>4</sup> This is in addition to the \$550,000 BLM overcharge. Thus, Direct was overcharging Century on multiple fronts – (1) Direct was invoicing Century as if dirt was being procured from the BLM site, when it was in fact from other locations including another Century job site – Rhodes Ranch; and (2) Direct was charging Century for removing the excess dirt from Rhodes Ranch. It is no wonder that Direct wanted to conceal its overbilling scheme, which was perpetrated under the nose of Century’s conflicted Land Development Manager, Prokopchuk. While Century did eventually obtain the dirt necessary to build the homes at the Inspirada project, the notion that Century was not damaged by Direct’s overbilling scheme is manifestly false.<sup>5</sup> Moreover, the discovery detour that Direct hopes to take before the hearing (and presumably at the hearing) is irrelevant to issue of willfulness.

***Direct’s Willful Failure to Comply with the Arbitrator’s Orders***

Direct’s misconduct and flouting of its discovery obligations is not limited to its efforts to conceal its alteration of evidence. Rather, Direct refused to comply with the Arbitrator’s Orders concerning its communications with Scott Prokopchuk (“**Prokopchuk**”), Century’s Land Development Manager, who was secretly employed by Direct at the same time he was responsible to oversee Century’s work. Direct failed to produce its communications with Prokopchuk, claiming they either could not be recovered or did not exist. Like the altered BLM documents, Direct has attempted to conceal the truth regarding the true nature of Prokopchuk’s relationship with Direct – and the resulting blatant conflict of interest – by failing to comply with Orders and engaging in discovery abuses. The Arbitrator ordered a forensic examination of Direct’s

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<sup>4</sup> See invoices and payment information for Rhodes Ranch import of materials to Inspirada attached to Century’s Motion for Discovery Sanction as Exhibit AA.

<sup>5</sup> In his deposition, Mr. Westwood suggested that perhaps Direct had actually taken the 94,000 cubic yards of soil from the BLM site, but had underreported to the BLM. See Deposition Transcript of Mel Westwood (“**Westwood Dep. Tr.**”) at p. 149, true and correct excerpts are attached to Century’s Discovery Motion as Exhibit O. In response, Century had a licensed surveyor from Wallace Morris Kline Surveying, Matthew Burrell, conduct a survey of the BLM site and compare it to the BLM survey on file with the BLM from December 10, 2015 (immediately prior to Direct’s removal of soil). A copy of Mr. Burrell’s Declaration with the supporting surveys is attached to Century’s Discovery Motion as Exhibit P. Mr. Burrell concluded that approximately 47,365 cubic yards of soil have been removed in total from the BLM site since December 10, 2015. This would include any removal of soil by other parties unrelated to this litigation. Accordingly, there is simply no way that Mr. Westwood’s testimony that Direct removed approximately 94,000 cubic yards of soil from the BLM site is credible.

1 computers and server due to the alteration of evidence and the failure to produce the Prokopchuk  
2 emails. Direct's intentional and willful misconduct is demonstrated by its failure to comply with  
3 its obligations concerning the forensic computer examination.

4 The forensic expert, Michael Holpuch, issued a report, which expressly states that: (1)  
5 **Direct failed to comply with the Arbitrator's Order regarding a forensic inspection of the**  
6 **altered BLM documents; (2) The data Direct provided did *not* include the altered BLM**  
7 **documents; (3) Mr. Holpuch was unable to analyze how the documents were altered and by**  
8 **whom; (4) Mr. Holpuch was unable to determine who accessed the altered BLM documents;**  
9 **(5) Direct did not provide him the computer (or hard drive) utilized by Ms. Middleton in**  
10 **February 2018 (despite the Arbitrator's Orders to do so); (6) Direct changed Ms.**  
11 **Middleton's computer to Windows 10 one day after the Arbitrator ordered it be imaged –**  
12 **Direct claimed this was an automatic update, but that is not consistent with Windows 10**  
13 **upgrades offered at that time; and (7) That there is evidence of another server utilized by**  
14 **Direct that Mr. Holpuch was not allowed to access (also in violation of the Arbitrator's**  
15 **Orders).** The forensic examination was an expensive process that was made even more expensive  
16 and time-consuming by Direct's failure to comply with the Arbitrator's Orders. Direct took action  
17 to ensure that nothing more could be found. Mr. Holpuch's reports make that much clear. Direct  
18 has successfully spoliated the evidence. Direct's conduct was manifestly willful and it should not  
19 be rewarded for its bad faith discovery tactics and wholesale violation of discovery orders and  
20 obligations.

21 Strangely, Direct does *not* want to depose Mr. Holpuch, whose reports are central to the  
22 issue of the discovery abuses. Instead, Direct wants to engage in irrelevant discovery that has little  
23 to no bearing on the actual issues pertinent to the issue of sanctions. This only further evidences  
24 that Direct has no valid justification for its intentional misconduct.

25 Finally, it is obvious that Direct plans to call Prokopchuk as its star witness. However, due  
26 to Direct's spoliation of evidence and failure to comply with the discovery orders, Century will  
27 not have the e-mails needed to properly cross-examine witnesses in this matter and to refute the

1 anticipated testimony from Mr. Westwood and Prokopchuk. Two years ago, Direct was ordered  
2 to produce all communications it had with Prokopchuk—no matter what e-mail address Mr.  
3 Prokopchuk utilized. These emails should have been produced by Direct two years ago instead of  
4 forcing an expensive and forensic review of Direct’s computers and servers. That forensic review  
5 demonstrated that Direct failed to comply with its discovery obligations and is only further  
6 attempting to conceal evidence from Century. Direct should not be rewarded for its successful  
7 efforts to conceal evidence in this matter. Direct cannot be heard to argue that Prokopchuk did not  
8 perform work for Direct when it failed to produce documents that would likely show otherwise.  
9 If Direct had actually preserved documents in this matter – as it was obligated to do – there would  
10 likely be many more such emails. Direct has concealed, altered and spoliated evidence such that  
11 evidence has been irreparably lost or can no longer be trusted as genuine. A fair trial is no longer  
12 possible as a result of Direct’s misconduct and the discovery misconduct is severely prejudicial to  
13 Century.

14 ***Century’s Proposal Concerning Related Prokopchuk Evidence***

15 Century provided information as to the potential misconduct Prokopchuk engaged in that  
16 benefited Direct and damaged Century. Citing the expert report of William Striegel, Century  
17 referenced the following:

- 18 • Prokopchuk approved change orders without requiring Direct to submit the proper  
19 documentation;
- 20 • Prokopchuk entered into draw schedules after work had already allegedly been  
21 performed;
- 22 • Prokopchuk approved payment of the fraudulent BLM invoicing;
- 23 • Prokopchuk approved payment of Direct invoicing for work that had not yet been  
24 performed;
- 25 • Prokopchuk awarded projects to Direct without seeking or considering competitive  
26 proposals;
- 27

- Prokopchuk attempted to award Direct an additional Purchase Work Authorization days after he resigned from Century;
- Prokopchuk allowed Direct to continue on the various projects despite being months behind schedule (on average 252 days behind schedule for the various projects); and
- Prokopchuk approved over \$5,000,000 in invoicing from Direct without requiring Direct to submit any back-up or supporting documentation.

*See* Ex. DD to Motion for Discovery Sanctions. Century was significantly damaged by Direct’s breach of the MSA by secretly employing Prokopchuk. However, the Court need not hear evidence of these damages for the purposes of deciding the *Ribeiro* factors and what sanction should be imposed. As in *Foster v. Dingwall*, the Court can first decide whether a case-ending sanction should be entered and thereafter it could hold a hearing on actual damages.

Moreover, Century proposed that the issues relating to the damages caused by Prokopchuk’s breaches be submitted by the parties on the papers and with the documents. Otherwise to hear evidence on each of these issues will take significantly longer than the time allocated by the Court. More importantly, it is unnecessary for the sanctions motion.

### **III. CONCLUSION**

Direct seeks to improperly expand the scope of the evidentiary hearing to include the entire underlying construction dispute, which would mean an evidentiary hearing that would take as long, or longer, than the ultimate arbitration hearing on the entire case (estimated to take approximately two weeks). This would undermine part of the Court’s prior ruling in relation to the discovery sanctions, which addresses the fact that the Court’s decision may impact the scope of the underlying arbitration hearing. (*See* Feb. 19, 2020 Order at p. 4).

The evidentiary hearing should be limited to the testimony of the parties involved in the alteration of evidence and the failure by Direct to produce documents in connection with the Arbitrator’s Orders. Additionally, the Court should hear testimony from the forensic computer expert who conducted an investigation into these discovery abuses. If the parties believe

1 background information would be helpful to the Court, they can provide that through their briefs,  
2 affidavits, documentary evidence or argument (as they have already in their respective briefs).  
3 There is no reason to bring in other witnesses who cannot testify as to the actual discovery issues  
4 before the Court. The issue before this Court is Direct's discovery abuses – not the merits of the  
5 underlying construction dispute. Century has already spent years and hundreds of thousands of  
6 dollars in litigation cost and expense, including experts, to uncover Direct's fraud and discovery  
7 abuses. The time has come for Direct to directly answer for its misconduct—without further delay  
8 or distraction from the real issues.

9 DATED this 22nd day of September, 2020.

10 **SANTORO WHITMIRE**

11 */s/ Oliver J. Pancheri*

12 NICHOLAS J. SANTORO, ESQ.

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21 *Attorneys for Century Communities of Nevada and*  
22 *Argonaut Insurance Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 22nd day of September, 2020, a true and correct copy of the **RESPONSE TO DIRECT GRADING & PAVING, LLC'S BRIEFING CONCERNING DISCOVERY SOUGHT PRIOR TO THE HEARING ON CENTURY'S MOTION FOR SANCTIONS AND ON DIRECT'S MOTION FOR RECONSIDERATION** was served electronically using the Eighth Judicial District Court's Odyssey eFileNV system to the following:

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/s/ Rachel Jenkins

An employee of SANTORO WHITMIRE

Other Title to Property

COURT MINUTES

September 24, 2020

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A-18-773139-C      Direct Grading & Paving LLC, Plaintiff(s)  
vs.  
Century Communities of Nevada LLC, Defendant(s)

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September 24, 2020      01:30 PM      Hearing: Evidentiary Hearing Issues

HEARD BY:      Bare, Rob      COURTROOM: RJC Courtroom 03C

COURT CLERK: Jackson, Carolyn

RECORDER:      Berndt, Kaihla

REPORTER:

PARTIES PRESENT:

Nicholas J. Santoro

Attorney for Counter Claimant,  
Defendant, Third Party Plaintiff

Oliver J. Pancheri

Attorney for Counter Claimant,  
Defendant, Third Party Plaintiff

Russell Gubler

Attorney for Counter Defendant, Plaintiff

#### JOURNAL ENTRIES

Court provided an overview of the issues regarding the limited scope of the evidentiary hearing.

Mr. Panchera advised the Defendants continued to have no objection to Mr. Wyatt, a former Century employee, being deposed. Mr. Wyatt was furloughed due to the COVID-19 Pandemic and the Plaintiffs were provided an updated address for Mr. Wyatt. Mr. Panchera argued the limited scope of the evidentiary hearing should include the alleged alterations of the BLM documents by Linda Middleton and the alleged failure by the Plaintiffs to abide by the arbitration Order regarding preservation of communications with Scott Prokopchuk. Further arguments by Mr. Panchera regarding the relevance of the Deposition of Don Boettcher and subpoenas to trucking companies.

Argument by Mr. Gubler regarding Rule 37 and the relevance of the Deposition of Don Boettcher and subpoenas to trucking companies.

COURT ORDERED, matter taken UNDER ADVISEMENT.

A-18-773139-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Other Title to PropertyCOURT MINUTESSeptember 25, 2020

A-18-773139-C      Direct Grading & Paving LLC, Plaintiff(s)  
                                  vs.  
                                  Century Communities of Nevada LLC, Defendant(s)

September 25, 2020      3:00 AM      Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:      None

**JOURNAL ENTRIES**

- This matter came before the Court for a Status Check. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown, the Court FINDS and ORDERS as follows:

**Factual background**

On or about October 7, 2014, April 23, 2015, September 3, 2015, and April 12, 2016, Plaintiff (Direct Grading & Paving) and Defendant (Century Communities of Nevada LLC) entered into a contract for Plaintiff to complete certain work on Defendant's properties, commonly known as the "Freeway 50 Property", "Rhodes Property", "Lakes Las Vegas Property", and "Inspirada Property". Dispute arose between the parties as to the work and payment and Plaintiff recorded liens on those properties. Per stipulation of the parties on July 18, 2017, they agreed to arbitrate their dispute. However, the arbitration has not yet occurred to date. Plaintiff initiated the instant lawsuit on April 19, 2018, which was stayed per parties' stipulation while arbitration is being completed. On November 13, 2019, Defendant filed a motion for provisional relief under NRS 38.222 or in the alternative, motion for the appointment of a new arbitrator under NRS 38.226. Per February 20, 2020 order, the Court found that it had the jurisdiction over the parties since the Plaintiff commenced the suit and under NRS 38.222, because the matter is urgent and the arbitrator cannot provide an adequate remedy. Furthermore,

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Minutes Date: September 25, 2020

DIRECT001378

the Court also ruled that under its power to provide provisional relief, an evidentiary hearing over the Plaintiff's alleged discovery misconduct is necessary.

It is undisputed that Plaintiff filed mechanic's liens against four of Defendant's projects, for the total amount of \$1,671,860.00. During the course of discovery in the above-mentioned arbitration proceedings, it is alleged that Plaintiff was engaged in multitude of discovery violations: (1) Plaintiff previously secretly employed one of Defendant's employee, Scott Prokopchuk, who was overseeing the project, but during discovery, failed to produce the emails with Prokopchuk and falsely claimed that they could not be produced; (2) Plaintiff's employee, Linda Middleton, altered the relevant documents to overbill Defendant (Plaintiff's invoices were purportedly altered to show that the material came from the BLM, but the material it provided actually came from another project, which was a cheaper source); (3) Arbitrator ordered Plaintiff to provide the relevant communications with Prokopchuk, but Plaintiff willfully failed to do so; (4) Arbitrator ordered Plaintiff to provide access to all of its computers and servers, but Plaintiff willfully failed to do so; (5) Declaration by Linda Middleton contains false information. Although Plaintiff denies the discovery violations and/or the scope or willfulness of the discovery violations, the Court has determined that an evidentiary hearing is necessary to address whether the discovery violations have indeed taken place and if so, what discovery sanctions are appropriate.

Plaintiff's motion for reconsideration and oral request for continuance

Plaintiff's oral request for continuance is denied. The Court already had multiple hearings on this matter and there is no good cause to continue the evidentiary hearing, which has already been continued due to the pandemic. The Court clarifies that Plaintiff's Motion for Reconsideration is DENIED. This motion was initially scheduled to be heard on May 14, 2020, but due to the pandemic, the evidentiary hearing could not be scheduled and the motion was vacated. In this motion, Plaintiff failed to cite sufficient change in law or fact for the court to reconsider its February 20, 2020 order. It is not disputed that the parties stipulated to an arbitration proceeding and the arbitrator had the authority to act. However, under NRS 38.222, Plaintiff does not dispute the urgent nature of the matter and the Court's ruling (that arbitrator did not provide an adequate remedy when he deferred on the final ruling on the issue of alteration of evidence and the discovery violations) cannot be deemed clearly erroneous. The scope of the proceeding before the Court is limited to addressing the discovery violations only and not litigating the entire case. Furthermore, Plaintiff, by initiating the instant lawsuit on April 19, 2018, consented to the jurisdiction of this court.

Defendant's motion for sanctions

Defendant's motion for sanctions filed on February 18, 2020 was initially set to be heard on May 14, 2020, but due to the pandemic, the evidentiary hearing could not be scheduled and the motion was vacated. The Court clarifies that Defendant's motion for sanctions shall be heard concurrently with the evidentiary hearing on the same issues on November 9, 2020 at 9:00 a.m.

### Evidentiary hearing

The Court FINDS that the scope of the evidentiary hearing is limited to addressing the alleged discovery violations noted above. The Court's ruling after the evidentiary hearing will determine the scope of the underlying arbitration hearing. As for the disputed discovery, the Court makes the following findings.

Deposition of Tim Wyatt: Defendant's counsel withdrew its objections to having deposition of its former employee, Tim Wyatt. Thus, if Plaintiff wishes to depose him, it may do so.

Deposition of Don Boettcher: There is insufficient reason to permit the testimony of Don Boettcher, former president of the Defendant. His purported knowledge or role in the projects is not necessary to determine whether Plaintiff committed discovery violations. His testimony may be necessary for the underlying arbitration, but has no relevance as to the nondisclosure of the information that Prokopchuk was in Plaintiff's payroll, Middleton altering the relevant documents, failing to disclose the relevant documents, and failing to disclose the computers and servers. Thus, the request for deposition is denied.

Subpoena of documents from Alpha Landscapes, Western States, and Patriot Contractors : Plaintiff states that documents are necessary because they will purportedly show that Defendant was not overcharged. However, there is little relevance to the discovery issues at hand. These documents may be necessary for the underlying arbitration to show the reasonability of Plaintiff's billing, but has no relevance as to the nondisclosure of the information that Prokopchuk was in Plaintiff's payroll, Middleton altering the relevant documents, failing to disclose the relevant documents, and failing to disclose the computers and servers. Thus, requests for subpoena are denied.

Subpoena of documents from the City of Henderson: Plaintiff states that these documents are necessary to show that it did not cause delays in the projects involved. These documents may be necessary for the underlying arbitration to show who was responsible for the delay in the project, but has no relevance as to the nondisclosure of the information that Prokopchuk was in Plaintiff's payroll, Middleton altering the relevant documents, failing to disclose the relevant documents, and failing to disclose the computers and servers. Thus, request for subpoena is denied.

The Court ORDERS (1) Plaintiff's oral request for continuance of the Evidentiary Hearing is DENIED, (2) Plaintiff's Motion for Reconsideration is DENIED, (3) Defendant's Motion for Sanctions is reset, and (4) Plaintiff's request to seek additional discovery is limited to permitting the deposition of Tim Wyatt.

Counsel for Defendant is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiff's counsel is to review

and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/25/20