

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.: 82150

Electronically Filed
Dec 14 2020 10:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

HORIZON HOLDINGS 2900, LLC,
A NEVADA LIMITED LIABILITY COMPANY

Appellant,

v.

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

Respondents.

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

**APPENDIX OF EXHIBITS TO HORIZON HOLDINGS 2900, LLC
DOCKETING STATEMENT – VOLUME 1 OF 2**

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Index to Appendix

Exhibit No.	Document Description	Date	Label
Volume 1			
1.	District Court Docket for Case No. A-17-758438	12/08/2020	HH000001-HH000010
2.	Complaint	07/14/2017	HH000011-HH000022
3.	First Amended Complaint	07/21/2017	HH000023-HH000034
4.	First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third-Party Complaint	09/05/2017	HH000035-HH000056
5.	Defendant Shea at Horizon Ridge Owners Association's Answer to First Amended Complaint	09/15/2017	HH000057-HH000065
6.	Defendant Taylor Management Association's Answer to First Amended Complaint	09/15/2017	HH000066-HH000074
7.	Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss	01/02/2018	HH000075-HH000078
8.	Notice of Entry of Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss	01/02/2018	HH000079-HH000085
9.	Stipulation & Order for Dismissal With Prejudice as to Defendant First American Exchange Company, LLC, Only	03/08/2018	HH000086-HH000088
10.	Notice of Entry of Order of Stipulation & Order for Dismissal With Prejudice as to Defendant First American Exchange Company, LLC, Only	03/08/2018	HH000089-HH000094
11.	Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice	03/21/2018	HH000095-HH000097
12.	Notice of Entry of Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice	03/22/2018	HH000098-HH000103

Exhibit No.	Document Description	Date	Label
13.	Horizon Holdings 2900, LLC's Second Amended Complaint	11/28/2018	HH000104-HH000112
14.	Defendant Shea at Horizon Ridge Owners Association's Answer to Second Amended Complaint	02/21/2019	HH000113-HH000121
15.	Defendant Taylor Management Association's Answer to Second Amended Complaint	02/21/2019	HH000122-HH000129
16.	Order Granting in Part and Denying in Party Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment	02/04/2020	HH000130-HH000132
17.	Notice of Entry of Order Granting in Part and Denying in Party Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment	02/04/2020	HH000133-HH000139
18.	Findings of Fact, Conclusions of Law and Judgment	05/26/2020	HH000140-HH000172
19.	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	06/01/2020	HH000173-HH000209
20.	Order Denying Defendant Taylor Association Management's Motion For An Award of Attorney's Fees and Interest	07/24/2020	HH000210-HH000214
21.	Notice of Entry of Order re Order Denying Defendant Taylor Association Management's Motion For An Award of Attorney's Fees and Interest	07/24/2020	HH000215-HH000222
Volume 2			
22.	Order re: Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest	11/19/2020	HH000223-HH000236
23.	Notice of Entry of Order re Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest	11/19/2020	HH000237-HH000254

Dated this 14th day of December, 2020.

McDONALD CARANO LLP

By: /s/ Pat Lundvall
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*Attorneys for Appellant Horizon
Holdings, 2900, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 14th day of December, 2020, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson
An Employee of McDonald Carano LLP

Exhibit 1

REGISTER OF ACTIONS**CASE No. A-17-758435-C****Horizon Holdings 2900 LLC, Plaintiff(s) vs. Shea at Horizon Ridge Owners Association, Defendant(s)**§
§
§
§
§
§
§Case Type: **Other Contract**
Date Filed: **07/14/2017**
Location: **Department 22**
Cross-Reference Case Number: **A758435**
Supreme Court No.: **81421****P. TY INFORMATION****Lead Attorneys****Defendant Shea at Horizon Ridge Owners Association****Robert E. Schumacher**
Retained
702-577-9300(W)**Defendant Taylor Management Association****Robert E. Schumacher**
Retained
702-577-9300(W)**Plaintiff Horizon Holdings 2900 LLC****Eric B. Zimbelman**
Retained
7029907272(W)**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

01/02/2018 **Order of Dismissal** (Judicial Officer: Johnson, Susan)
Debtors: Horizon Holdings 2900 LLC (Plaintiff)
Creditors: Tag Horizon Ridge LLC (Defendant), Aligned Group LLC (Defendant)
Judgment: 01/02/2018, Docketed: 01/02/2018

03/08/2018 **Order of Dismissal** (Judicial Officer: Johnson, Susan)
Debtors: Horizon Holdings 2900 LLC (Plaintiff)
Creditors: First American Exchange Group LLC (Defendant)
Judgment: 03/08/2018, Docketed: 03/08/2018

03/21/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Johnson, Susan)
Debtors: First American Exchange Group LLC (Third Party Plaintiff)
Creditors: Tag Fund I LLC (Third Party Defendant)
Judgment: 03/21/2018, Docketed: 03/22/2018
Debtors: First American Exchange Group LLC (Cross Claimant)
Creditors: Tag Horizon Ridge LLC (Cross Defendant)
Judgment: 03/21/2018, Docketed: 03/22/2018

02/04/2020 **Summary Judgment** (Judicial Officer: Johnson, Susan)
Debtors: Horizon Holdings 2900 LLC (Plaintiff)
Creditors: Shea at Horizon Ridge Owners Association (Defendant), Taylor Management Association (Defendant)
Judgment: 02/04/2020, Docketed: 02/05/2020
Comment: Certain Claim

04/05/2020 **Order** (Judicial Officer: Johnson, Susan)
Debtors: Horizon Holdings 2900 LLC (Plaintiff)
Creditors: Taylor Management Association (Defendant)
Judgment: 04/05/2020, Docketed: 04/16/2020
Total Judgment: 7,997.53

05/26/2020 **Judgment** (Judicial Officer: Johnson, Susan)
Debtors: Horizon Holdings 2900 LLC (Plaintiff)
Creditors: Shea at Horizon Ridge Owners Association (Defendant)
Judgment: 05/26/2020, Docketed: 05/27/2020

HH000001

11/19/2020	Judgment Plus Legal Interest (Judicial Officer: Johnson, Susan) Debtors: Horizon Holdings 2900 LLC (Plaintiff) Creditors: Shea at Horizon Ridge Owners Association (Defendant) Judgment: 11/19/2020, Docketed: 11/20/2020 Total Judgment: 272,937.49 Comment: In Part
11/25/2020	Judgment (Judicial Officer: Johnson, Susan) Debtors: Horizon Holdings 2900 LLC (Plaintiff) Creditors: Shea at Horizon Ridge Owners Association (Defendant), Taylor Management Association (Defendant) Judgment: 11/25/2020, Docketed: 12/01/2020 Total Judgment: 272,937.49
	OTHER EVENTS AND HEARINGS
07/14/2017	Complaint <i>Complaint</i>
07/17/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/20/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	First Amended Complaint <i>First Amended Complaint</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>Summons</i>
07/21/2017	Summons Electronically Issued - Service Pending <i>SUMMONS</i>
09/05/2017	Answer and Crossclaim <i>First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third Party Complaint</i>
09/05/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
09/12/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
09/12/2017	Motion to Dismiss <i>Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
09/14/2017	Three Day Notice <i>Three Day Notice of Intent To Take Default</i>
09/15/2017	Answer to Amended Complaint <i>Defendant Shea at Horizon Ridge Owners Association's Answer to First Amended Complaint</i>
09/15/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (Shea)</i>
09/15/2017	Answer to Amended Complaint <i>Defendant Taylor Management Association's Answer to First Amended Complaint</i>
09/15/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (Taylor)</i>
09/19/2017	Acceptance of Service <i>Acceptance of Service (Cross-Defendant TAG HORIZON RIDGE, LLC)</i>
09/19/2017	Acceptance of Service <i>Acceptance of Service (Third Party Defendant TAG FUND I, LLC)</i>
09/29/2017	Opposition to Motion to Dismiss <i>Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendant's Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
10/09/2017	Motion to Dismiss <i>TAG Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company</i>
10/09/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
10/12/2017	Opposition to Motion to Dismiss <i>Opposition to Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Crossclaim and Third-Party Complaint of First American Exchange Company</i>
10/12/2017	Reply in Support <i>Reply Brief in Support of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
10/13/2017	Minute Order (10:30 AM) (Judicial Officer Johnson, Susan) Minutes Result: Minute Order - No Hearing Held
10/13/2017	Amended Notice <i>Amended Notice of Hearing of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss</i>
10/13/2017	Notice of Change of Hearing

12/8/2020

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

Notice of Change of Hearing

10/13/2017 **Notice of Hearing**
Notice of Hearings

10/19/2017 **CANCELED Motion to Dismiss** (10:30 AM) (Judicial Officer Johnson, Susan)
Vacated
Defendant's Tag Horizon Ridge and The Aligned Groups' Motion to Dismiss

10/26/2017 **Stipulation and Order**
Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross Claim and Third Party Complaint and Defendant's Tag Horizon Ridge and the Aligned Group's Motion to Dismiss

10/30/2017 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross Claim and Third-Party Complaint of First American Exchange Company & Defendant's Tag Horizon Ridge and the Aligned Group's Motion to Dismiss

11/01/2017 **Reply in Support**
Reply Brief in Support of Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company

11/08/2017 **Motion for Leave to File**
Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss

11/17/2017 **Opposition and Countermotion**
Defendants Tag Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike Plaintiff's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss

11/20/2017 **Receipt of Copy**
Receipt of Copy

11/20/2017 **Receipt of Copy**
Receipt of Copy

11/20/2017 **Receipt of Copy**
Receipt of Copy

11/21/2017 **Reply to Opposition**
Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants TAG Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike

11/28/2017 **Motion to Dismiss** (10:30 AM) (Judicial Officer Johnson, Susan)
TAG Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company
[Parties Present](#)
11/09/2017 Reset by Court to 11/21/2017
11/09/2017 Reset by Court to 11/28/2017
11/21/2017 Reset by Court to 11/09/2017
Result: Denied Without Prejudice

11/28/2017 **Motion to Dismiss** (10:30 AM) (Judicial Officer Johnson, Susan)
Amended Notice of Hearing of Defendants TAG Horizon Ridge and the Aligned Group's Motion to Dismiss
11/21/2017 Reset by Court to 11/28/2017
Result: Granted in Part

11/28/2017 **Opposition and Countermotion** (10:30 AM) (Judicial Officer Johnson, Susan)
Defendants Tag Horizon Ridge and The Aligned Group's Opposition and Countermotion to Strike Plaintiff's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss

11/28/2017 **All Pending Motions** (10:30 AM) (Judicial Officer Johnson, Susan)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

12/01/2017 **Motion for Leave to File**
Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File An Amended Complaint

12/05/2017 **Notice of Non Opposition**
Notice of Non-Opposition to Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File an Amended Complaint

12/08/2017 **Order Denying Motion**
Order Denying Tag Horizon Ridge, LLC and Tag Fund I, LLC's Motion to Dismiss the Cross-Claim and Third-Party Complaint of First American Exchange Company

12/11/2017 **Commissioners Decision on Request for Exemption - Granted**
Commissioner's Decision on Request for Exemption - Granted

12/11/2017 **Notice of Entry of Order**
Notice of Entry of Order

12/14/2017 **Arbitration File**
Arbitration File

12/18/2017 **Minute Order** (3:00 AM) (Judicial Officer Johnson, Susan)
[Minutes](#)
Result: Minute Order - No Hearing Held

12/19/2017 **Motion for Leave** (10:30 AM) (Judicial Officer Johnson, Susan)
Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File a Supplemental Memorandum in Support of Plaintiff's Opposition to Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss
[Parties Present](#)
[Minutes](#)
12/14/2017 Reset by Court to 12/19/2017
Result: Off Calendar

12/19/2017 **Stipulation and Order**
Stipulation and Order to Vacate Hearing and Briefing on Plaintiff's Motion for Leave to File an Amended Complaint

12/21/2017 **Notice of Entry of Order**
Notice of Entry of Order

01/02/2018 **Order Granting Motion**
Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss

01/02/2018 **Notice of Entry of Order**

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

3/10

HH000003

Notice of Entry of Order
 01/02/2018 **Motion to Reconsider**
Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss
 01/04/2018 **Notice of Early Case Conference**
Notice of Early Case Conference
 01/09/2018 **CANCELED Motion for Leave** (10:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order
Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File An Amended Complaint
 01/12/2018 **Opposition to Motion**
Opposition to Plaintiff's Motion for Leave to File an Amended Complaint
 01/19/2018 **Opposition to Motion**
Opposition to Plaintiff's Motion for Reconsideration and/or Rehearing
 01/30/2018 **Reply in Support**
Horizon Holdings 2900, LLC s Reply in Support of its Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group s Motion to Dismiss
 02/06/2018 **Motion For Reconsideration** (10:30 AM) (Judicial Officer Johnson, Susan)
Plaintiff's Motion for Reconsideration and/or Rehearing of Defendants TAG Horizon Ridge and The Aligned Group's Motion to Dismiss
[Parties Present](#)
[Minutes](#)
 Result: Motion Denied
 02/16/2018 **Joint Case Conference Report**
JOINT CASE CONFERENCE REPORT
 02/16/2018 **Amended Joint Case Conference Report**
Amended Joint Case Conference Report
 03/08/2018 **Stipulation and Order for Dismissal With Prejudice**
Stipulation and Order for Dismissal With Prejudice as to Defendant First American Exxchange Company, LLC, Only
 03/08/2018 **Notice of Entry of Order**
Notice of Entry of Order
 03/21/2018 **Stipulation and Order for Dismissal With Prejudice**
Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice
 03/22/2018 **Notice of Entry of Order**
Notice of Entry of Order
 04/02/2018 **Order Denying Motion**
Order Denying Plaintiff's Motion for Reconsideration and/or Rehearing of Defendants Tag Horizon Ridge and The Aligned Group's Motion to Dismiss
 04/03/2018 **Notice of Entry of Order**
Notice of Entry of Order
 04/04/2018 **Scheduling Order**
Scheduling Order
 04/05/2018 **Order Setting Civil Bench Trial**
Order Setting Civil Bench Trial
 04/13/2018 **Memorandum of Costs and Disbursements**
Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Verified Memorandum of Costs
 04/23/2018 **Motion for Attorney Fees**
(6/5/18 Withdrawn) Motion for Attorneys' Fees and Costs
 04/23/2018 **Motion to Strike**
(6/5/18 Withdrawn) Plaintiff's Motion to Strike and Retax Defendants' Memorandum of Fees and Costs
 05/24/2018 **Stipulation and Order**
Stipulation and Order to Continue Hearing on Both Tag Horizon Ridge LLC and The Aligned Group, LLC's Motion for Attorney Fees and Costs and Plaintiff Horizon Holding 2900, LLC's Motion to Strike
 05/24/2018 **Notice of Entry of Order**
Notice of Entry of Order
 06/05/2018 **Stipulation and Order**
Stipulation and Order to Withdraw Both: (1) Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion for Attorney's Fees and Costs; and (2) Plaintiff Horizon Holdings 2900, LLC's Motion to Strike
 06/05/2018 **Notice of Entry of Order**
Notice of Entry of Order
 06/08/2018 **Substitution of Attorney**
Substitution of Attorney
 06/26/2018 **CANCELED Motion for Attorney Fees and Costs** (10:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order
Tag Horizon Ridge, LLC and the Aligned Group, LLC's Motion for Attorneys Fees and Costs
 05/29/2018 Continued to 06/26/2018 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association
 06/26/2018 **CANCELED Motion to Strike** (10:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order
Plaintiff's Motion to Strike and Retax Defendants' Memorandum of Fees and Costs
 05/24/2018 Continued to 06/26/2018 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association
 06/26/2018 **Certificate of Mailing**
Certificate of Mailing
 10/12/2018 **Amended Order Setting Civil Non-Jury Trial**
Amended Order Setting Civil Non-Jury Trial
 10/15/2018 **Stipulation and Order**
Stipulation and Order to Extend Discovery Deadlines and Reset Trial
 10/16/2018 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order
 10/25/2018 **Motion for Leave to File**
Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File Second Amended Complaint
 11/05/2018 **Opposition to Motion**
Defendants Shea at Horizon Ridge Owners' Association and Defendant Taylor Management Association's Opposition to Plaintiff's Motion to Amend

11/05/2018 **Declaration**
Declaration of Stephanie Freeman in Support of Defendants' Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint

11/05/2018 **Reply to Opposition**
Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants' Opposition to Motion for Leave to File Second Amended Complaint

11/06/2018 **Motion for Leave** (8:30 AM) (Judicial Officer Johnson, Susan)
Plaintiff Horizon Holdings 2900 LLC's Motion for Leave to File Second Amended Complaint
[Parties Present](#)
[Minutes](#)
Result: Granted in Part

11/09/2018 **Order**
Order Re: Plaintiff Horizon Holdings 2900, LLC's Motion for Leave to File Second Amended Complaint

11/28/2018 **Stipulation and Order**
Stipulation and Order to Allow Second Amended Complaint

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

11/28/2018 **Amended Complaint**
Horizon Holdings 2900, LLC's Second Amended Complaint

01/30/2019 **CANCELED Status Check: Trial Readiness** (8:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order

02/05/2019 **Stipulation and Order**
Stipulation and Order to Extend Expert Disclosure Deadlines (Second Request)

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

02/21/2019 **Answer**
Defendant Shea at Horizon Ridge Owners Association's Answer to Second Amended Complaint

02/21/2019 **Answer**
Defendant Taylor Management Association's Answer to Second Amended Complaint

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

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

05/08/2019 **CANCELED Pretrial/Calendar Call** (8:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order

05/20/2019 **CANCELED Bench Trial** (8:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order

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

06/11/2019 **Stipulation and Order**
Stipulation and Order to Continue Trial Date and Extend Discovery Deadlines

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

07/10/2019 **CANCELED Status Check: Trial Readiness** (8:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order
05/08/2019 Continued to 07/10/2019 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association

08/19/2019 **Affidavit of Service**
Affidavit/Declaration of Service of Prime HVAS, LLC Attn: Person Most Knowledgeable

08/19/2019 **Affidavit of Service**
Affidavit/Declaration of Service of Mark Kapetansky

08/19/2019 **Acceptance of Service**
Acceptance of Service of Subpoena to Steve Burford

08/19/2019 **Acceptance of Service**
Acceptance of Service of Subpoena to Corporate Air Mechanical Services, Inc.

08/21/2019 **CANCELED Pretrial/Calendar Call** (8:30 AM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order

09/03/2019 **CANCELED Bench Trial** (1:00 PM) (Judicial Officer Johnson, Susan)
Vacated - per Stipulation and Order

09/06/2019 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Certain Deadlines (Fifth Request)

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

09/10/2019 **Acceptance of Service**
Acceptance of Service for Stephanie Freeman

09/10/2019 **Acceptance of Service**
Acceptance of Service for Gary Border

09/10/2019 **Acceptance of Service**
Acceptance of Service for Marissa Chien

09/18/2019 **Status Check: Trial Readiness** (8:30 AM) (Judicial Officer Johnson, Susan)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

09/18/2019 **Amended Order Setting Civil Non-Jury Trial**
Third Amended Order Setting Civil Bench Trial

10/02/2019 **Stipulation and Order**
Stipulation and Order to Extend Dispositive Motions Deadline (Sixth Request)

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

11/12/2019 **Motion for Partial Summary Judgment**
Plaintiff Horizon Holdings 2900, LLC's Motion for Partial Summary Judgment

11/12/2019 **Appendix**
Appendix to Plaintiff Horizon Holdings 2900, LLC's Motion for Partial Summary Judgment

12/8/2020

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

11/12/2019 **Notice of Motion**
Notice of Motion

11/12/2019 **Motion for Summary Judgment**
Defendants' Motion for Summary Judgment

11/12/2019 **Appendix**
Appendix of Exhibits to Defendants' Motion for Summary Judgment

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

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

11/14/2019 **Errata**
Errata to Appendix of Exhibits to Defendants' Motion for Summary Judgment

11/27/2019 **Stipulation and Order**
Stipulation and Order to Continue Hearings

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

12/16/2019 **Pre-trial Memorandum**
Pre-Trial Memorandum Jointly Filed By Plaintiff and Defendants

12/16/2019 **Pre-trial Memorandum**
Pre-Trial Memorandum Jointly Filed by Plaintiff and Defendants

12/17/2019 **Opposition to Motion**
Plaintiff Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment

12/17/2019 **Appendix**
Appendix to Horizon Holdings 2900, LLC's Opposition to Defendants' Motion for Summary Judgment

12/17/2019 **Opposition to Motion**
Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment

12/18/2019 **Pretrial/Calendar Call** (8:30 AM) (Judicial Officer Johnson, Susan)
[Parties Present](#)
[Minutes](#)
10/30/2019 Reset by Court to 12/18/2019
Result: Trial Date Set

12/18/2019 **Errata**
Errata to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment

12/30/2019 **Objection**
Defendants' Objection to Plaintiff's Offer of Judgment

12/30/2019 **Stipulation and Order**
Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment

12/31/2019 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Briefing and Hearing Date on Motions for Summary Judgment

01/13/2020 **Reply to Opposition**
Plaintiff Horizon Holdings 2900, LLC's Reply to Defendants' Opposition to Motion for Partial Summary Judgment

01/13/2020 **Reply in Support**
Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Reply in Support of Motion for Partial Summary Judgment

01/17/2020 **Notice**
Defendants' Notice of Trial Subpoena

01/21/2020 **Motion for Partial Summary Judgment** (8:30 AM) (Judicial Officer Johnson, Susan)
Plaintiff Horizon Holdings 2900 LLC Motion for Partial Summary Judgment
12/17/2019 Reset by Court to 01/07/2020
01/07/2020 Continued to 01/21/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association
Result: Denied

01/21/2020 **Motion for Summary Judgment** (8:30 AM) (Judicial Officer Johnson, Susan)
Defendant's Motion for Summary Judgment
12/17/2019 Reset by Court to 01/07/2020
01/07/2020 Continued to 01/21/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association
Result: Granted

01/21/2020 **Notice**
Plaintiff's Notice of Trial Subpoenas

01/21/2020 **All Pending Motions** (8:30 AM) (Judicial Officer Johnson, Susan)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

01/22/2020 **Notice**
Defendants' Notice of Intent to Lodge Original Deposition Transcripts

01/23/2020 **Notice**
Plaintiff's Notice of Intent to Lodge Original Deposition Transcripts

01/23/2020 **Notice**
Defendants' Supplemental Notice of Trial Subpoenas

02/03/2020 **Bench Trial** (8:30 AM) (Judicial Officer Johnson, Susan)
02/03/2020, 02/04/2020, 02/05/2020, 02/06/2020, 02/07/2020, 02/11/2020, 02/12/2020
[Parties Present](#)
[Minutes](#)
11/12/2019 Reset by Court to 01/06/2020
01/06/2020 Reset by Court to 02/03/2020
Result: Trial Continues

02/04/2020 **Order**

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

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12/8/2020

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

Order Granting In Part and Denying In Part Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment

02/04/2020 **Notice of Entry of Order**
Notice of Entry of Order Granting In Party and Denying In Part Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment

02/05/2020 **Order Denying Motion**
Order Denying Plaintiff's Motion for Partial Summary Judgment

02/05/2020 **Notice of Entry of Order**
Notice of Entry of Order

02/06/2020 **Trial Memorandum**
Defendants' Civil Trial Memorandum Pursuant to EDCR 7.27

02/07/2020 **Brief**
Horizon Holdings 2900, LLC's Trial Brief

02/10/2020 **Memorandum of Costs and Disbursements**
Taylor Association Management's Verified Memorandum of Costs and Disbursements

02/11/2020 **CANCELED Bench Trial** (1:00 PM) (Judicial Officer Johnson, Susan)
Vacated - Duplicate Entry

02/24/2020 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Deadlines Relating to Memorandum of Costs

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

02/25/2020 **Motion for Attorney Fees**
Taylor Association Management's Motion for Attorneys' Fees and Interest

02/25/2020 **Appendix**
Appendix of Exhibits to Taylor Association Management's Motion for Attorneys' Fees Costs and Interest

02/25/2020 **Declaration**
Declaration of Robert E. Schumacher, Esq. in Support of Taylor Association Management's Motion for Attorneys' Fees, Cost and Interest

02/26/2020 **Clerk's Notice of Hearing**
Notice of Hearing

02/27/2020 **Motion to Retax**
Motion to Re-tax Costs

02/27/2020 **Appendix**
Appendix to Motion to Re-Tax Costs

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

03/05/2020 **Response**
Taylor Association Management's Response to Plaintiff's Motion to Re-Tax Costs

03/16/2020 **Stipulation and Order**
Stipulation and Order to Continue Hearings

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

03/20/2020 **Recorders Transcript of Hearing**
Bench Trial - Day 1 February 3, 2020

03/20/2020 **Recorders Transcript of Hearing**
Recorder's Transcript of Bench Trial - Day 3 February 5, 2020

03/20/2020 **Recorders Transcript of Hearing**
Bench Trial - Day 4 February 6, 2020

03/20/2020 **Recorders Transcript of Hearing**
Bench Trial - Day 5 February 7, 2020

03/24/2020 **Opposition to Motion**
Plaintiff's Opposition to Taylor Association Management's Motion for Attorneys' Fees and Interest

03/24/2020 **Appendix**
Appendix to Plaintiff's Opposition to Taylor Association Management's Motion for Attorney's Fees and Interest

03/24/2020 **Reply to Opposition**
Plaintiff's Reply to Taylor's Opposition to Motion to Re-Tax Costs

03/26/2020 **Recorders Transcript of Hearing**
Bench Trial - Day 6 February 11, 2020

03/26/2020 **Recorders Transcript of Hearing**
Recorders Transcript of Bench Trial - Day 7 February 12, 2020

04/07/2020 **Reply to Motion**
Taylor Association Management's Reply in Support of Motion for Attorneys' Fees and Interest

04/14/2020 **Motion for Attorney Fees** (8:30 AM) (Judicial Officer Johnson, Susan)
Taylor Association Management's Motion for Attorneys' Fees and Interest
03/31/2020 Reset by Court to 04/14/2020

Result: Denied

04/14/2020 **Motion to Retax** (8:30 AM) (Judicial Officer Johnson, Susan)
Plaintiff's Motion to Re-tax Costs
03/31/2020 Reset by Court to 04/14/2020

Result: Granted in Part

04/14/2020 **All Pending Motions** (8:30 AM) (Judicial Officer Johnson, Susan)
[Parties Present](#)
[Minutes](#)

Result: Matter Heard

04/15/2020 **Order**
Order Re: Plaintiff's Motion to Re-Tax Costs

04/24/2020 **Notice of Entry of Order**
Notice of Entry of Order Re: Motion to Re-Tax Costs

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

06/01/2020 **Notice of Entry of Findings of Fact, Conclusions of Law**
Notice of Entry of Findings of Fact, Conclusions of Law and Judgment

06/01/2020 **Memorandum of Costs and Disbursements**

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

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12/8/2020

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

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

06/02/2020 **Errata**
Errata to Shea at Horizon Ridge Owners Association's Verified Memorandum of Costs and Disbursements

06/12/2020 **Motion for Attorney Fees and Costs**
Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

06/12/2020 **Appendix**
Appendix of Exhibits to Shea at Horizon Ridge Owners Association s Motion for Attorney s Fees, Costs and Interest

06/12/2020 **Declaration**
Declaration of Robert E. Schumacher, Esq. in Support of Defendant Shea at Horizon Ridge Owners Association s Motion for Attorneys Fees, Costs and Interest

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

06/22/2020 **Notice of Appearance**
Notice of Appearance by Gallian Welker & Beckstrom, L.C.

06/29/2020 **Stipulation and Order**
Stipulation and Order to Extend Time to File Opposition and to Continue Hearing on Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

06/29/2020 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Time and Continue Hearing on Motion for Attorney's Fees, Costs and Interest

06/29/2020 **Case Appeal Statement**
Case Appeal Statement

06/29/2020 **Notice of Appeal**
Notice of Appeal

07/15/2020 **Recorders Transcript of Hearing**
Bench Trial - Day 2 February 4, 2020

07/21/2020 **Opposition to Motion**
Plaintiff's Opposition to Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

07/21/2020 **Appendix**
Plaintiff's Appendix to Opposition to Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

07/21/2020 **Cost on Appeal Bond**
Cost on Appeal Bond

07/24/2020 **Order Denying Motion**
Order Denying Defendant Taylor Association Management's Motion For An Award of Attorney's Fees and Interest

07/24/2020 **Notice of Entry of Order**
Notice of Entry of Order

08/04/2020 **Reply in Support**
Shea at Horizon Ridge Owners Association's Reply in Support of Motion for Attorneys' Fees, Costs and Interest

08/11/2020 **Motion for Attorney Fees and Costs** (8:30 AM) (Judicial Officer Johnson, Susan)
Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest
[Parties Present](#)
[Minutes](#)

07/14/2020 Continued to 08/11/2020 - Stipulation and Order - Horizon Holdings 2900 LLC; Shea at Horizon Ridge Owners Association; Taylor Management Association

Result: Granted in Part

11/19/2020 **Order**
Order re: Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

11/19/2020 **Notice of Entry of Order**
Notice of Entry of Order re Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest

11/24/2020 **Notice of Appearance**
Notice of Appearance

11/24/2020 **Notice of Appeal**
Notice of Appeal

11/24/2020 **Case Appeal Statement**
Case Appeal Statement

11/25/2020 **Judgment**
Judgment

11/25/2020 **Order Shortening Time**
Horizon Holdings 2900, LLC s Emergency Motion To Stay Execution Upon Judgment Pending Appeal On Order Shortening Time

11/25/2020 **Notice of Entry of Order**
Notice of Entry of Order Shortening Time re Horizon Holdings 2900, LLC s Emergency Motion To Stay Execution Upon Judgment Pending Appeal

11/25/2020 **Audiovisual Transmission Equipment Appearance Request**
Audiovisual Transmission Equipment Appearance Request

11/30/2020 **Bond**
Notice of Filing Cost Bond

11/30/2020 **Opposition to Motion**
Defendant Shea At Horizon Owners Association's Opposition to Horizon Holdings 2900, LLC's Emergency Motion to Stay Execution Upon Appeal Judgment Pending Appeal on Order Shortening Time

11/30/2020 **Notice of Withdrawal of Attorney**
Notice of Withdrawal of Gallian Welker & Beckstrom, L.C. as Plaintiff's Co-Counsel

12/07/2020 **Reply in Support**
Horizon Holdings 2900, LLC s Reply in Support of Emergency Motion To Stay Execution Upon Judgment Pending Appeal On Order Shortening Time

12/08/2020 **Audiovisual Transmission Equipment Appearance Request**
Amended Audiovisual Transmission Equipment Appearance Request

12/10/2020 **Motion to Stay** (9:00 AM) (Judicial Officer Johnson, Susan)
Plaintiff's Motion to Stay Execution Upon Judgment Pending Appeal on OST

FINANCIAL INFORMATION

| **Cross Claimant** First American Exchange Group LLC

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

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<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

	Total Financial Assessment			358.00
	Total Payments and Credits			358.00
	Balance Due as of 12/08/2020			0.00
09/06/2017	Transaction Assessment			358.00
09/06/2017	Efile Payment	Receipt # 2017-69878-CCCLK	First American Exchange Group LLC	(358.00)
	Cross Defendant Tag Horizon Ridge LLC			
	Total Financial Assessment			253.00
	Total Payments and Credits			253.00
	Balance Due as of 12/08/2020			0.00
09/12/2017	Transaction Assessment			253.00
09/12/2017	Efile Payment	Receipt # 2017-71112-CCCLK	Tag Horizon Ridge LLC	(253.00)
	Defendant Shea at Horizon Ridge Owners Association			
	Total Financial Assessment			723.00
	Total Payments and Credits			723.00
	Balance Due as of 12/08/2020			0.00
09/18/2017	Transaction Assessment			449.50
09/18/2017	Efile Payment	Receipt # 2017-72361-CCCLK	Shea at Horizon Ridge Owners Association	(449.50)
11/05/2018	Transaction Assessment			3.50
11/05/2018	Efile Payment	Receipt # 2018-73384-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
02/21/2019	Transaction Assessment			3.50
02/21/2019	Efile Payment	Receipt # 2019-11206-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
11/12/2019	Transaction Assessment			203.50
11/12/2019	Efile Payment	Receipt # 2019-68556-CCCLK	Shea at Horizon Ridge Owners Association	(203.50)
11/14/2019	Transaction Assessment			3.50
11/14/2019	Efile Payment	Receipt # 2019-69095-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
12/17/2019	Transaction Assessment			3.50
12/17/2019	Efile Payment	Receipt # 2019-75477-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
12/18/2019	Transaction Assessment			3.50
12/18/2019	Efile Payment	Receipt # 2019-75691-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
12/30/2019	Transaction Assessment			3.50
12/30/2019	Efile Payment	Receipt # 2019-77449-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
12/31/2019	Transaction Assessment			3.50
12/31/2019	Efile Payment	Receipt # 2019-77541-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
12/31/2019	Transaction Assessment			3.50
12/31/2019	Efile Payment	Receipt # 2019-77621-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
01/13/2020	Transaction Assessment			3.50
01/13/2020	Efile Payment	Receipt # 2020-02390-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
01/17/2020	Transaction Assessment			3.50
01/17/2020	Efile Payment	Receipt # 2020-03383-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
01/22/2020	Transaction Assessment			3.50
01/22/2020	Efile Payment	Receipt # 2020-04261-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
01/23/2020	Transaction Assessment			3.50
01/23/2020	Efile Payment	Receipt # 2020-04597-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
02/06/2020	Transaction Assessment			3.50
02/06/2020	Efile Payment	Receipt # 2020-07794-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
06/01/2020	Transaction Assessment			3.50
06/01/2020	Efile Payment	Receipt # 2020-29000-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
06/01/2020	Transaction Assessment			3.50
06/01/2020	Efile Payment	Receipt # 2020-29157-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
06/02/2020	Transaction Assessment			3.50
06/02/2020	Efile Payment	Receipt # 2020-29282-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
06/12/2020	Transaction Assessment			3.50
06/12/2020	Efile Payment	Receipt # 2020-31348-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
08/04/2020	Transaction Assessment			3.50
08/04/2020	Efile Payment	Receipt # 2020-42925-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
11/19/2020	Transaction Assessment			3.50
11/19/2020	Efile Payment	Receipt # 2020-65711-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
11/30/2020	Transaction Assessment			3.50
11/30/2020	Efile Payment	Receipt # 2020-67315-CCCLK	Shea at Horizon Ridge Owners Association	(3.50)
	Defendant Taylor Management Association			
	Total Financial Assessment			28.00
	Total Payments and Credits			28.00
	Balance Due as of 12/08/2020			0.00
02/04/2020	Transaction Assessment			3.50
02/04/2020	Efile Payment	Receipt # 2020-07089-CCCLK	Taylor Management Association	(3.50)
02/04/2020	Transaction Assessment			3.50
02/04/2020	Efile Payment	Receipt # 2020-07112-CCCLK	Taylor Management Association	(3.50)
02/10/2020	Transaction Assessment			3.50
02/10/2020	Efile Payment	Receipt # 2020-08266-CCCLK	Taylor Management Association	(3.50)
02/25/2020	Transaction Assessment			3.50
02/25/2020	Efile Payment	Receipt # 2020-11622-CCCLK	Taylor Management Association	(3.50)

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

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<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11791631>

02/25/2020	Transaction Assessment			3.50
02/25/2020	Efile Payment	Receipt # 2020-11626-CCCLK	Taylor Management Association	(3.50)
03/05/2020	Transaction Assessment			3.50
03/05/2020	Efile Payment	Receipt # 2020-13881-CCCLK	Taylor Management Association	(3.50)
04/07/2020	Transaction Assessment			3.50
04/07/2020	Efile Payment	Receipt # 2020-19504-CCCLK	Taylor Management Association	(3.50)
04/24/2020	Transaction Assessment			3.50
04/24/2020	Efile Payment	Receipt # 2020-21991-CCCLK	Taylor Management Association	(3.50)

Plaintiff Horizon Holdings 2900 LLC

Total Financial Assessment 533.00

Total Payments and Credits 533.00

Balance Due as of 12/08/2020 0.00

07/17/2017	Transaction Assessment			270.00
07/17/2017	Efile Payment	Receipt # 2017-57622-CCCLK	HORIZON HOLDINGS 2900, LLC	(270.00)
11/12/2019	Transaction Assessment			200.00
11/12/2019	Efile Payment	Receipt # 2019-68375-CCCLK	Horizon Holdings 2900 LLC	(200.00)
06/29/2020	Transaction Assessment			24.00
06/29/2020	Efile Payment	Receipt # 2020-34324-CCCLK	Horizon Holdings 2900 LLC	(24.00)
07/21/2020	Transaction Assessment			15.00
07/21/2020	Payment (Phone)	Receipt # 2020-12302-FAM	Horizon Holdings 2900 LLC	(15.00)
11/24/2020	Transaction Assessment			24.00
11/24/2020	Efile Payment	Receipt # 2020-66679-CCCLK	Horizon Holdings 2900 LLC	(24.00)

Third Party Defendant Tag Fund I LLC

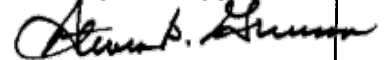
Total Financial Assessment 223.00

Total Payments and Credits 223.00

Balance Due as of 12/08/2020 0.00

10/09/2017	Transaction Assessment			223.00
10/09/2017	Efile Payment	Receipt # 2017-77525-CCCLK	Tag Fund I LLC	(223.00)

Exhibit 2

**COMP**

MICHAEL C. VAN, ESQ.

Nevada Bar No. 3876

BRENT D. HUNTLEY, ESQ.

Nevada Bar No. 12405

RICHARD A STORMS, ESQ.

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-758435-C

Dept. No.: Department 22

COMPLAINT**COMPLAINT**

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

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

3 **THE PARTIES**

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

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

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

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

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

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

16 **JURISDICTION AND VENUE**

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

19 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

27

28

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

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

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

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

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

14 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

4 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

4 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

23 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ...

28

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

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

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

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

95. Defendants accepted and retained those benefits.

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

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

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

4 **PRAYER FOR RELIEF**

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

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

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

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

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

12 Dated this 19 day of July, 2017

13
14 **SHUMWAY VAN**

15
16
17 By: _____

18 **MICHAEL C. VAN, ESQ.**

19 Nevada Bar No. 3876

20 **BRENT D. HUNTLEY, ESQ.**

21 Nevada Bar No. 12405

22 **RICHARD A STORMS, ESQ.**

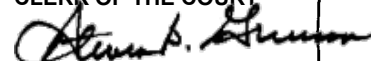
23 Nevada Bar No. 14283

24 8985 South Eastern Avenue, Suite 100

25 Las Vegas, Nevada 89123

26 *Attorneys for Plaintiff*

Exhibit 3


COMP

MICHAEL C. VAN, ESQ.

Nevada Bar No. 3876

BRENT D. HUNTLEY, ESQ.

Nevada Bar No. 12405

RICHARD A STORMS, ESQ.

Nevada Bar No. 14283

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brent@shumwayvan.com

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-758435-C

Dept. No.: XXII

FIRST AMENDED COMPLAINT**FIRST AMENDED COMPLAINT**

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

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

3 **THE PARTIES**

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

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

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

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

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

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

16 **JURISDICTION AND VENUE**

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

20 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

4 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

4 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

23 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ...

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

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

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

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

95. Defendants accepted and retained those benefits.

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

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

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

4 **PRAYER FOR RELIEF**

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

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

12 Dated this ____ day of July, 2017

13
14 **SHUMWAY VAN**

15
16 By: 

17 MICHAEL C. VAN, ESQ.

18 Nevada Bar No. 3876

19 BRENT D. HUNTLEY, ESQ.

20 Nevada Bar No. 12405

21 RICHARD A STORMS, ESQ.

22 Nevada Bar No. 14283

23 8985 South Eastern Avenue, Suite 100

24 Las Vegas, Nevada 89123

25 Attorneys for Plaintiff
26
27
28

Exhibit 4



1 **AACR/TPC**
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2 Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
3 Nevada Bar No. 007562
KOLESAR & LEATHAM
4 400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
5 Telephone: (702) 362-7800
Facsimile: (702) 362-9472
6 E-Mail: amaurice@klnevada.com
bwood@klnevada.com

7
8 Attorneys for Defendant, Cross-Claimant and
Third Party Plaintiff, FIRST AMERICAN
9 EXCHANGE COMPANY, LLC

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

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

20 Defendants.

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

23 Cross-Claimant,

24 vs.

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

27 Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

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

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

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

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

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

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

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

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

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

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

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

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

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

8 9. In answering Paragraph 9 of the Amended Complaint, FAEC admits that Horizon
9 Holdings purchased the Property from TAG Horizon Ridge, LLC ("TAG") on February 12,
10 2015. FAEC denies the remaining allegations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Breach of the Warranty of Suitability against all Defendants)

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

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

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

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

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

1 allegations.

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

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

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

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

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

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

23 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

14 **THIRD CLAIM FOR RELIEF¹**

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

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

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

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

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

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

26
27
28 ¹ The Amended Complaint includes two claims entitled "Third Claim for Relief."

FOURTH CLAIM FOR RELIEF

(Negligence against TAG, First American and Aligned)

56. In answering Paragraph 56 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

57. In answering Paragraph 57 of the Amended Complaint, FAEC denies the allegations.

58. In answering Paragraph 58 of the Amended Complaint, FAEC denies the allegations.

59. In answering Paragraph 59 of the Amended Complaint, FAEC denies the allegations.

60. In answering Paragraph 60 of the Amended Complaint, FAEC denies the allegations.

61. In answering Paragraph 61 of the Amended Complaint, FAEC denies the allegations.

FIFTH CLAIM FOR RELIEF

(Negligence against Taylor and Shea)

62. In answering Paragraph 62 of the Amended Complaint, FAEC repeats and realleges each of the answers to the previous paragraphs as if each were fully set forth herein.

63. In answering Paragraph 63 of the Amended Complaint, the allegations are directed to a separate defendant and require no response by FAEC. However, to the extent that an Answer is required, FAEC is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies said allegations.

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

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

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

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

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

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

SEVENTH CLAIM FOR RELIEF

(Negligence Per Se against Taylor and Shea)

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

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

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

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

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

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

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

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

13 **EIGHTH CLAIM FOR RELIEF**

14 (Declaratory Relief against Taylor and Shea)

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

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

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

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

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

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

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

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

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

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

NINTH CLAIM FOR RELIEF

(Unjust Enrichment against Taylor and Shea)

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

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

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

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

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

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

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

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

8 WHEREFORE, FAEC prays for relief as follows:

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

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

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

17 **SECOND AFFIRMATIVE DEFENSE**

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

19 **THIRD AFFIRMATIVE DEFENSE**

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

21 **FOURTH AFFIRMATIVE DEFENSE**

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

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

5 **FIFTH AFFIRMATIVE DEFENSE**

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

8 **SIXTH AFFIRMATIVE DEFENSE**

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

11 **SEVENTH AFFIRMATIVE DEFENSE**

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

14 **EIGHTH AFFIRMATIVE DEFENSE**

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

18 **NINTH AFFIRMATIVE DEFENSE**

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

20 **TENTH AFFIRMATIVE DEFENSE**

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

22 **ELEVENTH AFFIRMATIVE DEFENSE**

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

24 **TWELFTH AFFIRMATIVE DEFENSE**

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

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

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

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

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

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

24 **PARTIES**

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

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

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

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

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

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

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

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

12 **JURISDICTION AND VENUE**

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

18 **GENERAL ALLEGATIONS**

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

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

24 11. THR was the owner of the Property.

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

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

14. The Agreement provides in pertinent part:

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

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

Specifically, the Agreement provides:

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

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

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

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

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

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

...

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

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

5 ...

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

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

10 **FIRST CLAIM FOR RELIEF**

11 **(Express Indemnity)**

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

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

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

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

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

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

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

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

1 the claims asserted by Horizon Holdings;

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

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

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

8 DATED this 5th day of September, 2017.

9 **KOLESAR & LEATHAM**

10
11 By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

15 Attorneys for Defendant, Cross-Claimant and
16 Third-Party Plaintiff, FIRST AMERICAN
17 EXCHANGE COMPANY, LLC
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27
28

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

CERTIFICATE OF SERVICE

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

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

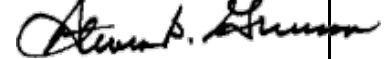


An Employee of KOLESAR & LEATHAM

Exhibit 5

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

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Steven D. Grierson
CLERK OF THE COURT



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bwalters@grsm.com

Attorneys for Defendant Shea at Horizon Ridge Owners Association

DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada	)	CASE NO. A-17-758435-C
limited liability company;	)	DEPT. NO.: XXII
)	
Plaintiff,)	
)	
vs.)	
)	
SHEA AT HORIZON RIDGE OWNERS)	
ASSOCIATION, a Domestic Non-Profit)	
Corporation, TAYLOR MANAGEMENT)	
ASSOCIATION, a Nevada Limited-Liability)	
Company, FIRST AMERICAN EXCHANGE)	
COMPANY, LLC, a Foreign Limited-Liability)	
Company, TAG HORIZON RIDGE, LLC, a Nevada)	
Limited-Liability Company, and THE ALIGNED)	
GROUP LLC, a Nevada Limited Liability Company;)	
)	
Defendants.)	

**DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S
ANSWER TO FIRST AMENDED COMPLAINT**

Defendant, SHEA AT HORIZON RIDGE OWNERS ASSOCIATION ("Shea"), by and through their attorneys, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON & REES SCULLY MANSUKHANI LLP, hereby submits their answers to Plaintiff, HORIZON HOLDINGS 2900, LLC's ("Plaintiff") First Amended Complaint as follows:

///

THE PARTIES

1. Answering Paragraphs 1, 2, and 3 of the Amended Complaint, Shea admits the allegations contained therein.

2. Answering Paragraphs 4, 5, and 6 of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

JURISDICTION AND VENUE

3. Answering Paragraph 7 of the Amended Complaint, Shea admits the allegations contained therein.

GENERAL ALLEGATIONS

4. Answering Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

5. Answering Paragraph 18 of the Complaint, HOA denies the allegations contained therein.

6. Answering Paragraph 19, 20 and 21 of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

7. Answering Paragraph 22 of the Amended Complaint, Shea denies the allegations contained therein.

8. Answering Paragraphs 23 and 24 of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

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FIRST CLAIM FOR RELIEF

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

9. Answering Paragraph 25, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

10. Answering Paragraphs 26, 27, 28, 28 and 30 of the Amended Complaint, this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

SECOND CLAIM FOR RELIEF

(Breach of the Warranty of Suitability against all Defendants)

11. Answering Paragraph 31, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

12. Answering Paragraphs 32, 33, 34, 35, 36 and 37, of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

13. Answering Paragraph 38, of the Amended Complaint, Shea denies the allegations contained therein.

14. Answering Paragraphs 39, 40 and 41, of the Amended Complaint, Shea is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

THIRD CLAIM FOR RELIEF

(Breach of the Covenant of Good Faith and Fair Dealing against TAG, First American and Aligned)

15. Answering Paragraph 42, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

16. Answering Paragraphs 43, 44, 45, 46, 47 and 48 of the Amended Complaint, this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

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FOURTH CLAIM FOR RELIEF
(Non Disclosure against TAG, First American and Aligned)

17. Answering Paragraph 49, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

18. Answering Paragraphs 50, 51, 52, 53, 54 and 55 of the Amended Complaint, this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

FIFTH CLAIM FOR RELIEF
(Negligence against TAG, First American and Aligned)

19. Answering Paragraph 56, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

20. Answering Paragraphs 57, 58, 59, 60 and 61 of the Amended Complaint, this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

SIXTH CLAIM FOR RELIEF
(Negligence against Taylor and Shea)

21. Answering Paragraph 62, of the Amended Complaint, Shea repeats and reallege each and every response as admitted and denied above.

22. Answering Paragraphs 63, 64, 65, 66 and 67 of the Amended Complaint, Shea denies the allegations contained therein.

SEVENTH CLAIM FOR RELIEF
(Negligent Undertaking against Taylor)

23. Answering Paragraph 68, of the Amended Complaint this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

24. Answering Paragraphs 69 and 70 of the Amended Complaint, this cause of action is not alleged against Shea. To the extent a response is required, Shea denies the allegations contained therein.

///

1 25. Answering Paragraph 71, of the Amended Complaint, this cause of action is not
2 alleged against Shea. To the extent a response is required, Shea denies the allegations contained
3 therein.

4 26. Answering Paragraphs 72, 73, 74 and 75 of the Amended Complaint, this cause of
5 action is not alleged against Shea. To the extent a response is required, Shea denies the
6 allegations contained therein.

7 **EIGHTH CLAIM FOR RELIEF**
8 **(Negligent Per Se against Taylor and Shea)**

9 27. Answering Paragraph 76, of the Amended Complaint, Shea repeats and reallege
10 each and every response as admitted and denied above.

11 28. Answering Paragraphs 77 and 78 of the Amended Complaint, Shea is without
12 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations
13 contained therein, and accordingly, those allegations are hereby denied.

14 29. Answering Paragraphs 79, 80, 81 and 82 of the Amended Complaint, Shea denies
15 the allegations contained therein.

16 **NINTH CLAIM FOR RELIEF**
17 **(Declaratory Relief against Taylor and Shea)**

18 30. Answering Paragraph 83, of the Amended Complaint, Shea repeats and reallege
19 each and every response as admitted and denied above.

20 31. Answering Paragraph 84 of the Amended Complaint, Shea is without sufficient
21 knowledge or information to form a belief as to the truth or falsity of the allegations contained
22 therein, and accordingly, those allegations are hereby denied.

23 32. Answering Paragraphs 85, 86 and 87 of the Amended Complaint, Shea denies the
24 allegations contained therein.

25 33. Answering Paragraph 88 of the Amended Complaint, Shea admits the allegations
26 contained therein.

27 34. Answering Paragraph 89 of the Amended Complaint, Shea denies the allegations
28 contained therein.

1 35. Answering Paragraphs 90 and 91 of the Amended Complaint, Shea is without
2 sufficient knowledge or information to form a belief as to the truth or falsity of the allegations
3 contained therein, and accordingly, those allegations are hereby denied.

4 **TENTH CLAIM FOR RELIEF**
5 **(Unjust Enrichment against Taylor and Shea)**

6 36. Answering Paragraph 92, of the Amended Complaint, Shea repeats and reallege
7 each and every response as admitted and denied above.

8 37. Answering Paragraph 93 of the Amended Complaint, Shea is without sufficient
9 knowledge or information to form a belief as to the truth or falsity of the allegations contained
10 therein, and accordingly, those allegations are hereby denied.

11 38. Answering Paragraphs 94, 95, 96, 97 and 98 of the Amended Complaint, Shea
12 denies the allegations contained therein.

13 **AFFIRMATIVE DEFENSES**

14 As and for their affirmative defenses in this case, Shea assert the following:

- 15 1. Plaintiff lacks standing to pursue the asserted claims.
- 16 2. Plaintiff has failed to state a claim upon which relief can be granted.
- 17 3. Plaintiff's claims for relief are not ripe.
- 18 4. Shea's acts and/or omissions, if any, were justified and privileged.
- 19 5. Plaintiff's claims for relief are barred by the statute of limitations.
- 20 6. Plaintiff's claims for relief are barred by the doctrines of waiver, estoppel and
21 laches.
- 22 7. Shea engaged in no acts or omissions relevant to the subject matter of the
23 Complaint as would create any liability whatsoever on its part to Plaintiff.
- 24 8. The alleged damages, if any, which Plaintiff has suffered, are caused in whole or
25 in part by the acts or omissions of Plaintiff or its agents and representatives.
- 26 9. Plaintiff's claims are reduced, modified and/or barred by the doctrine of unclean
27 hands.
- 28

10. Plaintiff failed to mitigate its damages.
11. Plaintiff's damages, if any, were not factually, legally, or proximately caused by Shea.
12. Plaintiff's claims for relief are barred by the failure of the occurrence of a condition precedent.
13. Plaintiff's claims are barred by a failure of consideration.
14. Plaintiff has not suffered any damages.
15. Plaintiff's harm, if any, is due to its own actions or by parties not within the control of Shea.
16. Plaintiff's alleged damages were proximately caused or contributed to by the intervening and superseding acts of other persons and/or entities acts.
17. Plaintiff's claimed damages were proximately caused or contributed to by the negligence of persons and/or entities other than Shea in failing to exercise the proper care which a prudent person under the same or similar circumstances would have exercised, and/or by the wrongful acts of person and/or entities other than Shea.
18. Plaintiff is barred from recovery because Plaintiff and/or its agents, employees, predecessors in interest, expressly or impliedly consented and agreed to Shea's alleged acts and/or omissions.
19. Plaintiff's claims are barred by its own failure to exercise ordinary and reasonable care and diligence and such acts and omissions were the proximate cause of some or all of Plaintiff's damages, if any.
20. Plaintiff's claims are barred because Shea and/or its agent/representative substantially complied with NRS Chapter 116.
21. Shea denies each and every allegation of the Amended Complaint not specifically admitted or otherwise pled herein.
22. No justiciable controversy exists between Plaintiff and Shea.
23. Plaintiff's claims are barred by the economic loss doctrine.

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24. Plaintiff's claims are barred by the voluntary payment doctrine.

25. Plaintiff is not entitled to equitable relief because it had an adequate remedy at law and failed to act.

26. Plaintiff is barred from recovering any special damages herein for failure to specifically allege the items of special damages claims, pursuant to FRCP 9.

27. Plaintiff's claims are barred because it failed to join a necessary and indispensable party.

28. Shea alleges that at all times it acted in good faith.

ANY OTHER MATTER CONSTITUTING AN AVOIDANCE

OR AFFIRMATIVE DEFENSE

Shea reserves their rights to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

Dated: September 15, 2017.

**GORDON REES SCULLY
MANSUKHANI LLP**

By: /s/ Brian K. Walters
Robert E. Schumacher, Esq.
Brian K. Walters, Esq.
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2017, I served a true and correct file-stamped copy of **DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S ANSWER TO FIRST AMENDED COMPLAINT** upon the parties by electronic transmission through the Eight Judicial District Court e-Filing System in accordance with mandatory electronic service requirement of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rule

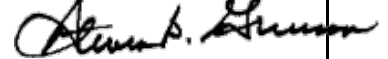
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Brent D. Huntley, Esq.
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Attorneys for Plaintiff

/s/ Chelsey Holland
An employee of Gordon & Rees
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Exhibit 6

Gordon & Rees Scully Mansukhani, LLP
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Steven D. Grierson
CLERK OF THE COURT



1 **ANS**
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3 Nevada Bar No. 7504
4 BRIAN K. WALTERS
5 Nevada Bar No. 9711
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9 Telephone: (702) 577-9319
10 Facsimile: (702) 255-2858
11 rschumacher@grsm.com
12 bwalters@grsm.com

13 *Attorneys for Defendant Taylor Management Association*

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

11 HORIZON HOLDINGS 2900, LLC, a Nevada	)	CASE NO. A-17-758435-C
12 limited liability company;	)	DEPT. NO.: XXII
13)	
14 Plaintiff,)	
15)	
16 vs.)	
17)	
18 SHEA AT HORIZON RIDGE OWNERS)	
19 ASSOCIATION, a Domestic Non-Profit)	
20 Corporation, TAYLOR MANAGEMENT)	
21 ASSOCIATION, a Nevada Limited-Liability)	
22 Company, FIRST AMERICAN EXCHANGE)	
23 COMPANY, LLC, a Foreign Limited-Liability)	
24 Company, TAG HORIZON RIDGE, LLC, a Nevada)	
25 Limited-Liability Company, and THE ALIGNED)	
26 GROUP LLC, a Nevada Limited Liability Company;)	
27)	
28 Defendants.)	

21 **DEFENDANT TAYLOR MANAGEMENT ASSOCIATION'S ANSWER TO FIRST**
22 **AMENDED COMPLAINT**

23 Defendant, TAYLOR MANAGEMENT ASSOCIATION ("TMA"), by and through their
24 attorneys, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON
25 & REES SCULLY MANSUKHANI LLP, hereby submits their answers to Plaintiff, HORIZON
26 HOLDINGS 2900, LLC's ("Plaintiff") First Amended Complaint as follows:

27 ///

28 ///

THE PARTIES

1. Answering Paragraphs 1, 2, and 3 of the Amended Complaint, TMA admits the allegations contained therein.

2. Answering Paragraphs 4, 5, and 6 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

JURISDICTION AND VENUE

3. Answering Paragraph 7 of the Amended Complaint, TMA admits the allegations contained therein.

GENERAL ALLEGATIONS

4. Answering Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

5. Answering Paragraph 18 of the Complaint, HOA denies the allegations contained therein.

6. Answering Paragraph 19, 20 and 21 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

7. Answering Paragraph 22 of the Amended Complaint, TMA, denies the allegations contained therein.

8. Answering Paragraphs 23 and 24 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

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FIRST CLAIM FOR RELIEF
(Breach of Contract Against TAG, First American and Aligned)

9. Answering Paragraph 25, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

10. Answering Paragraphs 26, 27, 28, 28 and 30 of the Amended Complaint, this cause of action is not alleged against TMA. To the extent a response is required, TMA denies the allegations contained therein.

SECOND CLAIM FOR RELIEF
(Breach of the Warranty of Suitability against all Defendants)

11. Answering Paragraph 31, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

12. Answering Paragraphs 32, 33, 34, 35, 36 and 37, of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

13. Answering Paragraph 38, of the Amended Complaint, TMA denies the allegations contained therein.

14. Answering Paragraphs 39, 40 and 41, of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

THIRD CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing against TAG, First American and Aligned)

15. Answering Paragraph 42, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

16. Answering Paragraphs 43, 44, 45, 46, 47 and 48 of the Amended Complaint, this cause of action is not alleged against TMA. To the extent a response is required, TMA denies the allegations contained therein.

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FOURTH CLAIM FOR RELIEF
(Non Disclosure against TAG, First American and Aligned)

17. Answering Paragraph 49, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

18. Answering Paragraphs 50, 51, 52, 53, 54 and 55 of the Amended Complaint, this cause of action is not alleged against TMA. To the extent a response is required, TMA denies the allegations contained therein.

FIFTH CLAIM FOR RELIEF
(Negligence against TAG, First American and Aligned)

19. Answering Paragraph 56, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

20. Answering Paragraphs 57, 58, 59, 60 and 61 of the Amended Complaint, this cause of action is not alleged against TMA. To the extent a response is required, TMA denies the allegations contained therein.

SIXTH CLAIM FOR RELIEF
(Negligence against Taylor and Shea)

21. Answering Paragraph 62, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

22. Answering Paragraphs 63, 64, 65, 66 and 67 of the Amended Complaint, TMA denies the allegations contained therein.

SEVENTH CLAIM FOR RELIEF
(Negligent Undertaking against Taylor)

23. Answering Paragraph 68, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

24. Answering Paragraphs 69 and 70 of the Amended Complaint, TMA admits the allegations contained therein.

25. Answering Paragraph 71, of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

26. Answering Paragraphs 72, 73, 74 and 75 of the Amended Complaint, TMA denies the allegations contained therein.

EIGHTH CLAIM FOR RELIEF
(Negligent Per Se against Taylor and Shea)

27. Answering Paragraph 76, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

28. Answering Paragraphs 77 and 78 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

29. Answering Paragraphs 79, 80, 81 and 82 of the Amended Complaint, TMA denies the allegations contained therein.

NINTH CLAIM FOR RELIEF
(Declaratory Relief against Taylor and Shea)

30. Answering Paragraph 83, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

31. Answering Paragraph 84 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

32. Answering Paragraphs 85, 86 and 87 of the Amended Complaint, TMA denies the allegations contained therein.

33. Answering Paragraph 88 of the Amended Complaint, TMA admits the allegations contained therein.

34. Answering Paragraph 89 of the Amended Complaint, TMA denies the allegations contained therein.

35. Answering Paragraphs 90 and 91 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

///

TENTH CLAIM FOR RELIEF
(Unjust Enrichment against Taylor and Shea)

36. Answering Paragraph 92, of the Amended Complaint, TMA repeats and reallege each and every response as admitted and denied above.

37. Answering Paragraph 93 of the Amended Complaint, TMA is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly, those allegations are hereby denied.

38. Answering Paragraphs 94, 95, 96, 97 and 98 of the Amended Complaint, TMA denies the allegations contained therein.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses in this case, TMA asserts the following:

1. Plaintiff lacks standing to pursue the asserted claims.
2. Plaintiff has failed to state a claim upon which relief can be granted.
3. Plaintiff's claims for relief are not ripe.
4. TMA's acts and/or omissions, if any, were justified and privileged.
5. Plaintiff's claims for relief are barred by the statute of limitations.
6. Plaintiff's claims for relief are barred by the doctrines of waiver, estoppel and laches.
7. TMA engaged in no acts or omissions relevant to the subject matter of the Complaint as would create any liability whatsoever on its part to Plaintiff.
8. The alleged damages, if any, which Plaintiff has suffered are caused in whole or in part by the acts or omissions of Plaintiff or its agents and representatives.
9. Plaintiff's claims are reduced, modified and/or barred by the doctrine of unclean hands.
10. Plaintiff failed to mitigate its damages.
11. Plaintiff's damages, if any, were not factually, legally, or proximately caused by TMA.

///

1 12. Plaintiff's claims for relief are barred by the failure of the occurrence of a
2 condition precedent.

3 13. Plaintiff's claims are barred by a failure of consideration.

4 14. Plaintiff has not suffered any damages.

5 15. Plaintiff's harm, if any, is due to its own actions or by parties not within the
6 control of TMA.

7 16. Plaintiff's alleged damages were proximately caused or contributed to by the
8 intervening and superseding acts of other persons and/or entities acts.

9 17. Plaintiff's claimed damages were proximately caused or contributed to by the
10 negligence of persons and/or entities other than TMA in failing to exercise the proper care which
11 a prudent person under the same or similar circumstances would have exercised, and/or by the
12 wrongful acts of person and/or entities other than TMA.

13 18. Plaintiff is barred from recovery because Plaintiff and/or its agents, employees,
14 predecessors in interest, expressly or impliedly consented and agreed to TMA's alleged acts
15 and/or omissions.

16 19. Plaintiff's claims are barred by its own failure to exercise ordinary and reasonable
17 care and diligence and such acts and omissions were the proximate cause of some or all of
18 Plaintiff's damages, if any.

19 20. Plaintiff's claims are barred because TMA and/or its agent/representative
20 substantially complied with NRS Chapter 116.

21 21. TMA denies each and every allegation of the Amended Complaint not
22 specifically admitted or otherwise pled herein.

23 22. No justiciable controversy exists between Plaintiff and TMA.

24 23. Plaintiff's claims are barred by the economic loss doctrine.

25 24. Plaintiff's claims are barred by the voluntary payment doctrine.

26 25. Plaintiff is not entitled to equitable relief because it had an adequate remedy at
27 law and failed to act.
28

1 26. Plaintiff is barred from recovering any special damages herein for failure to
2 specifically allege the items of special damages claims, pursuant to FRCP 9.

3 27. Plaintiff's claims are barred because it failed to join a necessary and indispensable
4 party.

5 28. TMA alleges that at all times it acted in good faith.

6 **ANY OTHER MATTER CONSTITUTING AN AVOIDANCE**

7 **OR AFFIRMATIVE DEFENSE**

8 TMA reserves their rights to assert additional affirmative defenses in the event discovery
9 indicates that additional affirmative defenses would be appropriate.

10
11 Dated: September 15, 2017.

**GORDON REES SCULLY
MANSUKHANI LLP**

12
13 By: /s/ Brian K. Walters
14 Robert E. Schumacher, Esq.
15 Brian K. Walters, Esq.
16 300 S. 4th Street, Suite 1550
17 Las Vegas, NV 89101

***Attorneys for Defendant
Taylor Management Association***

Gordon & Rees Scully Mansukhani, LLP
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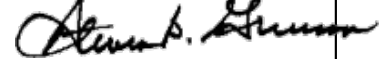
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2017, I served a true and correct file-stamped copy of **DEFENDANT TAYLOR MANAGEMENT ASSOCIATION'S ANSWER TO FIRST AMENDED COMPLAINT** upon the parties by electronic transmission through the Eight Judicial District Court e-Filing System in accordance with mandatory electronic service requirement of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rule

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Attorneys for Plaintiff

/s/ Chelsey Holland
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Exhibit 7



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

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

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

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

1 Cross-Defendants.

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

4 Third-Party Plaintiff,

5 vs.

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

8 Third-Party Defendant.

9 Defendants TAG Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss
10 Plaintiff's Complaint, filed September 12, 2017, was heard Tuesday, November 28, 2017 at
11 10:30 a.m. Colin Cavanaugh, Esq. of KEATING Law Group appeared for Defendants TAG
12 Horizon Ridge, LLC and The Aligned Group, LLC. Michael Van, Esq. and Brent Huntly, Esq. of
13 SHUMWAY VAN, and Catherine Jordan appeared for Plaintiff.

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

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

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

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

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

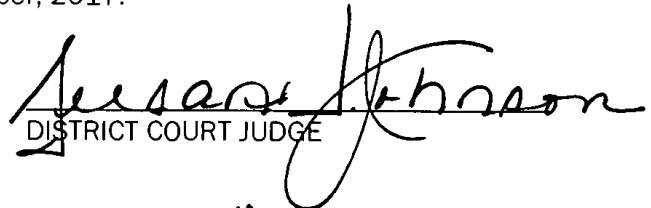
1 14, 2014, Plaintiff agreed to buy the subject property "as is," with a closing date of February
2 22, 2015. *See* Section 5 of the Agreement. Given its "as is" condition, Plaintiff and Defendant
3 understood and agreed the purchase price had been adjusted by prior negotiations; the
4 parties further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

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

HORIZON HOLDINGS V. SHEA, ET AL.
ORDER GRANTING MOTION TO DISMISS
CASE NO. A-17-758435-C

IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Third Cause of Action (Breach of Covenant of Good Faith and Fair Dealing), Second Third Cause of Action (Non-Disclosure) and Fourth Cause of Action (Negligence) is GRANTED for the reasons set forth above. In addition, outside of the parties' Agreement, Defendant TAG Horizon Ridge, LLC owed no further duties to Plaintiff under a negligence theory or otherwise.

DATED this 30th day of December, 2017.



DISTRICT COURT JUDGE
Y.M.

Submitted by:

KEATING LAW GROUP

Approved as to Form and Content:

SHUMWAY VAN


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

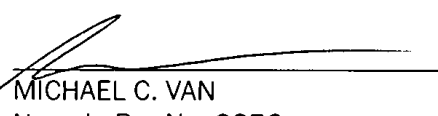
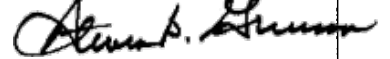

MICHAEL C. VAN
Nevada Bar No. 3876
BRENT D. HUNTLEY
Nevada Bar No. 12405
8985 S. Eastern Avenue, Ste. 100
Las Vegas, Nevada 89123
Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

Exhibit 8



NEOJ
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ccavanaugh@keatinglg.com
Attorneys for Defendants
TAG HORIZON RIDGE, LLC and
THE ALIGNED GROUP, LLC and
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

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

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

NOTICE OF ENTRY OF ORDER

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

1 Cross-Defendants.

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

4 Third-Party Plaintiff,

5 vs.

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

8 Third-Party Defendant.

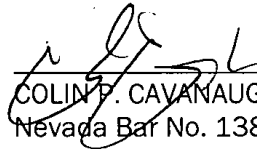
9 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

10 PLEASE TAKE NOTICE that an Order Granting Defendants Tag Horizon Ridge, LLC and
11 The Aligned Group, LLC's Motion to Dismiss has been entered in the above referenced matter.

12 A file-stamped copy of said Order is attached.

13 DATED this 2 day of January, 2018.

14 KEATING LAW GROUP

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

CERTIFICATE OF SERVICE

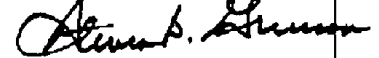
Pursuant to NRCP 5(b) and Administrative Order 14-2 of the Eighth Judicial District Court, I hereby certify that I am an employee of K E A T I N G LAW GROUP and that on the 2nd day of January, 2018, I served the above and foregoing NOTICE OF ENTRY OF ORDER on the following parties in compliance with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

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

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

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


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



ORDR
JOHN T. KEATING
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COLIN P. CAVANAUGH
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jkeating@keatinglg.com
ccavanaugh@keatinglg.com
Attorneys for Defendants
TAG HORIZON RIDGE, LLC and
THE ALIGNED GROUP, LLC and
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

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

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

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

1 Cross-Defendants.

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

4 Third-Party Plaintiff,

5 vs.

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

8 Third-Party Defendant.

9 Defendants TAG Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss
10 Plaintiff's Complaint, filed September 12, 2017, was heard Tuesday, November 28, 2017 at
11 10:30 a.m. Colin Cavanaugh, Esq. of KEATING Law Group appeared for Defendants TAG
12 Horizon Ridge, LLC and The Aligned Group, LLC. Michael Van, Esq. and Brent Huntly, Esq. of
13 SHUMWAY VAN, and Catherine Jordan appeared for Plaintiff.

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

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

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

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

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

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

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

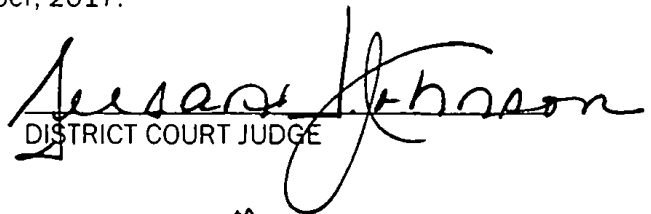
28

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

HORIZON HOLDINGS V. SHEA, ET AL.
ORDER GRANTING MOTION TO DISMISS
CASE NO. A-17-758435-C

IT IS FURTHER ORDERED Defendants' Motion to Dismiss as it relates to the Third Cause of Action (Breach of Covenant of Good Faith and Fair Dealing), Second Third Cause of Action (Non-Disclosure) and Fourth Cause of Action (Negligence) is GRANTED for the reasons set forth above. In addition, outside of the parties' Agreement, Defendant TAG Horizon Ridge, LLC owed no further duties to Plaintiff under a negligence theory or otherwise.

DATED this 30th day of December, 2017.



DISTRICT COURT JUDGE
y.m.

Submitted by:

KEATING LAW GROUP

Approved as to Form and Content:

SHUMWAY VAN


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

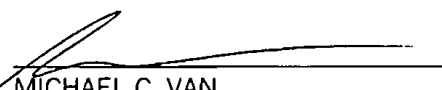
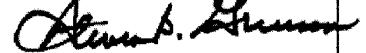

MICHAEL C. VAN
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Las Vegas, Nevada 89123
Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

Exhibit 9



1 **SODW**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

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6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendant

FIRST AMERICAN EXCHANGE COMPANY,

8 LLC

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 * * *

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

13 Plaintiffs,

14 vs.

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

21 Defendants.

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

24 Cross-Claimant,

25 vs.

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

28 Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

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

KOLESAR & LEATHAM

400 S. Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Tel: (702) 362-7800 / Fax: (702) 362-9472

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

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

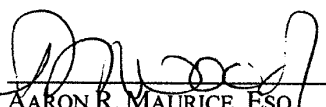
STIPULATION & ORDER FOR DISMISSAL WITH PREJUDICE

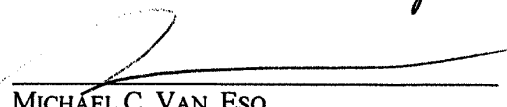
IT IS HEREBY STIPULATED by and between Plaintiff, Horizon Holdings 2900, LLC, by and through its attorneys of record, the law firm of Shumway Van, and Defendant, First American Exchange Company, LLC ("FAEC"), by and through its attorneys of record, the law firm of Kolesar & Leatham, that an order may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

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

Dated this 28 day of February 2018

Dated this 27 day of February, 2018


AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
400 S. Rampart Blvd., Ste. 400
Las Vegas, NV 89145
Attorneys for First American Exchange
Company, LLC

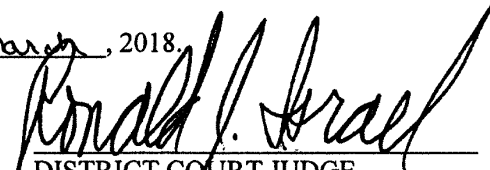

MICHAEL C. VAN, ESQ.
Nevada Bar No. 3876
BRENT D. HUNTLEY, ESQ.
Nevada Bar No. 12405
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Attorneys for Horizon Holdings 2900, LLC

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

ORDER

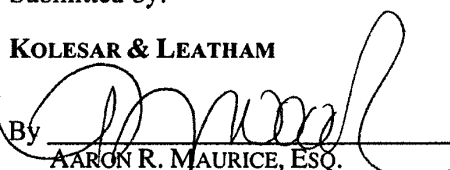
Based upon the stipulation of the parties, and good cause appearing, it is hereby ORDERED that Plaintiff's claims against FAEC are hereby dismissed, with prejudice, with Plaintiff bearing no responsibility for FAEC's fees and costs. This Order is limited to Plaintiff's claims against FAEC, and does not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

IT IS SO ORDERED this 1st day of March, 2018.


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

Submitted by:

KOLESAR & LEATHAM

By 
AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Defendant,
First American Exchange Company, LLC

Exhibit 10



1 **NEOJ**
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2 Nevada Bar No. 006412
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3 Nevada Bar No. 007562
KOLESAR & LEATHAM
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6 E-Mail: amaurice@klnevada.com
bwood@klnevada.com
7 Attorneys for Defendant
FIRST AMERICAN EXCHANGE COMPANY,
8 LLC

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

11 * * *

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

13 Plaintiffs,

14 vs.

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

21 Defendants.

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

24 Cross-Claimant,

25 vs.

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

28 Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

NOTICE OF ENTRY OF ORDER

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

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

NOTICE OF ENTRY OF ORDER

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

DATED this 8th day of March, 2018.

KOLESAR & LEATHAM

By 

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Defendant, FIRST AMERICAN
EXCHANGE COMPANY, LLC

KOLESAR & LEATHAM


400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Tel: (702) 362-7800 / Fax: (702) 362-9472

CERTIFICATE OF SERVICE

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

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



An Employee of KOLESAR & LEATHAM



1 **SODW**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

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6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendant

FIRST AMERICAN EXCHANGE COMPANY,

8 LLC

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 * * *

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

13 Plaintiffs,

14 vs.

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

21 Defendants.

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

24 Cross-Claimant,

25 vs.

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

28 Cross-Defendants.

CASE NO. A-17-758435-C

DEPT NO. XXII

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

KOLESAR & LEATHAM

400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Tel: (702) 362-7800 / Fax: (702) 362-9472

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Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

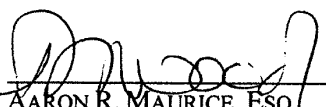
STIPULATION & ORDER FOR DISMISSAL WITH PREJUDICE

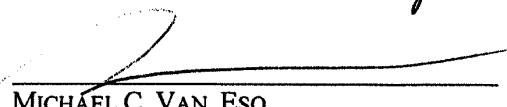
IT IS HEREBY STIPULATED by and between Plaintiff, Horizon Holdings 2900, LLC, by and through its attorneys of record, the law firm of Shumway Van, and Defendant, First American Exchange Company, LLC ("FAEC"), by and through its attorneys of record, the law firm of Kolesar & Leatham, that an order may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

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

Dated this 28 day of February 2018

Dated this 27 day of February, 2018


AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
400 S. Rampart Blvd., Ste. 400
Las Vegas, NV 89145
Attorneys for First American Exchange
Company, LLC

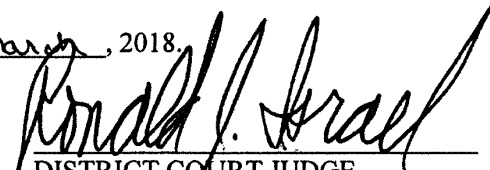

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Las Vegas, Nevada 89123
Attorneys for Horizon Holdings 2900, LLC

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

ORDER

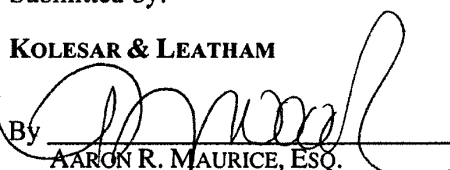
Based upon the stipulation of the parties, and good cause appearing, it is hereby ORDERED that Plaintiff's claims against FAEC are hereby dismissed, with prejudice, with Plaintiff bearing no responsibility for FAEC's fees and costs. This Order is limited to Plaintiff's claims against FAEC, and does not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

IT IS SO ORDERED this 1st day of March, 2018.


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

Submitted by:

KOLESAR & LEATHAM

By 
AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Defendant,
First American Exchange Company, LLC

Exhibit 11

Steven D. Grierson

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ccavanaugh@keatinglg.com
Attorneys for Defendants
TAG HORIZON RIDGE, LLC and
THE ALIGNED GROUP, LLC and
Third Party Defendant *TAG FUND I, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

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

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

Cross-Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

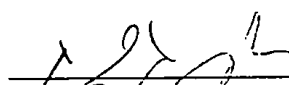
IT IS HEREBY STIPULATED AND AGREED, by and between Cross-Claimant and Third
Party Plaintiff, FIRST AMERICAN EXCHANGE COMPANY, LLC, and its counsel, KOLESAR &
LEATHAM, and Cross-Defendant and Third-Party Defendant, TAG HORIZON RIDGE, LLC and
TAG FUND I, LLC, by and through their counsel, KEATING LAW GROUP,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

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

DATED this 19 day of March, 2018. Dated this 19th day of March, 2018.

KEATING LAW GROUP

KOLESAR & LEATHAM


COLIN P. CAVANAUGH
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TAG HORIZON RIDGE, LLC and
Third Party Defendant TAG FUND I, LLC


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FIRST AMERICAN EXCHANGE COMPANY, LLC

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LAS VEGAS, NEVADA 89148

HORIZON HOLDINGS 2900, LLC v. SHEA AT HORIZON RIDGE, ET AL.
SAO TO DISMISS CROSS-CLAIM AND THIRD-PARTY COMPLAINT
CASE NO. A-17-758435-C

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above entitled Cross-Claim and Third-Party Complaint be dismissed in their entirety, with prejudice, each party bearing its own attorney's fees, costs, and interest.

DATED this 20th day of March, 2018.


DISTRICT COURT JUDGE

Submitted by:

KEATING LAW GROUP

y.m

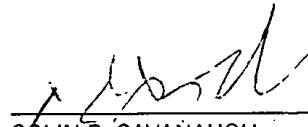
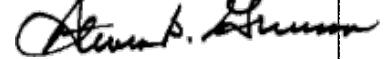

COLIN P. CAVANAUGH
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TAG HORIZON RIDGE, LLC and
Third Party Defendant TAG FUND I, LLC

Exhibit 12



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

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

NOTICE OF ENTRY OF ORDER

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

1 Cross-Defendants.

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

4 Third-Party Plaintiff,

5 vs.

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

8 Third-Party Defendant.

9 TO: ALL PARTIES AND THEIR COUNSEL,

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

13 DATED this 22 day of March, 2018.

14 KEATING LAW GROUP

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

CERTIFICATE OF SERVICE

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

MICHAEL C. VAN, ESQ, #3876
BRENT D. HUNTLEY, ESQ, #12405
RICHARD A STORMS, ESQ, #14283
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Las Vegas, Nevada 89123
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& Taylor Management Association

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Attorneys for First American Exchange Company, LLC


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

Steven D. Grierson

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

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

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

Cross-Defendants.

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

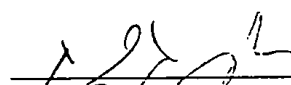
IT IS HEREBY STIPULATED AND AGREED, by and between Cross-Claimant and Third
Party Plaintiff, FIRST AMERICAN EXCHANGE COMPANY, LLC, and its counsel, KOLESAR &
LEATHAM, and Cross-Defendant and Third-Party Defendant, TAG HORIZON RIDGE, LLC and
TAG FUND I, LLC, by and through their counsel, KEATING LAW GROUP, that the above entitled
Cross-Claim and Third-Party Complaint be dismissed in their entirety, with prejudice, each
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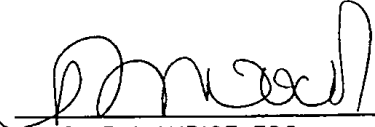
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dismissal of all parties' claims asserted in this action, no deadlines will be impacted by the
entry of this Order.

DATED this 19 day of March, 2018. Dated this 19th day of March, 2018.

KEATING LAW GROUP

KOLESAR & LEATHAM


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Third Party Defendant TAG FUND I, LLC


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Attorneys for Cross-Claimant/Third Party Plaintiff
FIRST AMERICAN EXCHANGE COMPANY, LLC

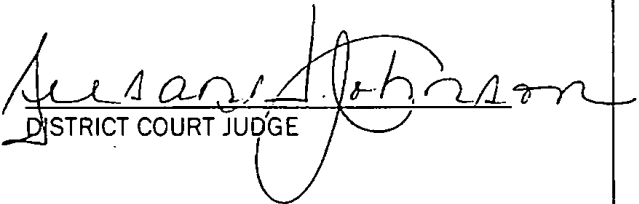
KEATING LAW GROUP
9130 W. RUSSELL RD., SUITE 200
LAS VEGAS, NEVADA 89148

HORIZON HOLDINGS 2900, LLC v. SHEA AT HORIZON RIDGE, ET AL.
SAO TO DISMISS CROSS-CLAIM AND THIRD-PARTY COMPLAINT
CASE NO. A-17-758435-C

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above entitled Cross-Claim and Third-Party Complaint be dismissed in their entirety, with prejudice, each party bearing its own attorney's fees, costs, and interest.

DATED this 20th day of March, 2018.


DISTRICT COURT JUDGE

Submitted by:

KEATING LAW GROUP

y.m

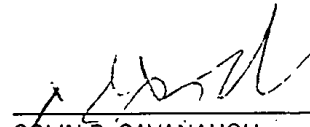

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Attorneys for Cross-Defendant
TAG HORIZON RIDGE, LLC and
Third Party Defendant TAG FUND I, LLC

Exhibit 13



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4 Telephone: (702) 990-7272
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Attorneys for Plaintiff
6 **HORIZON HOLDINGS 2900, LLC**

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **HORIZON HOLDINGS 2900, LLC, a Nevada**
11 **Limited Liability Company,**

12 **Plaintiff,**

13 **vs.**

14 **SHEA AT HORIZON RIDGE OWNERS**
15 **ASSOCIATION, a Domestic Non-Profit**
16 **Corporation; TAYLOR MANAGEMENT**
17 **ASSOCIATION, a Nevada Limited Liability**
18 **Company;**

19 **Defendants.**

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

HORIZON HOLDINGS 2900, LLC'S
SECOND AMENDED COMPLAINT

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

24 **THE PARTIES**

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

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

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

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

5 JURISDICTION AND VENUE

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

10 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

11 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

23 **THIRD CLAIM FOR RELIEF**

24 *(Declaratory Relief – Against the Association)*

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

27 ///

1 31. The Declaration, other governing documents and Nevada law obligate the Association
2 to ensure that Plaintiff receive an "undivided pro-rata fractional interest as tenant in common in the
3 common elements" and the "use and enjoyment of all other common elements," including but not
4 limited to the HVAC.

5 32. The Association, for itself or through Taylor, has refused to fulfill this obligation
6 because they have deemed it too costly, and/or because they incorrectly claim it is Plaintiffs'
7 responsibility.

8 33. Because the HVAC remains unrepaired as of the date of this Second Amended
9 Complaint, this issue is ripe for judicial determination.

10 34. Plaintiff seeks a determination from this Court that it is entitled to (i) an "undivided
11 pro-rata fractional interest as tenant in common in the common elements" and the "use and enjoyment
12 of all other common elements," including but not limited to the HVAC and (ii) have the Defendants
13 perform the maintenance and repairs guaranteed by the Declaration.

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

16 **FOURTH CLAIM FOR RELIEF**

17 *(Negligence against Taylor and the Association)*

18 36. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set
19 forth herein.

20 37. Defendants have a duty of care to Plaintiff to act on an informed basis, in good faith,
21 and in the honest belief that their actions are in the best interest of the Association.

22 38. Defendants breached their duty of care by failing to act to rectify the HVAC Shortfall,
23 opting instead for cheaper, but ineffective, solutions and by blaming the Plaintiff for a condition of a
24 Common Element.

25 39. As a result of Defendant's actions, Plaintiff has been forced to spend thousands of dollars
26 on repairs and expert opinions, and additional repairs, if even possible, are still required.

27 40. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in
28 an amount to be proved at trial but in excess of \$50,000.

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

3 **FIFTH CLAIM FOR RELIEF**

4 *(Negligent Undertaking against Taylor)*

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

7 43. Defendant Taylor operates as the management association for the Association.

8 44. Upon information and belief, Defendant Taylor has rendered services for consideration
9 on behalf of the Association.

10 45. These services, including managing the Association, have been necessary for the
11 protection of Plaintiff and the Property.

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

14 47. Plaintiff has thus been harmed in the amount of several thousand dollars for repair and
15 expert analysis and continues to occupy the Property the HVAC Shortfall because of its reliance upon
16 Taylor.

17 48. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in
18 an amount to be proved at trial but in excess of \$50,000.

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

21 ///

22 ///

23 ///

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

PRAYER FOR RELIEF

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

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

Dated this 28th day of November, 2018.

PEEL BRIMLEY LLP


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ezimbelman@peelbrimley.com
Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

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

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of November, 2018, I caused the above and foregoing document, **SECOND AMENDED COMPLAINT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

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

Shea at Horizon Ridge Owners Association:

Robert E. Schumacher, Esq. (rschumacher@grsm.com)
Cristina B. Pagaduan (cpagaduan@grsm.com)
Chelsey J. Holland (cjholland@grsm.com)
Sean Owens (sowens@grsm.com)
Andrea C. Montero (amontero@grsm.com)
Brian Walters (bwalters@grsm.com)

Taylor Management Association:

Brian Walters (bwalters@grsm.com)

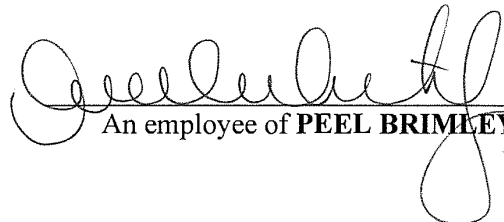
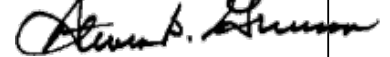

An employee of **PEEL BRIMLEY, LLP**

Exhibit 14



ANAC
ROBERT E. SCHUMACHER, ESQ.
Nevada State Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada State Bar No. 9711
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bwalters@grsm.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada	)	CASE NO. A-17-758435-C
Limited Liability Company;	)	DEPT. NO.: XXII
)	
Plaintiff,	)	DEFENDANT SHEA AT
	)	HORIZON RIDGE OWNERS
vs.	)	ASSOCIATION'S
	)	ANSWER TO SECOND
SHEA AT HORIZON RIDGE OWNERS	)	AMENDED COMPLAINT
ASSOCIATION, a Domestic Non-Profit)	
Corporation, TAYLOR MANAGEMENT)	
ASSOCIATION, a Nevada Limited-Liability)	
Company;)	
)	
Defendants.)	

Defendant, SHEA AT HORIZON RIDGE OWNERS ASSOCIATION ("Shea"), by and through their attorneys, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON REES SCULLY MANSUKHANI LLP, hereby submits its answer to Plaintiff, HORIZON HOLDINGS 2900, LLC's ("Plaintiff") Second Amended Complaint as follows:

THE PARTIES

1. Answering Paragraph 1 of the Second Amended Complaint, Shea admits the

1 allegations contained therein.

2 2. Answering Paragraph 2 of the Second Amended Complaint, Shea admits that it is
3 a domestic non-profit association and that Taylor is a domestic limited liability company. Shea
4 denies the remaining allegations.

5 **JURISDICTION AND VENUE**

6 3. Answering Paragraph 3 of the Second Amended Complaint, Shea states that the
7 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
8 not required. To the extent that an answer is required, Shea denies the allegations contained
9 therein.

10 **GENERAL ALLEGATIONS**

11 4. Answering Paragraph 4 of the Second Amended Complaint, Shea admits that
12 Plaintiff Horizon Holdings, 2900, LLC is the owner of the Property. Shea is without sufficient
13 knowledge or information to form a belief as to the truth or falsity of the remaining allegations
14 contained therein, and accordingly, those allegations are hereby denied.

15 5. Answering Paragraph 5 of the Second Amended Complaint, Shea states that the
16 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
17 not required. To the extent that an answer is required, Shea denies the allegations contained
18 therein.

19 6. Answering Paragraph 6 of the Second Amended Complaint, Shea denies the
20 allegations therein to the extent that Plaintiff has misquoted the Declaration. Shea otherwise
21 admits that the Declaration speaks for itself.

22 7. Answering Paragraphs 7, 8, 9, 10, 11 and 12 of the Second Amended Complaint,
23 Shea is without knowledge or information sufficient to form a belief as to the truth or veracity of
24 the allegations contained therein and therefore denies the same in their entirety.

25 8. Answering Paragraphs 13 of the Second Amended Complaint, Shea denies the
26 allegations contained therein.

27 9. Answering Paragraph 14 of the Second Amended Complaint, Shea is without
28

1 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
2 contained therein and therefore denies the same in their entirety.

3 10. Answering Paragraph 15 of the Second Amended Complaint, Shea is without
4 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
5 related to any determinations made by Plaintiff's expert and therefore denies the same in their
6 entirety. Shea denies the remaining allegations contained therein.

7 11. Answering Paragraph 16 of the Second Amended Complaint, Shea denies that
8 there is any "HVAC Shortfall." Shea is without knowledge or information sufficient to form a
9 belief as to the truth or veracity of the allegations related to actions allegedly taken by Plaintiff's
10 tenants and therefore denies the same in their entirety. Shea denies that Plaintiff is unable to
11 mitigate the issues it complains of without the support and cooperation of Shea and Taylor.

12 12. Answering Paragraph 17 of the Second Amended Complaint, Shea is without
13 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
14 contained therein and therefore denies the same in their entirety.

15 13. Answering Paragraphs 18 of the Second Amended Complaint, Shea denies the
16 allegations contained therein.

17 14. Answering Paragraph 19 of the Second Amended Complaint, Shea is without
18 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
19 contained therein and therefore denies the same in their entirety.

20 15. Answering Paragraphs 20 of the Second Amended Complaint, Shea denies the
21 allegations contained therein.

22 **FIRST CLAIM FOR RELIEF**
23 **(Breach of Contract -- Against the Association)**

24 16. Answering Paragraph 21 of the Second Amended Complaint, Shea repeats and
25 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
26 entirety

27 17. Answering Paragraph 22 of the Second Amended Complaint, Shea admits that
28 Plaintiff is entitled to the rights and privileges inuring to Plaintiff by way of the Declaration.

1 Shea denies the remaining allegations contained therein.

2 18. Answering Paragraphs 23 and 24 of the Second Amended Complaint, Shea denies
3 the allegations contained therein.

4 **SECOND CLAIM FOR RELIEF**
5 **(Breach of the Covenant of Good Faith and Fair Dealing -- Against the Association)**

6 19. Answering Paragraph 25 of the Second Amended Complaint, Shea repeats and
7 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
8 entirety.

9 20. Answering Paragraph 26 of the Second Amended Complaint, Shea states that the
10 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
11 not required. To the extent that an answer is required, Shea denies the allegations contained
12 therein.

13 21. Answering Paragraphs 27, 28 and 29 of the Second Amended Complaint, Shea
14 denies the allegations contained therein.

15 **THIRD CLAIM FOR RELIEF**
16 **(Declaratory Relief – Against the Association)**

17 22. Answering Paragraph 30 of the Second Amended Complaint, Shea repeats and
18 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
19 entirety.

20 23. Answering Paragraph 31 of the Second Amended Complaint, Shea states that the
21 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
22 not required. To the extent that an answer is required, Shea denies the allegations contained
23 therein.

24 24. Answering Paragraphs 32, 33 and 35 of the Second Amended Complaint, Shea
25 denies the allegations contained therein.

26 25. Answering Paragraph 34 of the Second Amended Complaint, Shea is without
27 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
28 contained therein and therefore denies the same in their entirety.

FOURTH CLAIM FOR RELIEF
(Negligence against Taylor and the Association)

26. Answering Paragraph 36 of the Second Amended Complaint, Shea repeats and realleges its answers to the preceding and succeeding paragraphs as though stated herein in their entirety.

27. Answering Paragraphs 37, 38, 39, 40 and 41 of the Second Amended Complaint, Shea denies the allegations contained therein.

FIFTH CLAIM FOR RELIEF
(Negligent Undertaking against Taylor)

28. Answering Paragraph 42 of the Second Amended Complaint, Shea repeats and realleges its answers to the preceding and succeeding paragraphs as though stated herein in their entirety.

29. Answering Paragraph 43 of the Second Amended Complaint, Shea admits the allegations contained therein.

30. Answering Paragraph 44 of the Second Amended Complaint, Shea states that the allegations contained therein assert and/or call for legal conclusions, and therefore an answer is not required. To the extent that an answer is required, Shea denies the allegations contained therein.

31. Answering Paragraphs 45, 46, 47, 48 and 49 of the Second Amended Complaint, Shea denies the allegations contained therein.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses in this case, Shea assert the following:

1. Plaintiff lacks standing to pursue the asserted claims.
2. Plaintiff is not the proper-party in interest.
3. Plaintiff has failed to state a claim upon which relief can be granted.
4. Plaintiff's claims for relief are not ripe.
5. Shea's acts and/or omissions, if any, were justified and privileged.
6. Plaintiff's claims for relief are barred by the statute of limitations and/or repose.

1 7. Plaintiff's claims for relief are barred by the doctrines of waiver, estoppel and
2 laches.

3 8. Shea engaged in no acts or omissions relevant to the subject matter of the
4 Complaint as would create any liability whatsoever on its part to Plaintiff.

5 9. The alleged damages, if any, which Plaintiff has suffered, are caused in whole or
6 in part by the acts or omissions of Plaintiff or its agents and representatives.

7 10. Plaintiff's claims are reduced, modified and/or barred by the doctrine of unclean
8 hands.

9 11. Plaintiff failed to mitigate its damages.

10 12. Plaintiff's damages, if any, were not factually, legally, or proximately caused by
11 Shea.

12 13. Plaintiff's claims for relief are barred by the failure of the occurrence of a
13 condition precedent.

14 14. Plaintiff's claims are barred by a failure of consideration.

15 15. Plaintiff has not suffered any damages.

16 16. Plaintiff purchased the subject property "as-is."

17 17. Plaintiff's harm, if any, is due to its own actions or by parties not within the
18 control of Shea.

19 18. Plaintiff's alleged damages were proximately caused or contributed to by the
20 intervening and superseding acts of other persons and/or entities acts.

21 19. Plaintiff's claimed damages were proximately caused or contributed to by the
22 negligence of persons and/or entities other than Shea in failing to exercise the proper care which
23 a prudent person under the same or similar circumstances would have exercised, and/or by the
24 wrongful acts of person and/or entities other than Shea.

25 20. Plaintiff is barred from recovery because Plaintiff and/or its agents, employees,
26 predecessors in interest, expressly or impliedly consented and agreed to Shea's alleged acts
27 and/or omissions.
28

21. Plaintiff's claims are barred by its own failure to exercise ordinary and reasonable care and diligence and such acts and omissions were the proximate cause of some or all of Plaintiff's damages, if any.

22. Plaintiff's claims are barred because Shea and/or its agent/representative substantially complied with NRS Chapter 116.

23. Shea denies each and every allegation of the Second Amended Complaint not specifically admitted or otherwise pled herein.

24. No justiciable controversy exists between Plaintiff and Shea.

25. Plaintiff's claims are barred by the economic loss doctrine.

26. Plaintiff's claims are barred by the voluntary payment doctrine.

27. Plaintiff is not entitled to equitable relief because it had an adequate remedy at law and failed to act.

28. Plaintiff's claims are barred by the business judgment rule.

29. Plaintiff is barred from recovering any special damages herein for failure to specifically allege the items of special damages claims, pursuant to FRCP 9.

30. Plaintiff's claims are barred because it failed to join a necessary and indispensable party.

31. Shea alleges that at all times it acted in good faith.

ANY OTHER MATTER CONSTITUTING AN AVOIDANCE
OR AFFIRMATIVE DEFENSE

Shea reserves their rights to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

PRAYER

Shea prays for the following:

1. That Plaintiff takes nothing by way of its Second Amended Complaint from Shea;
2. That Shea be dismissed in its entirety with prejudice;
3. That judgment be entered in favor of Shea;

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4. For attorneys' fees and costs of defending this action; and
5. For such other and further relief as this Court deems just and proper.

DATED this 21st day of February, 2019.

**GORDON REES SCULLY
MANSUKHANI LLP**

By: /s/ Brian K. Walters
ROBERT E. SCHUMACHER, ESQ.
Nevada State Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada State Bar No. 9711
300 South 4th Street, Suite 1550
Las Vegas, NV 89101
*Attorneys for Defendants,
Taylor Management Association and
Shea at Horizon Ridge Owners
Association*

CERTIFICATE OF SERVICE

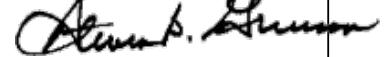
I HEREBY CERTIFY that on the 21st day of February 2019, I served a true and correct copy of **DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S ANSWER TO SECOND AMENDED COMPLAINT** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter as follows:

Eric Zimbelman, Esq.
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Email: ezimbelman@peelbrimley.com
Attorneys for Plaintiff,
HORIZON HOLDINGS 2900, LLC

/s/ Andrea Montero

An employee of GORDON REES SCULLY
MANSUKHANI, LLP

Exhibit 15



1 **ANAC**
2 ROBERT E. SCHUMACHER, ESQ.
3 Nevada State Bar No. 7504
4 BRIAN K. WALTERS, ESQ.
5 Nevada State Bar No. 9711
6 **GORDON REES SCULLY MANSUKHANI, LLP**
7 300 South 4th Street, Suite 1550
8 Las Vegas, NV 89101
9 Telephone: (702) 577-9319
10 Facsimile: (702) 255-2858
11 Email: rschumacher@grsm.com
12 bwalters@grsm.com

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

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 HORIZON HOLDINGS 2900, LLC, a Nevada
18 Limited Liability Company;

19 Plaintiff,

20 vs.

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

26 Defendants.

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

) **DEFENDANT TAYLOR**
) **MANAGEMENT ASSOCIATION'S**
) **ANSWER TO SECOND**
) **AMENDED COMPLAINT**

27 Defendant TAYLOR MANAGEMENT ASSOCIATION ("TMA"), by and through its
28 attorneys, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON
REES SCULLY MANSUKHANI LLP, hereby submits its answer to Plaintiff, HORIZON
HOLDINGS 2900, LLC's ("Plaintiff") Second Amended Complaint as follows:

THE PARTIES

1. Answering Paragraph 1 of the Second Amended Complaint, TMA admits the

1 allegations contained therein.

2 2. Answering Paragraph 2 of the Second Amended Complaint, TMA admits that it is
3 a domestic limited liability company and that Shea is a domestic non-profit association. TMA
4 denies the remaining allegations.

5 **JURISDICTION AND VENUE**

6 3. Answering Paragraph 3 of the Second Amended Complaint, TMA states that the
7 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
8 not required. To the extent that an answer is required, TMA denies the allegations contained
9 therein.

10 **GENERAL ALLEGATIONS**

11 4. Answering Paragraph 4 of the Second Amended Complaint, TMA admits that
12 Plaintiff Horizon Holdings, 2900, LLC is the owner of the Property. TMA is without sufficient
13 knowledge or information to form a belief as to the truth or falsity of the remaining allegations
14 contained therein, and accordingly, those allegations are hereby denied.

15 5. Answering Paragraph 5 of the Second Amended Complaint, TMA states that the
16 allegations contained therein assert and/or call for legal conclusions, and therefore an answer is
17 not required. To the extent that an answer is required, TMA denies the allegations contained
18 therein.

19 6. Answering Paragraph 6 of the Second Amended Complaint, TMA denies the
20 allegations therein to the extent that Plaintiff has misquoted the Declaration. TMA otherwise
21 admits that the Declaration speaks for itself.

22 7. Answering Paragraphs 7, 8, 9, 10, 11 and 12 of the Second Amended Complaint,
23 TMA is without knowledge or information sufficient to form a belief as to the truth or veracity of
24 the allegations contained therein and therefore denies the same in their entirety.

25 8. Answering Paragraphs 13 of the Second Amended Complaint, TMA denies the
26 allegations contained therein.

27 9. Answering Paragraph 14 of the Second Amended Complaint, TMA is without
28

1 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
2 contained therein and therefore denies the same in their entirety.

3 10. Answering Paragraph 15 of the Second Amended Complaint, TMA is without
4 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
5 related to any determinations made by Plaintiff's expert and therefore denies the same in their
6 entirety. TMA denies the remaining allegations contained therein.

7 11. Answering Paragraph 16 of the Second Amended Complaint, TMA denies that
8 Plaintiff is unable to mitigate the issues it complains of without the support and cooperation of
9 Taylor. TMA is without knowledge or information sufficient to form a belief as to the truth or
10 veracity of the remaining allegations contained therein and therefore denies the same in their
11 entirety.

12 12. Answering Paragraph 17 of the Second Amended Complaint, TMA is without
13 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
14 contained therein and therefore denies the same in their entirety.

15 13. Answering Paragraph 18 of the Second Amended Complaint, TMA denies the
16 allegations contained therein.

17 14. Answering Paragraph 19 of the Second Amended Complaint, TMA is without
18 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
19 contained therein and therefore denies the same in their entirety.

20 15. Answering Paragraphs 20 of the Second Amended Complaint, TMA denies the
21 allegations contained therein.

22 **FIRST CLAIM FOR RELIEF**
23 **(Breach of Contract -- Against the Association)**

24 16. Answering Paragraph 21 of the Second Amended Complaint, TMA repeats and
25 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
26 entirety

27 17. Answering Paragraphs 22, 23, and 24 of the Second Amended Complaint, this
28 cause of action is not alleged against Taylor. To the extent that an answer is required, TMA

1 denies the allegations contained therein.

2 **SECOND CLAIM FOR RELIEF**
3 **(Breach of the Covenant of Good Faith and Fair Dealing -- Against the Association)**

4 18. Answering Paragraph 25 of the Second Amended Complaint, TMA repeats and
5 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
6 entirety.

7 19. Answering Paragraphs 26, 27, 28 and 29 of the Second Amended Complaint, this
8 cause of action is not alleged against TMA. To the extent that an answer is required, TMA
9 denies the allegations contained therein.

10 **THIRD CLAIM FOR RELIEF**
11 **(Declaratory Relief – Against the Association)**

12 20. Answering Paragraph 30 of the Second Amended Complaint, TMA repeats and
13 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
14 entirety.

15 21. Answering Paragraphs 31, 32, 33, 34 and 35 of the Second Amended Complaint,
16 this cause of action is not alleged against TMA. To the extent that an answer is required, TMA
17 denies the allegations contained therein.

18 **FOURTH CLAIM FOR RELIEF**
19 **(Negligence against Taylor and the Association)**

20 22. Answering Paragraph 36 of the Second Amended Complaint, TMA repeats and
21 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
22 entirety.

23 23. Answering Paragraphs 37, 38, 39, 40 and 41 of the Second Amended Complaint,
24 TMA denies the allegations contained therein.

25 **FIFTH CLAIM FOR RELIEF**
26 **(Negligent Undertaking against Taylor)**

27 24. Answering Paragraph 42 of the Second Amended Complaint, TMA repeats and
28 realleges its answers to the preceding and succeeding paragraphs as though stated herein in their
entirety.

25. Answering Paragraph 43 of the Second Amended Complaint, TMA admits the allegations contained therein.

26. Answering Paragraph 44 of the Second Amended Complaint, TMA states that the allegations contained therein assert and/or call for legal conclusions, and therefore an answer is not required. To the extent that an answer is required, TMA denies the allegations contained therein.

27. Answering Paragraphs 45, 46, 47, 48 and 49 of the Second Amended Complaint, TMA denies the allegations contained therein.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses in this case, TMA assert the following:

1. Plaintiff lacks standing to pursue the asserted claims.
2. Plaintiff is not the proper-party in interest.
3. Plaintiff has failed to state a claim upon which relief can be granted.
4. Plaintiff's claims for relief are not ripe.
5. TMA's acts and/or omissions, if any, were justified and privileged.
6. Plaintiff's claims for relief are barred by the statute of limitations and/or repose.
7. Plaintiff's claims for relief are barred by the doctrines of waiver, estoppel and laches.
8. TMA engaged in no acts or omissions relevant to the subject matter of the Second Amended Complaint as would create any liability whatsoever on its part to Plaintiff.
9. The alleged damages, if any, which Plaintiff has suffered, are caused in whole or in part by the acts or omissions of Plaintiff or its agents and representatives.
10. Plaintiff's claims are reduced, modified and/or barred by the doctrine of unclean hands.
11. Plaintiff failed to mitigate its damages.
12. Plaintiff's damages, if any, were not factually, legally, or proximately caused by TMA.

1 13. Plaintiff's claims for relief are barred by the failure of the occurrence of a
2 condition precedent.

3 14. Plaintiff's claims are barred by a failure of consideration.

4 15. Plaintiff has not suffered any damages.

5 16. Plaintiff's harm, if any, is due to its own actions or by parties not within the
6 control of TMA.

7 17. Plaintiff's alleged damages were proximately caused or contributed to by the
8 intervening and superseding acts of other persons and/or entities acts.

9 18. Plaintiff's claimed damages were proximately caused or contributed to by the
10 negligence of persons and/or entities other than TMA in failing to exercise the proper care which
11 a prudent person under the same or similar circumstances would have exercised, and/or by the
12 wrongful acts of person and/or entities other than TMA.

13 19. Plaintiff is barred from recovery because Plaintiff and/or its agents, employees,
14 predecessors in interest, expressly or impliedly consented and agreed to TMA's alleged acts
15 and/or omissions.

16 20. Plaintiff's claims are barred by its own failure to exercise ordinary and reasonable
17 care and diligence and such acts and omissions were the proximate cause of some or all of
18 Plaintiff's damages, if any.

19 21. Plaintiff's claims are barred because TMA and/or its agent/representative
20 substantially complied with NRS Chapter 116.

21 22. TMA denies each and every allegation of the Second Amended Complaint not
22 specifically admitted or otherwise pled herein.

23 23. No justiciable controversy exists between Plaintiff and TMA.

24 24. TMA owes no duty to Plaintiff.

25 25. Plaintiff's claims are barred by the economic loss doctrine.

26 26. Plaintiff's claims are barred by the voluntary payment doctrine.

27 27. Plaintiff is not entitled to equitable relief because it had an adequate remedy at
28

1 law and failed to act.

2 28. Plaintiff purchased the subject property “as-is.”

3 29. Plaintiff is barred from recovering any special damages herein for failure to
4 specifically allege the items of special damages claims, pursuant to NRCP 9.

5 30. Plaintiff’s claims are barred because it failed to join a necessary and indispensable
6 party.

7 31. TMA alleges that at all times it acted in good faith.

8 **ANY OTHER MATTER CONSTITUTING AN AVOIDANCE**

9 **OR AFFIRMATIVE DEFENSE**

10 TMA reserves its rights to assert additional affirmative defenses in the event discovery
11 indicates that additional affirmative defenses would be appropriate.

12 **PRAYER**

13 TMA prays for the following:

14 1. That Plaintiff takes nothing by way of its Second Amended Complaint from
15 TMA;

16 2. That TMA be dismissed in its entirety with prejudice;

17 3. That judgment be entered in favor of TMA;

18 4. For attorneys’ fees and costs of defending this action; and

19 5. For such other and further relief as this Court deems just and proper.

20 DATED this 21st day of February, 2019.

21 **GORDON REES SCULLY
MANSUKHANI LLP**

22 By: /s/ Brian K. Walters

23 ROBERT E. SCHUMACHER, ESQ.
Nevada State Bar No. 7504

24 BRIAN K. WALTERS, ESQ.

25 Nevada State Bar No. 9711

300 South 4th Street, Suite 1550

Las Vegas, NV 89101

26 *Attorneys for Defendants,*

27 *Taylor Management Association and*

Shea at Horizon Ridge Owners

28 *Association*

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

CERTIFICATE OF SERVICE

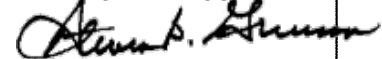
I HEREBY CERTIFY that on the 21st day of February 2019, I served a true and correct copy of **DEFENDANT TAYLOR MANAGEMENT ASSOCIATION'S ANSWER TO SECOND AMENDED COMPLAINT** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter as follows:

Eric Zimbelman, Esq.
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Email: ezimbelman@peelbrimley.com
Attorneys for Plaintiff,
HORIZON HOLDINGS 2900, LLC

/s/ Andrea Montero

An employee of GORDON REES SCULLY
MANSUKHANI, LLP

Exhibit 16



ORDER

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

GORDON & REES SCULLY MANSUKHANI LLP

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Email: rschumacher@grsm.com

bwalters@grsm.com

Attorneys for Defendants

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' SHEA AT
HORIZON RIDGE OWNERS
ASSOCIATION AND TAYLOR
ASSOCIATION MANAGEMENT'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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

On January 21, 2020, a hearing was conducted in Dept. XXII before the Hon. Susan

Johnson on Defendants Taylor Association Management (erroneously named as "TAYLOR

MANAGEMENT ASSOCIATION) and Defendant Shea at Horizon Ridge Owners' Association

("Association") (collectively, "Defendants") Motion for Partial Summary Judgment ("Motion").

Brian K. Walters, Esq. of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf

of Defendants. Eric Zimbelman, Esq. of PEEL BRIMLEY, LLP appeared on behalf of Plaintiff

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

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

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

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

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

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

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

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

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

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

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

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

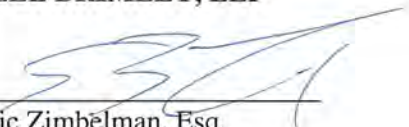
2 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants'
3 Motion for Partial Summary Judgment is denied without prejudice as it relates to Defendants'
4 Eleventh Affirmative Defense ("Plaintiff failed to mitigate its damages."). Defendants may
5 renew the Motion under NRCP 52(c) at the close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

6 DATED this 31st day of January, 2020

7
8 
9 DISTRICT COURT JUDGE

10 *Approved as to form and content:*

11 **PEEL BRIMLEY, LLP**

12 
13 Eric Zimbelman, Esq.
14 *Attorneys for Plaintiff*
15 *Horizon Holdings 2900, LLC*

16 *Respectfully submitted by:*

17 **GORDON REES SCULLY**
18 **MANSUKHANI, LLC**

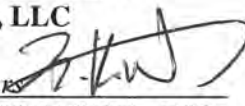
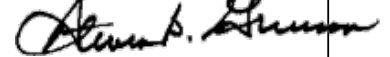
19 
20 */s/ Brian K. Walters*
21 ROBERT E. SCHUMACHER, ESQ.
22 Nevada Bar No. 7504
23 BRIAN K. WALTERS, ESQ.
24 Nevada Bar No. 9711
25 300 South 4th Street, Suite 1550
26 Las Vegas, Nevada 89101
27 *Attorneys for Defendants,*
28 *Taylor Association Management,*
and Shea at Horizon Ridge Owners' Association

Exhibit 17

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

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2/4/2020 2:53 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NEO**
2 ROBERT E. SCHUMACHER, ESQ.
3 Nevada Bar No. 7504
4 BRIAN K. WALTERS, ESQ.
5 Nevada Bar No. 9711
6 **GORDON & REES SCULLY MANSUKHANI LLP**
7 300 South 4th Street, Suite 1550
8 Las Vegas, NV 89101
9 Telephone: (702) 577-9339
10 Facsimile: (702) 255-2858
11 Email: rschumacher@grsm.com
12 bwalters@grsm.com

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

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

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

20 Plaintiff,

21 vs.

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

Defendants.

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

) **NOTICE OF ENTRY OF ORDER**
) **GRANTING IN PART AND**
) **DENYING IN PART**
) **DEFENDANTS' SHEA AT**
) **HORIZON RIDGE OWNERS**
) **ASSOCIATION AND TAYLOR**
) **ASSOCIATION MANAGEMENT'S**
) **MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**

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

1 **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART**
2 **DEFENDANTS' SHEA AT HORIZON RIDGE OWNERS ASSOCIATION AND**
3 **TAYLOR ASSOCIATION MANAGEMENT'S MOTION FOR PARTIAL SUMMARY**
4 **JUDGMENT**

5 PLEASE TAKE NOTICE that on February 4, 2020, an **ORDER GRANTING IN PART**
6 **AND DENYING IN PART DEFENDANTS' SHEA AT HORIZON RIDGE OWNERS**
7 **ASSOCIATION AND TAYLOR ASSOCIATION MANAGEMENT'S MOTION FOR**
8 **PARTIAL SUMMARY JUDGMENT** was entered in the above-entitled matter, a copy of
9 which is attached hereto as **Exhibit "1."**

10 DATED this 4th day of February 2020.

11 **GORDON REES SCULLY**
12 **MANSUKHANI LLP**

13 /s/ Brian K. Walters

14 ROBERT E. SCHUMACHER, ESQ.

15 Nevada Bar No. 7504

16 BRIAN K. WALTERS, ESQ.

17 Nevada Bar No. 9711

18 300 South 4th Street, Suite 1550

19 Las Vegas, NV 89101

20 ***Attorneys for Defendants,***

21 ***SHEA AT HORIZON RIDGE OWNERS***

22 ***ASSOCIATION AND TAYLOR***

23 ***MANAGEMENT ASSOCIATION***

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February 2020, I served a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' SHEA AT HORIZON RIDGE OWNERS ASSOCIATION AND TAYLOR ASSOCIATION MANAGEMENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** via the Court's Electronic Filing/Service system upon all parties on the E-Service Master List as follows:

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

/s/ Andrea Montero

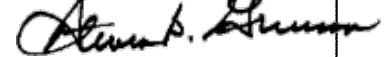
An employee of GORDON REES SCULLY
MANSUKHANI LLP

EXHIBIT 1

EXHIBIT 1

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

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2/4/2020 2:04 PM
Steven D. Grierson
CLERK OF THE COURT



ORDER

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

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Email: rschumacher@grsm.com

bwalters@grsm.com

Attorneys for Defendants

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

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

**ORDER GRANTING IN PART
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Brian K. Walters, Esq. of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf

of Defendants. Eric Zimbelman, Esq. of PEEL BRIMLEY, LLP appeared on behalf of Plaintiff

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3 arguments of counsel during the hearing, and for good cause appearing:

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5 as to Plaintiff's Fourth Claim for Relief (Negligence) and Fifth Claim for Relief (Negligent
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20 Defendants' affirmative defense that Plaintiff failed to mitigate its damages;

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Gordon Rees Scully Mansukhani, LLP
300 S. 4th Street, Suite 1550
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3 Motion for Partial Summary Judgment is denied without prejudice as it relates to Defendants'
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5 renew the Motion under NRCP 52(c) at the close of Plaintiff's case in chief.

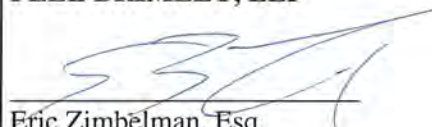
6 DATED this 31st day of January, 2020

7
8 
9 DISTRICT COURT JUDGE

10 *Approved as to form and content:*

A-17-758435-C
by

11 **PEEL BRIMLEY, LLP**

12
13 
14 Eric Zimbelman, Esq.
15 *Attorneys for Plaintiff*
16 *Horizon Holdings 2900, LLC*

17 *Respectfully submitted by:*

18 **GORDON REES SCULLY**
19 **MANSUKHANI, LLC**

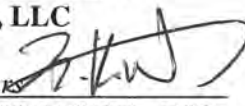
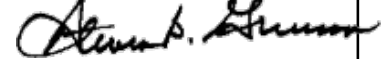
20 
21 */s/ Brian K. Walters*
22 ROBERT E. SCHUMACHER, ESQ.
23 Nevada Bar No. 7504
24 BRIAN K. WALTERS, ESQ.
25 Nevada Bar No. 9711
26 300 South 4th Street, Suite 1550
27 Las Vegas, Nevada 89101
28 *Attorneys for Defendants,*
Taylor Association Management,
and Shea at Horizon Ridge Owners' Association

Exhibit 18



1 FFCL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

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

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

7 Plaintiff,

8 Vs.

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

14 Defendants.

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

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

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

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

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

1 of the witnesses, DON L. GIFFORD, MATT LUBAWY, STEPHEN BURFORD, HARVEY IRBY,
2 STACY RIVERA, WITHOLD IGLIKOWSKI, ROXANNA NORRIS, LAURA WAALKS,
3 MARVIN BRYAN, MARK KAPETANSKY, CATHERINE JORDAN, NATHAN HILL,³
4 WILLIAM BIRD, GARY BORDERS and MARISSA CHIEN, as well as the oral statements and
5 arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:
6

7 **FINDINGS OF FACT**

8 1. This case arises as a result of alleged deficiencies Plaintiff HORIZON HOLDINGS
9 2900, LLC has experienced with the heating, ventilation and air conditioning (also referred to as
10 "HVAC" herein) system within its approximate 5,200 square-foot condominium office space
11 purchased in 2015 and located within Defendant SHEA AT HORIZON RIDGE OWNERS'
12 ASSOCIATION'S (also referred to as the "ASSOCIATION" herein) common-interest community.
13 Specifically, Plaintiff claims the building's HVAC system does not direct sufficient air to its unit,
14 whereby 2,500 square feet of its office space is unbearably hot and unusable in the warmer months.
15 More specifically, Plaintiff alleges the office suite suffers a massive six-ton shortfall of cool air as
16 the ASSOCIATION'S HVAC system is not properly balanced. Stating the issue differently,
17 Plaintiff avers its office suite is not receiving its *pro rata* share of the cooler air. As a consequence,
18 HORIZON HOLDINGS 2900, LLC alleges it has endured over \$225,000.00 in lost rents and
19 approximately \$800,000.00 decrease in the property's fair market value. By way of its Second
20 Amended Complaint filed November 28, 2018, Plaintiff HORIZON HOLDINGS 2900, LLC
21 asserted the following causes of action against Defendants SHEA AT HORIZON RIDGE
22 OWNERS' ASSOCIATION and TAYLOR MANAGEMENT ASSOCIATION:
23
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27
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³MR. HILL testified only in the hearing held pursuant to Rule 37 of the Nevada Rules of Civil Procedure (NRCP). MR. BRYAN testified at both the NRCP 37 hearing and the non-jury trial.

- 1 (1) Breach of contract against the ASSOCIATION;
- 2 (2) Breach of covenant of good faith and fair dealing against the ASSOCIATION;
- 3 (3) Declaratory relief against the ASSOCIATION;
- 4 (4) Negligence against both the ASSOCIATION and TAYLOR ASSOCIATION
- 5 MANAGEMENT (also referred to as "TAM" herein); and
- 6 (5) Negligent undertaking against TAM.

7
8 The Fourth and Fifth Causes of Action asserting negligence and negligent undertaking against the
9 ASSOCIATION and TAM were dismissed by way of summary judgment issued February 4, 2020
10 which was unopposed by HORIZON HOLDINGS 2900, LLC. The causes of action addressed in
11 the trial before the Court were solely the first three lodged against the ASSOCIATION. The
12 following facts were adduced at trial:

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

20
21 3. The CC&Rs set forth the Declarant's intention to develop and convey commercial
22 office subdivision units within the Project pursuant to the general plan. The Project was restricted

23 ...

24 ...

25
26
27 ⁴The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge
28 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will
be identified as 2900 and 2904 herein. It is noted here, however, at the trial, the parties did refer to the 2900 Building as
"Building 1" and the 2904 Building as "Building 2."

⁵See Joint Trial Exhibit 1 admitted into evidence.

1 exclusively to non-residential use, and, according to the CC&Rs and pursuant to NRS
2 116.1201(2)(b), the Declaration and Project was not subject to NRS Chapter 116.⁶

3 4. At all times pertinent herein, DON GREIG, GARY BORDERS and MARISSA
4 CHIEN⁷ were owners of commercial suites within the common-interest community and members of
5 the ASSOCIATION'S Board of Directors with the latter two filling the offices of President and
6 Secretary/Treasurer,⁸ respectively. MR. BORDERS testified at trial he was the first owner to build
7 out his approximate 7,500 square-foot commercial space located on the second floor or Suite 200 of
8 the 2900 Building in 2005.⁹ When doing so, he retained a designer who created the place for work
9 in terms of space planning and placement of offices. Of note, MR. BORDERS testified, at the time
10 of his build-out, he had to change the HVAC ducting as it did not meet what he was constructing.
11 He sought and acquired Board approval to change the ducts pursuant to the CC&Rs' Section 2.10,
12 and further, to install a stand-alone HVAC unit on the roof to cool the 140 square-foot room housing
13 his computer server.¹⁰ This stand-alone HVAC unit exclusively services Suite 200 and is MR.
14 BORDER'S sole responsibility to maintain, unlike the ASSOCIATION'S concern for two 60-ton
15 roof-top units (also referred to as "RTUs" herein) serving the entire building's common elements
16 and owners' suites.
17

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

24 ⁶*Id.*

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

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

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

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

1 purchase/sale closed in February 2015.¹¹ CATHERINE JORDAN is the managing member and
2 principal of HORIZON HOLDINGS 2900, LLC. The offices were leased by Plaintiff, as the holding
3 company, to QUALITY NURSING, LLC, PHYSICIANS TO HOME and JORDAN MEDICAL,¹²
4 all three limited liability companies of which MS. JORDAN is and was the principal and managing
5 member. At or near time of purchase, MS. JORDAN entered into a Fixed Price Agreement with
6 RYCON CONSTRUCTION, LLC to convert the then existing offices to medical suites at a total
7 cost of \$177,679.00.¹³ Such conversion or “tenant improvements” (also referred to as “TIs” herein)
8 involved the removal of walls existing between two and three smaller offices to create larger offices
9 and medical suites. MARVIN BRYAN of RYCON CONSTRUCTION, LLC testified he also
10 arranged the installation of a dryer vent and exhaust fan, the replacement of a damaged thermostat
11 and addition of a 220 volt for washer/dryer and plumbing as the anticipated medical suites needed
12 running water and drainage.¹⁴ The general contractor’s scope of work also included painting and
13 installing other aesthetics such as flooring.¹⁵ MR. BRYAN testified, while the build-out involved
14 new framing, he did not raise or lower the ceiling. Other than the repair of the damaged thermostat,
15 MR. BRYAN testified RYCON CONSTRUCTION, LLC performed no HVAC work.
16
17

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

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

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

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

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

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

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

4 7. In March 2015, the ASSOCIATION arranged for its then preferred HVAC vendor,
5 STEVE BURFORD of CORPORATE AIR MECHANICAL SYSTEMS, INC. (also referred to as
6 "CAMS" herein), to repair leaks and duct separation within the common elements. The York
7 communication board on the RTU was repaired and interconnected with the computerized Building
8 Management System (also referred to as "BMS" herein). As reported by MR. BURFORD in e-mail:
9 "Schneider¹⁶ was able to re-add the unit to the BMS and it is working again."¹⁷ While it was
10 completing its TI improvements within Plaintiff's office suite in May 2015, RYCON
11 CONSTRUCTION, LLC contracted with CAMS to install four (4) Schneider Electric wall sensors at
12 a cost of \$760.00.¹⁸ According to MR. BURFORD, the work was performed and everything was
13 working correctly. MR. BURFORD also testified he did look at some of the VAVs in Plaintiff's
14 unit, but he did not inspect all. He noted, by this time, the ASSOCIATION had upgraded its
15 buildings' air control system software and the owners needed to upgrade their VAVs to
16 communicate with the new system.
17
18

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

22 ...
23
24

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

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

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

1 mitigate the heat coming into the offices. Such blinds were described by MS. JORDAN in her
2 testimony as that company's "best sun filtration" at a total cost of \$8,385.89.¹⁹

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

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

22
23
24
25 ¹⁹See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted
into evidence.

26 ²⁰See Joint Trial Exhibit 4.

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

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

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

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

6 Hi Catherine,

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

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

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

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

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

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

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

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

26
27 ²³See Defendant's Trial Exhibit 587, PRIME HVAC, LLC's Service Proposal 15-103, admitted into evidence.

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

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

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

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

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

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

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

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

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

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

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

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

23 ...
24
25

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

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

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

5 14. In late August/early September 2015, MS. JORDAN retained PRIME HVAC, LLC to
6 perform work in Plaintiff’s office suite for the bid of \$2,587.00. As indicated within an Invoice sent
7 to MS. JORDAN on September 9, 2015,²⁸ the following work took place:
8

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

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

²⁷*Id.*

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

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

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

4 Hi Catherine,

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

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

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

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

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

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

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

³²See Joint Trial Exhibit 7.

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

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

7 Matt:

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

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

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

26 ³³*Id.*

27 ³⁴*Id.*

28 ³⁵*Id.*

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

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

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

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

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

22 Good morning all,

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

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

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

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

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

7 22. A few days later, on or about November 4, 2015, MS. JORDAN acquired a bid from
8 PRIME VAC, LLC to replace six VAVs at a cost of \$4,500.00.³⁹ On November 26, 2015, MR.
9 KAPETANSKY of PRIME HVAC, LLC wrote MS. JORDAN with courtesy copies to MR. GREIG,
10 MR. ANGELL and MS. CHIEN:

11 Hi Catherine,

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

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

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

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

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

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

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

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

19 23. On May 20, 2016, TAM provided notice to CAMS the ASSOCIATION was
20 cancelling its contract for services as of June 30, 2016.⁴¹ PRIME HVAC, LLC, who MS. JORDAN
21 initially hired as her HVAC contractor, was retained by the ASSOCIATION as one of its preferred
22 vendors.

23 24. The evidence presented indicates there were no complaints by MS. JORDAN,
24 HORIZON HOLDINGS 2900, LLC, its tenants or employees from December 2015 until early June
25 2016.⁴² On June 8, 2016, MS. JORDAN wrote MS. FREEMAN, the e-mail of which was copied
26 and sent to ASSOCIATION Board members: “The temperature in my office is 76 today and was 78
27 all evening yesterday. I am still waiting on the AC schedule I requested yesterday. Can you tell me
28 when these issues will be addressed?”⁴³ MS. FREEMAN responded the following day:

...

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

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

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

⁴³*Id.*

1 Hi Catherine,

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

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

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

10 Folks,

11 Each owner operates a unique business with varying needs.

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

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

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

23 Stephanie

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

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

⁴⁵See Joint Trial Exhibit 34.

⁴⁶*Id.*

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

6 MS. FREEMAN responded that day:

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

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

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

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

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

24 Ok everyone,

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

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

⁴⁷See Plaintiff's Trial Exhibit 103.

⁴⁸*Id.*

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

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

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

15 26. MS. JORDAN'S next communication concerning HVAC issues was October 20,
16 2015.⁵⁰

17 Dear Stephanie

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

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

25 Hi all,

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

32 ⁴⁹*Id.*

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

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

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

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

7 Lori

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

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

20 Good morning,

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

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

⁵²*Id.*

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

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

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

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

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

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

20
21 29. MS. JORDAN retained the services of an electrical contractor, DON L. GIFFORD of
22 GIFFORD CONSULTING GROUP (also referred to as "GCG" within the evidence), and HARVEY
23 H. IRBY, P.E. in or about March 2017 to evaluate and analyze the HVAC system in the 2900
24 Building and particularly Suite 101. Both MR. GIFFORD and MR. IRBY eventually were retained
25 as Plaintiff's electrical and mechanical engineering experts in this litigation. The parties stipulated
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28 ⁵⁴See Defendant's Trial Exhibit 607, MR. KAPETANSKY'S e-mail to MS. JORDAN dated January 18, 2017,
admitted into evidence.

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

27 ⁵⁶*Id.*, p. 4.

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

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

5 **30.** WILLIAM BIRD, an expert in HVAC and plumbing, testified on behalf of the
6 ASSOCIATION. He was retained to review the report authored by MR. GIFFORD and MR. IRBY.
7 He was not provided any documents, such as mechanical engineering and other building plans, for
8 the 2900 Building. He testified there had to be existing plans as one could not acquire a permit
9 without the submission of plans. He would not have rendered an opinion using plans of a different
10 building. Further, he did not know how MR. GIFFORD reached the conclusion there was a 6-ton
11 shortfall when neither he nor MR. IRBY did a design. MR. BIRD also was critical of MR. IRBY'S
12 position Plaintiff's suite was a "standard office," and the fact MR. GIFFORD inputted information
13 for standard office space when conducting load calculations using a HAP⁵⁸ software program, a tool
14 used by engineers to estimate loads and design HVAC systems. In MR. BIRD'S view, Plaintiff's
15 unit is not a standard office; it houses several employees and patients, and consist of medical suites
16 with examination rooms and equipment, such as EKGs, all of which generate heat.⁵⁹ In short,
17 Plaintiff's suite has different loads than a typical office. MR. BIRD further opined the existing duct
18 work should have been moved during the TI renovation if Plaintiff had intended to change the
19 previous office space to medical suites. In addition, the server room housing Plaintiff's computers
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24 received only that for the 2904 Building, although some mechanical engineering drawings for the 2900 Building were
25 contained in the city's file for 2904. No other efforts were made during the course of discovery by the Plaintiff to
26 acquire plans for the 2900 Building. Defense counsel subpoenaed the 2900 Building plans and received those for the
27 2904 Building. During the course of the trial, it became apparent Plaintiff and its experts were relying upon 2904
28 Building plans as those relating to the 2900 Building could not be found. MR. BRYAN of RYCON CONSTRUCTION,
LLC, a witness to the litigation, went to the City of Henderson Building Department as he had received a telephone call
from MS. JORDAN there was some confusion regarding the plans.

⁵⁸ "HAP" is the acronym for "hourly analysis program."

⁵⁹ "EKGs" is the acronym for "electrocardiograms."

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

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

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

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

⁶²*Id.*

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

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

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

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

15 **CONCLUSIONS OF LAW**

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

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

23 2. In this case, HORIZON HOLDINGS 2900, LLC asserts a "breach of contract" claim
24 against the ASSOCIATION, arguing it is entitled to certain rights and privileges by way of the
25 Declaration or CC&Rs, including but not limited to the full benefit of all common elements,
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⁶³*Id.*

1 “including the cool air provided by the HVAC.” Such is being refused by the ASSOCIATION,
2 resulting in breach and causing Plaintiff to suffer damages.⁶⁴ While, by the terms of the CC&Rs,
3 NRS Chapter 116 does not apply as the Project is a commercial or non-residential common-interest
4 community, this chapter’s statutory scheme nevertheless is instructive in determining whether
5 CC&Rs here impose contractual obligations between HORIZON HOLDINGS 2900, LLC and the
6 ASSOCIATION.
7

8 3. NRS 116.2101 permits the creation of a common-interest community “by recording a
9 declaration executed in the same manner as a deed and, in a cooperative, by conveying the real
10 estate subject to that declaration to the association.” A declaration must contain a number of
11 required statements⁶⁵ and “may contain any other matters the declaration considers appropriate.”
12 NRS 116.2105(2). “CC&Rs become a part of the title to property.” NRS 116.41095(2). By law, a
13 person who buys a home subject to CC&Rs must receive as information statement warning “[b]y
14 purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your
15 lifestyle and freedom of choice” and the CC&Rs “bind you and every future owner of the property
16 whether or not you have read them or had them explained to you.” *Id.* The statement must further
17 advise the prospective home buyer “[t]he law generally provides for a 5-day period in which you
18 have the right to cancel the purchase agreement.” NRS 116.41095(1).
19
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21 4. The proposition CC&Rs create contractual obligations, in addition to imposing
22 equitable servitudes, is widely accepted. U.S. Home Corporation v. Michael Ballesteros Trust, 134
23 Nev. 180, 183, 415 P.3d 32, 36 (2018), *citing* Restatement (Third) of the Law of Property:
24 Servitudes, ch. 4 intro. Note (Am. Law Inst. 2000) (“one of the basic principles underlying the
25 Restatement is that the function of the law is to ascertain and give effect to the likely intentions and
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27
28 ⁶⁴*Id.*

⁶⁵*See* NRS 116.2105(1).

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

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

11
12 6. A breach of contract occurs where a party does not perform a duty arising under the
13 agreement, and such failure is material. *See* Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d
14 1259, 1263 (2000), *reversed on other grounds*, Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

15
16 7. As pertinent to this case, the CC&Rs’ Article I entitled “Definitions” specifically
17 defines certain verbiage. Section 1.11 defined “Common Elements” as:

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

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⁶⁶ *Also see* CC&Rs’ Section 16.1: “The covenants and restrictions of this Declaration shall run with and bind the
Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this
Declaration, their respective legal representatives, successor Owners and assigns.”

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

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

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

11 “HVAC” is defined in Section 1.19 as:

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

15 “Unit” is defined in Section 1.34 as:

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

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

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

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

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

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

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

16 11. In this case, HORIZON HOLDINGS 2900, LLC claims it suffered loss of rents and
17 property value as the ASSOCIATION has refused or failed to abide by its responsibility under the
18 CC&Rs to provide Plaintiff its *pro rata* share of the cooler air. Plaintiff's position is based upon the
19 opinions rendered by its electrical and mechanical engineering experts, MR. GIFFORD and MR.
20 IRBY, respectively. While these experts did opine "[t]he 6-ton shortfall we delineate...is the result
21 of building system inadequacies in design and/or operation as substantiated by Table 1 and the
22 succeeding analysis," and "[t]here [was] no evidence that the building HVAC system was ever
23 properly commissioned" or balanced, they also noted the lack of cooler air was caused, in part, by
24 Plaintiff's own failure to take measures to remedy the system for which it is responsible pursuant to
25 the CC&Rs. For example, these experts' report dated March 2017 indicates HORIZON
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1 HOLDINGS 2900, LLC should have retained a contractor to add a twelfth (12th) VAV to the suite's
2 northeast office, including an in-office thermostat, which all evidence showed Plaintiff never did.
3 Further, these experts also recommended Plaintiff lower the height of the existing conference room
4 thermostat from its current location near the ceiling to standard height, another task Plaintiff did not
5 undertake in efforts to remedy the situation. In short, these experts opined the HVAC issues are and
6 were caused in part by HORIZON HOLDINGS 2900, LLC'S inaction; they are and were not the
7 solely caused by the ASSOCIATION'S refusal or failure to balance or "properly commission" the
8 building's HVAC system.
9

10 12. Further, while MR. GIFFORD and MR. IRBY opined Plaintiff suffered a 6-ton
11 shortfall in air given their assessment of building system inadequacy in design and operation, the
12 evidence showed such was based, at least in part, upon their review of the 2904 Building plans.
13 They were not afforded the opportunity to review the 2900 Building plans and specifications and
14 made the supposition the 2900 and 2904 Buildings were identical. Such an assumption, however,
15 dismisses the fact the two buildings are unique, by way of, *inter alia*, grading, location and facing.
16 Further, the evidence showed the buildings' interiors or office suites were not identical or utilized in
17 the same way. For example, Suites 100 and 110 in the 2900 Building cover 4,052 square feet
18 (7.43% of building), whereas Suites 100 and 110 in the 2904 Building embody 3,989 square feet
19 (7.21% of building).⁶⁸ Suites 101, 111, 120 and 121 in the 2900 Building occupy 9,664 square feet
20 (17.5% of building) and the same numbered suites in the 2904 Building comprise 9,727 square feet
21 (17.6% of building). While the business of HORIZON HOLDINGS 2900, LLC involves the
22 leasing to medical offices providing on-site health services and diagnostic testing to patients, the
23 work of its neighbor, MR. BORDERS, consists of market research. As MR. BORDERS testified,
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28 ⁶⁸See Joint Trial Exhibit 2, First Amendment to Declaration of Commercial Office Subdivision Covenants,
Conditions & Restrictions and Reservation of Easements for Shea At Horizon Ridge, Bates No. TAM0352-TAM0353.

1 every build-out is different. In short, the opinions rendered by MR. GIFFORD and MR. IRBY
2 Plaintiff suffered a 6-ton shortfall given the building's inadequacy in design and operation are
3 somewhat flawed given their reliance upon another building's construction plans and assumptions
4 the 2900 and 2904 Buildings were identical. Further, MR. GIFFORD'S load calculations are
5 likewise flawed as such were based upon data Plaintiff's suite was typical office space, and ignored
6 the demands of medical facilities.
7

8 13. Plaintiff's experts were not the only ones to cast partial blame upon Plaintiff for its
9 HVAC issues. Defense expert, MR. BIRD, noted it was not uncommon for office occupants to
10 acquire a stand-alone HVAC unit to service the computer server room. While Plaintiff proposed it
11 was precluded from installing its own separate HVAC unit within the Common Elements to service
12 its medical suites, the evidence belied that supposition. Section 2.10 of the CC&Rs provided "no
13 HVAC shall be placed in any part of the Common Elements other than its original location as
14 installed by Declarant, *unless* the approval of the Board is first obtained." (Emphasis added) No
15 evidence was presented to suggest HORIZON HOLDINGS 2900, LLC ever sought the approval of
16 the Board to install a stand-alone HVAC unit within the Common Elements; it follows, then,
17 Plaintiff also was never denied Board approval. Further, precedent showed the Board had never
18 denied such approval to any of its owners; if anything, MR. BORDERS testified the
19 ASSOCIATION Board had granted approval at least twice before. Stand-alone HVAC units did
20 exist on the rooftops of both the 2900 and 2904 Buildings. Further, MR. KAPETANSKY also noted
21 it appeared air shortfall had also been caused by RYCON CONSTRUCTION, LLC when it
22 constructed the TIs in Plaintiff's office suite in 2015.
23
24

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

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

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

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

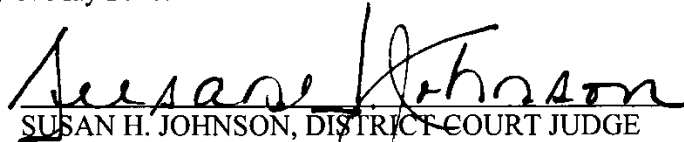
8 16. HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of
11 America, 104 Nev. 587, 592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

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

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

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

9 DATED this 26th day of May 2020.

10 
11 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

12 **CERTIFICATE OF SERVICE**

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

18 ERIC ZIMBELMAN, ESQ.
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27 
28 Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Exhibit 19

HH000173

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

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

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

DATED this 1st day of June 2020.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Robert E. Schumacher

ROBERT E. SCHUMACHER

Nevada State Bar No. 7504

BRIAN K. WALTERS

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Las Vegas, NV 89101

Attorneys for Defendants

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

CERTIFICATE OF SERVICE

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

Eric Zimbelman, Esq.
Nevada Bar No. 9407
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Attorneys for Plaintiff
Horizon Holdings 2900, LLC

/s/ Andrea Montero
An employee of GORDON REES SCULLY
MANSUKHANI LLP

EXHIBIT 1

EXHIBIT 1

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 **HORIZON HOLDINGS 2900, LLC, a**
6 **Nevada Limited Liability Company,**

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

7 **Plaintiff,**

8 **Vs.**

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

14 **Defendants.**

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

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

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

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

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

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

HH000177

1 of the witnesses, DON L. GIFFORD, MATT LUBAWY, STEPHEN BURFORD, HARVEY IRBY,
2 STACY RIVERA, WITHOLD IGLIKOWSKI, ROXANNA NORRIS, LAURA WAALKS,
3 MARVIN BRYAN, MARK KAPETANSKY, CATHERINE JORDAN, NATHAN HILL,³
4 WILLIAM BIRD, GARY BORDERS and MARISSA CHIEN, as well as the oral statements and
5 arguments of counsel, this Court makes the following Findings of Fact and Conclusions of Law:
6

7 **FINDINGS OF FACT**

8 1. This case arises as a result of alleged deficiencies Plaintiff HORIZON HOLDINGS
9 2900, LLC has experienced with the heating, ventilation and air conditioning (also referred to as
10 "HVAC" herein) system within its approximate 5,200 square-foot condominium office space
11 purchased in 2015 and located within Defendant SHEA AT HORIZON RIDGE OWNERS'
12 ASSOCIATION'S (also referred to as the "ASSOCIATION" herein) common-interest community.
13 Specifically, Plaintiff claims the building's HVAC system does not direct sufficient air to its unit,
14 whereby 2,500 square feet of its office space is unbearably hot and unusable in the warmer months.
15 More specifically, Plaintiff alleges the office suite suffers a massive six-ton shortfall of cool air as
16 the ASSOCIATION'S HVAC system is not properly balanced. Stating the issue differently,
17 Plaintiff avers its office suite is not receiving its *pro rata* share of the cooler air. As a consequence,
18 HORIZON HOLDINGS 2900, LLC alleges it has endured over \$225,000.00 in lost rents and
19 approximately \$800,000.00 decrease in the property's fair market value. By way of its Second
20 Amended Complaint filed November 28, 2018, Plaintiff HORIZON HOLDINGS 2900, LLC
21 asserted the following causes of action against Defendants SHEA AT HORIZON RIDGE
22 OWNERS' ASSOCIATION and TAYLOR MANAGEMENT ASSOCIATION:
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³MR. HILL testified only in the hearing held pursuant to Rule 37 of the Nevada Rules of Civil Procedure (NRCP). MR. BRYAN testified at both the NRCP 37 hearing and the non-jury trial.

- 1 (1) Breach of contract against the ASSOCIATION;
- 2 (2) Breach of covenant of good faith and fair dealing against the ASSOCIATION;
- 3 (3) Declaratory relief against the ASSOCIATION;
- 4 (4) Negligence against both the ASSOCIATION and TAYLOR ASSOCIATION
- 5 MANAGEMENT (also referred to as "TAM" herein); and
- 6 (5) Negligent undertaking against TAM.

7
8 The Fourth and Fifth Causes of Action asserting negligence and negligent undertaking against the
9 ASSOCIATION and TAM were dismissed by way of summary judgment issued February 4, 2020
10 which was unopposed by HORIZON HOLDINGS 2900, LLC. The causes of action addressed in
11 the trial before the Court were solely the first three lodged against the ASSOCIATION. The
12 following facts were adduced at trial:

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

20
21 3. The CC&Rs set forth the Declarant's intention to develop and convey commercial
22 office subdivision units within the Project pursuant to the general plan. The Project was restricted

23 ...

24 ...

25
26
27 ⁴The addresses for the two buildings are 2900 West Horizon Ridge Parkway and 2904 West Horizon Ridge
28 Parkway. The building at issue in this case is 2900 West Horizon Ridge Parkway. For simplicity, these buildings will
be identified as 2900 and 2904 herein. It is noted here, however, at the trial, the parties did refer to the 2900 Building as
"Building 1" and the 2904 Building as "Building 2."

⁵See Joint Trial Exhibit 1 admitted into evidence.

1 exclusively to non-residential use, and, according to the CC&Rs and pursuant to NRS
2 116.1201(2)(b), the Declaration and Project was not subject to NRS Chapter 116.⁶

3 4. At all times pertinent herein, DON GREIG, GARY BORDERS and MARISSA
4 CHIEN⁷ were owners of commercial suites within the common-interest community and members of
5 the ASSOCIATION'S Board of Directors with the latter two filling the offices of President and
6 Secretary/Treasurer,⁸ respectively. MR. BORDERS testified at trial he was the first owner to build
7 out his approximate 7,500 square-foot commercial space located on the second floor or Suite 200 of
8 the 2900 Building in 2005.⁹ When doing so, he retained a designer who created the place for work
9 in terms of space planning and placement of offices. Of note, MR. BORDERS testified, at the time
10 of his build-out, he had to change the HVAC ducting as it did not meet what he was constructing.
11 He sought and acquired Board approval to change the ducts pursuant to the CC&Rs' Section 2.10,
12 and further, to install a stand-alone HVAC unit on the roof to cool the 140 square-foot room housing
13 his computer server.¹⁰ This stand-alone HVAC unit exclusively services Suite 200 and is MR.
14 BORDER'S sole responsibility to maintain, unlike the ASSOCIATION'S concern for two 60-ton
15 roof-top units (also referred to as "RTUs" herein) serving the entire building's common elements
16 and owners' suites.
17

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

24 ⁶*Id.*

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

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

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

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

1 purchase/sale closed in February 2015.¹¹ CATHERINE JORDAN is the managing member and
2 principal of HORIZON HOLDINGS 2900, LLC. The offices were leased by Plaintiff, as the holding
3 company, to QUALITY NURSING, LLC, PHYSICIANS TO HOME and JORDAN MEDICAL,¹²
4 all three limited liability companies of which MS. JORDAN is and was the principal and managing
5 member. At or near time of purchase, MS. JORDAN entered into a Fixed Price Agreement with
6 RYCON CONSTRUCTION, LLC to convert the then existing offices to medical suites at a total
7 cost of \$177,679.00.¹³ Such conversion or “tenant improvements” (also referred to as “TIs” herein)
8 involved the removal of walls existing between two and three smaller offices to create larger offices
9 and medical suites. MARVIN BRYAN of RYCON CONSTRUCTION, LLC testified he also
10 arranged the installation of a dryer vent and exhaust fan, the replacement of a damaged thermostat
11 and addition of a 220 volt for washer/dryer and plumbing as the anticipated medical suites needed
12 running water and drainage.¹⁴ The general contractor’s scope of work also included painting and
13 installing other aesthetics such as flooring.¹⁵ MR. BRYAN testified, while the build-out involved
14 new framing, he did not raise or lower the ceiling. Other than the repair of the damaged thermostat,
15 MR. BRYAN testified RYCON CONSTRUCTION, LLC performed no HVAC work.
16
17

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

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

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

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

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

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

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

4 7. In March 2015, the ASSOCIATION arranged for its then preferred HVAC vendor,
5 STEVE BURFORD of CORPORATE AIR MECHANICAL SYSTEMS, INC. (also referred to as
6 "CAMS" herein), to repair leaks and duct separation within the common elements. The York
7 communication board on the RTU was repaired and interconnected with the computerized Building
8 Management System (also referred to as "BMS" herein). As reported by MR. BURFORD in e-mail:
9 "Schneider¹⁶ was able to re-add the unit to the BMS and it is working again."¹⁷ While it was
10 completing its TI improvements within Plaintiff's office suite in May 2015, RYCON
11 CONSTRUCTION, LLC contracted with CAMS to install four (4) Schneider Electric wall sensors at
12 a cost of \$760.00.¹⁸ According to MR. BURFORD, the work was performed and everything was
13 working correctly. MR. BURFORD also testified he did look at some of the VAVs in Plaintiff's
14 unit, but he did not inspect all. He noted, by this time, the ASSOCIATION had upgraded its
15 buildings' air control system software and the owners needed to upgrade their VAVs to
16 communicate with the new system.
17
18

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

22 ...
23
24

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

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

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

1 mitigate the heat coming into the offices. Such blinds were described by MS. JORDAN in her
2 testimony as that company's "best sun filtration" at a total cost of \$8,385.89.¹⁹

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

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19
20
21 10. In late July 2015, MS. JORDAN contacted MR. BURFORD regarding HVAC issues
22 relating to Plaintiff's office unit. According to MS. JORDAN, MR. BURFORD related three
23 controller units "were out," and such could be replaced at a cost of \$3,800.00. Given what she
24

25 ¹⁹See Plaintiff's Trial Exhibit 117, Plaintiff's Vendor Balance Detail for QUALITY NURSING, LLC admitted
into evidence.

26 ²⁰See Joint Trial Exhibit 4.

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

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

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

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

6 Hi Catherine,

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

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

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

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

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

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

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

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

26
27 ²³See Defendant's Trial Exhibit 587, PRIME HVAC, LLC's Service Proposal 15-103, admitted into evidence.

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

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

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

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

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

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

9 Now that my controls are fixed, half of my unit is still 80 degrees during the day. I
had the company evaluate the air temp that was blowing out of my registers on the half of my
unit that remains 80 degrees. They found the air to be blowing out at 75 degrees when it
10 should be blowing out at between 55-59 degrees. This would lead one to believe that the
compressors are not cycling or working correctly. I am requesting immediately (at my
11 expense) that the compressors and roof units be evaluated by someone other than CAMS.
Given the fact of CAMS' excessive costs and taking months to repair issues in the past. (sic)

12 As I stated earlier, I cannot conduct business and this issue is hindering my ability to
bring in revenue. I have forwarded a copy of this to my attorney and requesting a list of who
13 is on the board for my association and when the board meetings are scheduled.

14 Please let me know if there is anyone else I should contact or notify of this matter.

15 Also, there is a leak on the west exterior wall that occurs every time it rains and water
enters one of my exam rooms where there is 100K piece of equipment. The leak comes from
16 up above my unit. This is the second time I have reported this.²⁵

17 13. On August 27, 2015, MS. JORDAN wrote MR. BURFORD and MS. FREEMAN
18 another "To whom it may concern" e-mail. It reads as follows:

19 My name is Catherine Jordan. I am the owner of 2900 West Horizon Ridge #101, Henderson
20 NV. I have been without complete air conditioning in my unit for 90 days. This is
obstructing my business. I just spoke with Steve at CAMS who the board contracted to fix
21 the units. He stated that at this time there is a circuit breaker and a TXV power head valve
that needs to be replaced on the northern unit which requires being ordered from out of state.
22 I am authorizing Steve at CAMS to order the parts immediately and if the board has issues I
will pay for it and I can have my attorney seek after them for reimbursement.²⁶

23 ...
24
25

26
27 ²⁵See Joint Trial Exhibit 42, Letter from MS. JORDAN dated August 25, 2015, admitted into evidence; also see
Plaintiff's Trial Exhibit 133, p. 2, MS. JORDAN'S August 26, 2015 e-mail to MS. FREEMAN.

28 ²⁶See Joint Trial Exhibit 6, E-mails between MS. JORDAN, MR. BURFORD, MS. FREEMAN and MS.
CHIEN, admitted into evidence.

1 Upon receiving word from MR. BURFORD he would "order the circuit breaker now," MS. CHIEN
2 instructed he not directly communicate with MS. JORDAN regarding common element business as
3 work on the common elements was to be performed when the ASSOCIATION Board or its
4 management company gave him authorization "—not Catherine Jordan."²⁷

5 14. In late August/early September 2015, MS. JORDAN retained PRIME HVAC, LLC to
6 perform work in Plaintiff's office suite for the bid of \$2,587.00. As indicated within an Invoice sent
7 to MS. JORDAN on September 9, 2015,²⁸ the following work took place:
8

9 Work to complete removal of 3 existing/malfunctioning invinsys VAV actuators and provide
10 replacement with Honeywell Spyder programmable logic controllers. VAV actuators
11 retrofitted to south office space service. Work included installation of required VAV wall
12 mounted thermostat modules and necessary programming to front end. Work performed per
13 Prime Proposal 15.103. Noted disconnected and capped duct feed to hallway diffuser during
14 actuator installation and notified Catherine. Per ongoing suite cooling performance concerns
15 from state and management of Quality Nursing, follow-up analysis work was performed to
16 confirm and evaluate VAV operation. Airflow analysis throughout space in question was
17 performed on entire diffuser inventory with data subsequently uploaded and emailed. During
18 regular device testing on 8/28, found # 3 actuator (feed to center administrative office space)
19 recently replaced was unresponsive to normal zone sensor/space temp command, follow up
20 repair on 9/1 provided programming flash and re-installation to device. Commencement of
21 normal operation was then immediately verified. Space temperature evaluation on 8/28/15
22 found significant discrepancy between supply air temperatures in the north and south ends of
23 suite, with north diffusers providing normal air conditioning supply air temperatures and
24 southern most diffusers providing poor cooling. Follow up work to provide verification of
25 central mechanical (rooftop) cooling equipment is required to ensure availability of adequate
26 cooling capacity. All duct connections throughout suite were verified as structurally intact,
27 all VAV equipment was operationally verified 9/9/15.

28 15. On September 2, 2015 and in response to MS. JORDAN'S August 26, 2015 e-mail
where she indicated she was forwarding documentation to her attorney and "instruct him to go with
legal actions to cure this situation," WILLIAM PAUL WRIGHT, ESQ., counsel for the
ASSOCIATION wrote MS. JORDAN requesting her lawyer's contact information.²⁹

²⁷*Id.*

²⁸See Joint Trial Exhibit 14, PRIME HVAC, LLC'S Invoice ESH-0805 dated September 9, 2015, admitted into evidence; also see Defendant's Trial Exhibit 587 and Plaintiff's Trial Exhibit 115, both admitted into evidence.

²⁹See Joint Trial Exhibit 7, E-mail string between MR. WRIGHT, MS. JORDAN and MATTHEW EKINS,

1 16. On September 3, 2015, MR. BURFORD wrote MS. JORDAN an e-mail, which was
2 copied to ASSOCIATION Board members and MS. FREEMAN of TAM.³⁰ This e-mail reads in
3 part:

4 Hi Catherine,

5 I stopped by on Tuesday to take a look at your offices and take some temperature readings of
6 the air coming out of the supply registers. I found you had between 59 and 63 degree air
7 coming out of all the registers I checked. The two Southern offices specifically had 63
8 degree air coming out. I noticed the smaller office facing the South had one supply register
9 and no return registers. The larger office on the Southwest corner had two supply registers
10 and one return register. In my opinion this is not a supply air temperature problem but rather
11 a (sic) air volume problem. I would recommend you hire an AC company to come in and
12 take actual air flow readings (Cubic Feet per Minute, not temperature) to see what volume of
13 air you have coming from the supply registers in those offices. Once you know that
14 information you will be able to balance the air flow so those perimeter offices get more air to
15 them since they have a greater heat load from the windows. This may require the AC
16 company to install dampers in your duct work to regulate the air flow to the different
17 registers. I would also recommend you install additional return air grilles (sic) in all of the
18 perimeter offices. Removing the warm air from the offices is equally as important as
19 supplying cold air to the offices.³¹

20 17. MATTHEW EKINS, ESQ. responded to MR. WRIGHT'S September 2, 2015 e-mail
21 on September 8, 2015, indicating "[t]oday my client asked me to become involved and facilitate a
22 timely resolution. I will be calling you this afternoon to see what can be done to resolve the 90 plus
23 days without sufficient air conditioning for my client's office."³² Apparently, MR. WRIGHT missed
24 MR. EKINS' telephone call, and noted he (WRIGHT) would contact MR. EKINS' "tomorrow."

25 MR. EKINS responded by e-mail the following day, noting he was leaving town for a funeral
26 and available only by e-mail. His September 9, 2015 e-mail further read:

27 The primary concern is having the AC system fixed in a timely fashion. Also, it would be
28 helpful to have the Taylor and Associates and my client to be able to speak directly on

ESQ., Plaintiff's lawyer, admitted into evidence.

³⁰See Joint Trial Exhibit 8, E-mail from MR. BURFORD of CAM dated September 3, 2015, admitted into evidence.

³¹MR. BURFORD testified at trial he had been contracted by the ASSOCIATION and TAM to complete a duct survey on the 2904 Building. He was not contracted to conduct work on the 2900 Building, but did look at HORIZON HOLDINGS 2900, LLC'S offices. He did not know if the layout for the two buildings, 2900 and 2904, were the same.

³²See Joint Trial Exhibit 7.

1 resolution of the problem. My client informs me that she has had her space inspected by a
2 different HVAC company and it verified all her systems are working properly. There is
3 simply no cold air coming in from the compressors. I am working on getting a letter from
4 that HVAC company to confirm this. Can you let me know where Taylor & Assoc (sic) is at
5 on working with CAMS or another HVAC company to get this problem solved?³³

6 18. On September 10, 2015, MR. WRIGHT wrote MR. EKINS an e-mail which reads:

7 Matt:

8 Attached are invoices for HVAC repairs done in 2014 to the tune of nearly \$15K. The
9 compressors that were causing issues this year were installed last year in another repair.
10 Why they failed again in (sic) being looked into. However, any claim that the Board is not
11 performing its duties and taking care of the portions of the building that it is responsible for,
12 in (sic) simply not accurate.

13 Another e-mail was sent by MR. WRIGHT, indicating once the lawyers had an opportunity to speak,
14 they needed to address MS. JORDAN'S interference with the ASSOCIATION'S vendors and her
15 directives towards TAM and the ASSOCIATION.³⁴ MR. EKINS responded four days later,
16 providing an invoice for the work MS. JORDAN had completed for the system for which Plaintiff
17 was responsible. He also inquired whether "management" had verified the compressors were
18 supplying cool air to all of his client's space, and could inspect and verify "today" cold air was being
19 supplied and all compressors were functional. On September 16, 2015, MR. WRIGHT indicated the
20 ASSOCIATION would like to coordinate with MS. JORDAN to have the respective HVAC vendors
21 meet on site to review the situation and one or two Board members would be present.³⁵ No evidence
22 was provided to indicate whether such a site visit ever took place.

23 19. In mid-September 2015, MR. GREIG of the Board discussed prospects of balancing
24 "the whole building at the same time" with MR. BURFORD.³⁶ MR. BURFORD discussed the
25 reasoning in his communication to the Board:

26 ³³*Id.*

27 ³⁴*Id.*

28 ³⁵*Id.*

³⁶See Joint Trial Exhibit 30, E-mail communication between MR. GREIG, MR. BORDERS, MS. CHIEN and
MR. BURFORD dated September 11, 2015, admitted into evidence.

1 ...there's a duct status pressure set point and sensor that make sure the correct volume of air
2 is going through the main duct work to all of the suites, so that should be a constant (unless
3 there's a break in the duct work somewhere). All we really need to do is balance each
VAV's supply registers so we can push an equal amount of air to each register (or push more
air to higher heat load areas such as East, South and West facing window offices).

4 MR. BORDERS testified, prior to incur the expenses of balancing the entire building, it was decided
5 certain repair work and replacement of deficient equipment would be completed. Further, before the
6 ASSOCIATION incurred such expenses for balancing, the owners of suites in the 2900 Building,
7 including HORIZON HOLDINGS 2900, LLC, needed to repair the deficiencies for which they were
8 responsible.
9

10 20. In mid-October 2015, MR. BURFORD of CAMS installed a new condenser fan
11 motor to resolve the problems in Plaintiff's office suite at the ASSOCIATION'S expense. Further,
12 new control boards were needed for the four (4) RTUs so they could "speak with the software," as
13 the old ones were ten (10) years old and no longer compatible.³⁷
14

15 21. MS. JORDAN sent a certified letter, return receipt requested to the ASSOCIATION
16 on October 28, 2015, relaying: "This is the fourth time in 2 months I have issued this complaint.
17 Our back offices stay at 77 degrees during the day."³⁸ It was about the time MS. JORDAN sent her
18 letter, the ASSOCIATION was arranging repairs to the RTU #2 located on the 2900 Building's
19 rooftop. As noted by MR. KAPETANSKY in his e-mail to both ASSOCIATION Board members
20 and TAM dated October 29, 2015:
21

22 Good morning all,

23 Wanted to send out one quick follow up from the conversations I had with both Don
24 [GREIG] and Marissa [CHIEN] yesterday. We are replacing (and upgrading) unit
25 communication and control on rooftop AC # 2 at 2900 W Horizon Ridge Pkwy (sic) due to a

26 ³⁷See Joint Trial Exhibit 31, E-mail communication between MR. GRIEG and MR. BURFORD dated October
27 23, 2015, admitted into evidence.

28 ³⁸MS. JORDAN wrote MS. FREEMAN an e-mail on November 12, 2015: "The temperature in my entire office
is 62 degrees today. Please let me know you received this email and what is being done to render the issue." See Joint
Trial Exhibit 34, p. J34-3, admitted into evidence.

1 board level failure with communication. This board was previously repaired and is now not
2 communicating with the computer control system, preventing the equipment from following
3 an occupancy schedule and promotion excessive electrical consumption. While this upgrade
4 is desirable from an enhanced control capability (as well as the obvious restoration of
communication) the cost of this upgrade outweighs the benefits of an immediate overhaul of
the remaining (still communicating) rooftop equipment.

5 In summary, if/when we see the remaining rooftop equipment at Shea exhibit board level
6 malfunction we can continue with this upgrade to that equipment at that time. ...

7 22. A few days later, on or about November 4, 2015, MS. JORDAN acquired a bid from
8 PRIME VAC, LLC to replace six VAVs at a cost of \$4,500.00.³⁹ On November 26, 2015, MR.
9 KAPETANSKY of PRIME HVAC, LLC wrote MS. JORDAN with courtesy copies to MR. GREIG,
10 MR. ANGELL and MS. CHIEN:

11 Hi Catherine,

12 Happy Thanksgiving. I was able to make some corrective action in your suite and
13 increase total heating available, however I was surprised to see no less than 2 VAVs in your
14 suite with no zone sensor control. No zone sensor likely equals very little cooling capability
15 and no heating capability whatsoever. Whoever was responsible for your T.I. work was
16 derelict in their placement of some of the zone sensors for space climate control. I would say
the actual articulation of the supply diffusers was typical of what I've found throughout the
Shea campus providing the not uncommon aspect of zone sensors feeding input to VAV
terminal units that supply air to two or even three different locations in the suite.

17 I started with the VAV marked "9", not sure of the device ID (Nick [ANGELL] looks
18 at those on the computer and some of them are correct anyway). This unit has zone sensor
19 wiring ran to a junction box in the wall with no sensor...I include a picture, attached and
20 labeled "VAV 9". When we replace the actuator in VAV 9 I can install the new zone sensor
21 at the existing junction box and there should be no issues. Worst case scenario is pulling
some sensor wire through the existing conduit and then wiring in the new sensor, so this
won't be a large additional cost even if we have to re-work the wire as the infrastructure is in
place.

22 Moved on to VAV "8", device ID marked "11". This unit had the heat locked out on
23 airflow proving. I adjusted the manual supply damper upstream of the VAV unit and had no
24 effect on air flow sampling through the pitot tube. I moved the pitot tube around in its
25 insertion window until I found a satisfactory position for it that seemed to keep the heat
enabled. I may have to come back and completely relocate the pitot tube but for now the
heat on this unit is fairly reliable.

26
27 ³⁹See Defendant's Trial Exhibit 588, PRIME HVAC, LLC'S Service Proposal 15-108 dated November 4, 2015,
28 admitted into evidence; also see Plaintiff's Trial Exhibit 115 showing \$4,500.00 payment to PRIME HVAC, LLC from
QUALITY NURSING, LLC.

1 • VAV “2”, device ID labeled “25” is the terminal unit supplied from the zone sensor
2 with the “ABN: diagnostic on the display, we can expect no function from this unit until the
3 actuator and zone sensor are replaced. I found the unit with the high voltage temperature
4 limit safety tripped and I reset the safety to examine operation, again locked out through the
5 loss of the zone sensor.

6 • VAV labeled “1”, remarked “3”, supplies your office as well as the northern most
7 office space and seemed to be working well. Not sure if the supply to your office is choked
8 off through a physical duct connection or not. I will investigate it when we’re there
9 replacing actuators.

10 • The last unit I looked at is also labeled VAV “1”, remarked “6”, and I have pictures
11 attached of the zone sensor wiring ran loose to the ceiling cavity approximately 10 feet west
12 of the VAV itself. They didn’t even try to hook up a zone sensor for this unit, and the wire
13 will likely have to be re-ran to an appropriate location to allow for normal VAV operation.
14 Expect some additional cost for this repair and to allow normal operation from your unit.

15 I stopped my inspection at that point as most of the units have now been examined
16 and serious deficiencies of the VAV terminal units in your suite had already been noted.
17 Any further repair work required can be performed as needed during the actuator retrofit and
18 other repair requirements listed here. ...⁴⁰

19 23. On May 20, 2016, TAM provided notice to CAMS the ASSOCIATION was
20 cancelling its contract for services as of June 30, 2016.⁴¹ PRIME HVAC, LLC, who MS. JORDAN
21 initially hired as her HVAC contractor, was retained by the ASSOCIATION as one of its preferred
22 vendors.

23 24. The evidence presented indicates there were no complaints by MS. JORDAN,
24 HORIZON HOLDINGS 2900, LLC, its tenants or employees from December 2015 until early June
25 2016.⁴² On June 8, 2016, MS. JORDAN wrote MS. FREEMAN, the e-mail of which was copied
26 and sent to ASSOCIATION Board members: “The temperature in my office is 76 today and was 78
27 all evening yesterday. I am still waiting on the AC schedule I requested yesterday. Can you tell me
28 when these issues will be addressed?”⁴³ MS. FREEMAN responded the following day:

...

⁴⁰See Defendant’s Trial Exhibit 606, E-mail from MR. KAPETANSKY to MS. JORDAN dated November 26, 2015, admitted into evidence.

⁴¹See Joint Trial Exhibit 9, Letter from TAM to CAMS dated May 20, 2016, admitted into evidence.

⁴²See, for example, Plaintiff’s Trial Exhibit 103, E-mail communication between MS. JORDAN, MS. FREEMAN, LORI PUGH, Maintenance Coordinator for TAM, MR. BORDERS and MS. CHIEN from November 12, 2015 to July 27, 2016, admitted into evidence.

⁴³Id.

1 Hi Catherine,

2 Please note that the A/C schedule is Monday thru Friday from 4:00 a.m. – 6:00 p.m. The
3 scheduling of the A/C is at the discretion of the Board. You are the only owner in the front
4 building that has made the request to have the A/C run on nights and weekends. The other
5 owners shouldn't have to subsidize your sole usage. If you want to pay for the entire cost of
6 providing A/C to the building on weekends, we can come up with a charge for that.⁴⁴

7 MS. JORDAN replied to MS. FREEMAN'S response: "[C]orrection to last email[.] It needs to read
8 that I have medical equipment and computers that should not be exposed to high temperatures."⁴⁵

9 At that point, MR. BORDERS noted in his responsive e-mail:

10 Folks,

11 Each owner operates a unique business with varying needs.

12 For example, my computer server room requires constant air conditioning. For this reason
13 we installed a separate unit to manage. I paid for the unit and continually pay and for the
14 energy required to power it. As I read the CC&R's this is my problem and not an association
15 problem.⁴⁶

16 The evidence presented at trial showed HORIZON HOLDINGS 2900, LLC never sought approval
17 from the ASSOCIATION'S Board to install a stand-alone air conditioning to exclusively service its
18 office suite, including the cooling of its medical equipment and computers as MR. BORDERS had
19 done when he built out his space in or about 2005.

20 25. On June 23, 2016, MS. JORDAN wrote MS. FREEMAN again: "Please note that it is
21 79 in all my office today." MS. FREEMAN responded within the hour: "Thank you Catherine—we
22 will contact Prime to go out and adjust." On June 29, 2016, MS. JORDAN wrote MS. FREEMAN:

23 Stephanie

24 I am giving you an update regarding the AC status in our unit. I contacted Mark at Prime
25 and told him that the AC was to come on at 4am and wasn't coming on until 6am as I am
26 there at 5am several mornings a week. He said he would check with Nick Angel who does
27 the programming. Also my unit is at 78-80 every day. He said he adjusted some airflow and

28 ⁴⁴*Id.*; also see Joint Trial Exhibit 34, E-mail exchange between MS. JORDAN, MS. FREEMAN, MR.
BORDERS and MS. CHIEN from November 12, 2015 to June 9, 2016, admitted into evidence.

⁴⁵See Joint Trial Exhibit 34.

⁴⁶*Id.*

1 had to wait to talk to York because he was unsure how to adjust it. We go to the unit above
2 us every day and their unit is at 72. So this doesn't make any sense as heat travels upward
3 and it should be harder to cool the upstairs unit. Mark acknowledged in a text the other day
4 for some reason the airflow is having trouble getting down to my unit. When do you think it
5 is reasonable to have an answer to this problem as its (sic) been going on for a year now?

6 MS. FREEMAN responded that day:

7 Hi Catherine,
8 I was told that the back unit is running at half capacity and Mark is working on finding out
9 what is wrong. I will keep you apprised of any updates I receive.⁴⁷

10 On July 27, 2016, MS. JORDAN wrote MS. FREEMAN again:

11 Dear Stephanie
12 It is 81 degrees in all of my office today. I need to know what we are going to do to come up
13 with a permanent solution to this issue. This is the constant temp in my office everyday (sic)
14 after noon time. The last I heard from you On (sic) June 29th was that one unit was working
15 at 50 percent and Mark was working on it and would you "keep me apprised". I have not
16 heard anything from you or Mark and now it has been a solid year that I haven't had proper
17 airconditioning (sic). Please let me know what is going to be done.

18 MS. FREEMAN responded that day: "Lori [PUGH] will contact Mark to get status on repairs."

19 MS. PUGH responded to MS. FREEMAN and the Board members: "I have left him a voicemail and
20 will advise once I hear back from him." MR. BORDERS replied to all on the e-mail chain: "The
21 AC in 200-2900 has been malfunctioning for 3 days now. Mark was out yesterday but I never
22 received the cause/cure download."⁴⁸ MS. PUGH responded she would inquire "on this one as well
23 when I hear back from him." Shortly thereafter, MS. PUGH relayed to all MS. CHIEN'S reply:

24 Ok everyone,

25 I just got of (sic) the phone with Mark just at this very moment. First of all Catherine is
26 misinformed as usual. The issue from June 29th was on the North Unit and it has been
27 resolved and is working normally.

28 Our current problem is with the South unit which services Gary's [BORDERS] unit and
Catherine's south end.

⁴⁷See Plaintiff's Trial Exhibit 103.

⁴⁸*Id.*

1 There is a condenser coil refrigerant leak and it is currently operating at 50% capacity.
2 Unfortunately the condenser coil is an extremely complicated and intricate bar of the A/C
3 rooftop unit. To take it apart you would have to take the entire unit offline as in 0% capacity.
4 Assuming you find the cause of the leak there is no guarantee that one will up later or that
5 you found them all. Mark is strongly advising that we evaluate replacing the coil (which
6 requires a crane) in the fall when it cools down.

7 We have 2 options: 1) Do nothing and operate at 50% capacity because that is the best we
8 can do. You don't want to have zero A/C capacity in 115 degree heat.

9 2) We could dump refrigerant into the system and hoping it is a slow leak so we could have
10 100% capacity for awhile (sic). It's kind of like when your car has an oil leak and instead of
11 fixing it you just keep on putting more oil into it. The cost of putting a load of refrigerant is
12 going to be \$2,000. The problem is that you don't know how long that it will last. It might
13 last a day, a week, or a month or two. I think we should do it and see how bad of a leak we
14 have.⁴⁹

15 26. MS. JORDAN'S next communication concerning HVAC issues was October 20,
16 2015.⁵⁰

17 Dear Stephanie

18 This is Catherine Jordan with Horizon Holdings in 2900 West Horizon Ridge 101. Our air
19 conditioning has not work (sic) correctly in over the year I have been here. I have written
20 several emails. I would like to schedule an afternoon appt (sic) when someone from your
21 company who can come walk with me on my issues. This problem is interrupting my
22 business and has for the past year. Please let me know you received this e-mail.

23 This e-mail was forwarded to MS. CHIEN, who, in turn, sent it to MR. KAPETANSKY. MR.
24 KAPETANSKY responded on October 24, 2016:

25 Hi all,

26 I spoke with Catherine and followed up with marissa (sic) last week. Catherine is still
27 complaining her perimeter office space being insufficiently cooled, although I've been in the
28 suite on different occasions and the problems are more intermittent than she is
acknowledging. Her employees are usually happy when I check with them the times I
happen to see someone in the halls.⁵¹ Hopefully when the repairs are complete to RTU 2 and
the capacity is restored we can quiet her concerns again.

⁴⁹*Id.*

⁵⁰See Joint Trial Exhibit 48, E-mail exchange between MS. JORDAN, MS. FREEMAN, MS. CHIEN and MR.
KAPETANSKY between November 12, 2015 and October 24, 2016, admitted into evidence.

⁵¹MR. KAPETANSKY testified he had told the ASSOCIATION'S Board his belief MS. JORDAN was
exaggerating the conditions in Plaintiff's unit.

1 My intention was to perform the repairs on RTU 2 today but the weather is challenging.
2 Tomorrows (sic) forecast is clear skies. I'll update you when repairs are complete and we'll
3 see how it goes.⁵²

4 27. The evidence presented shows there were no further HVAC complaints made by MS.
5 JORDAN, HORIZON HOLDINGS 2900, LLC, its tenants and employees between October 20,
6 2016 and January 12, 2017 when MS. JORDAN wrote the following e-mail to MS. PUGH:⁵³

7 Lori

8 ...Also I want to confirm that he (sic) A/C and heating issues I have had for the past year are
9 unresolved. As per Brandon yesterday he said that he and Mark agree that I have flow issues
10 getting through to my ducts. He stated that the owners of the other units would not let them
11 in. I own the bottom half of the building so its (sic) not me. I spoke with the other two
12 owners down here and they stated it wasn't them not letting them in. I went to Ameriprise
13 financial and they stated of course they would let them in if they were approached. That
14 leaves two owners that need to be contacted and the (sic) would be western Medical
15 associates and the Marketing firm upstairs. Would you please contact both of those to
16 facilitate Mark entry into their units if need be. It should not be hard as I understand both of
17 them are board members. I need follow up on all these issues I have addressed.

18 28. On January 17, 2017, MR. KAPETANSKY wrote MS. JORDAN a report of the
19 findings and recommendations:

20 Good morning,

21 Based on our findings from 1/11 we note that temps in the office space are within normal
22 guidelines for space comfort. Temperature set points are in-line with facility energy
23 conservation goals. Please see the attached service invoice.

24 Attached are the photos that Brandon took on Wednesday, January 11 at about 12:45
25 in the afternoon. He verified normal temps in the afternoon after his first trip in earlier the
26 same morning. The attached photos also include tag info showing date and geo location.
27 Also attached is a photo I took from December 2015 which clearly shows one of your VAV
28 thermostats at ceiling height, that is the stat serving the center conference room area. This
situation was never corrected. I've instructed a number of times in the past that the stat has
to be moved to a normal temperature sensing heat to prove normal space temp comfort, if the
unit is still operating it's going to steal capacity from elsewhere in your suite to try and
satisfy the temperature set point from 10 feet off the floor. Needless to say, that's a tall order
that would be inhibiting performance elsewhere in your suite.

⁵²*Id.*

⁵³See Joint Trial Exhibit 46, E-mail exchange between MS. JORDAN and MS. PUGH, admitted into evidence.

1 You still have this unit and one other (photo of zone sensor also attached) that require
2 replacement of the VAV actuator to ensure control and calibration capability. Without a
3 complete retrofit of all the VAV actuators in your suite, you cannot achieve full control and
4 maximize targeted comfort to the space. We cannot guarantee any operation at all from
5 original VAV actuators, not heating, not cooling. Further, your suite is fully ¼ of the
6 building at 2900 W. Horizon Ridge Pkwy. The suites elsewhere on the property campus are
7 all designed to operate with 12 total VAV terminal units for that square footage, you have 11.
8 Your north office space, where you reside as well as the ladies in the accounting area is
9 served inadequately with one VAV providing air to 5 separate diffusers spread out across 4
10 separate rooms (your original corner office, Laura's [WAALK] office, your new office and
11 your new office restroom). The 12th VAV was likely removed during your T.I. where (along
12 with the legacy of the thermostat 10 feet off the floor) we previously corrected one VAV that
13 did not have a zone sensor installed at all (where we provided both the sensor and
14 termination of wiring we found simply laying in the ceiling) and another that had zone sensor
15 wire ran to a box in the wall and left there, unterminated. We have worked to correct duct
16 work runs, air flow sensing faults and failed heating assemblies in your suite along with
17 providing only a partial retrofit of VAV actuators.⁵⁴

11 The pricing to complete the remaining 2 actuators and zone sensors (including installation
12 and programming) would be \$2300.00.

13 Pricing to install a 12th VAV serving north office space (requiring updated drawings, high
14 and low volt wiring infrastructure, duct work modification and space termination, terminal
15 unit installation, actuator installation and programming as well as modification of existing
16 duct runs to properly balance load) would be \$7800.00.

16 Detailed quotations are available should you decide to perform these strongly recommended
17 improvements, pricing is included here so you can shop around if you like. Let us know if
18 you'd like to proceed.

18 The evidence adduced at trial showed HORIZON HOLDINGS 2900, LLC never arranged for the
19 installation of the twelfth VAV to serve the north office space.

20
21 29. MS. JORDAN retained the services of an electrical contractor, DON L. GIFFORD of
22 GIFFORD CONSULTING GROUP (also referred to as "GCG" within the evidence), and HARVEY
23 H. IRBY, P.E. in or about March 2017 to evaluate and analyze the HVAC system in the 2900
24 Building and particularly Suite 101. Both MR. GIFFORD and MR. IRBY eventually were retained
25 as Plaintiff's electrical and mechanical engineering experts in this litigation. The parties stipulated
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28 ⁵⁴See Defendant's Trial Exhibit 607, MR. KAPETANSKY'S e-mail to MS. JORDAN dated January 18, 2017,
admitted into evidence.

1 to the admission of these gentlemen's "Preliminary HVAC Building Analysis, Suite 101" dated
2 March 27, 2017 into evidence.⁵⁵ Both MR. GIFFORD and MR. IRBY concluded the available cubic
3 foot per minute (also referred to as "CFM") within Suite 101 is inadequate "based not only on the
4 results of our calculations, but are substantiated by [MS. JORDAN'S] descriptions of the inadequacy
5 of the system to provide a reasonable environment in which to work and to serve ...clientele."
6 They recommended HORIZON HOLDINGS 2900, LLC retain a contractor to add a twelfth (12th)
7 VAV to the suite's northeast office, including an in-office thermostat, both of which would be
8 Plaintiff's responsibility as the unit's owner pursuant to the CC&Rs. "This will require a
9 modification to the existing medium-pressure ductwork. VAV 12 and the appropriate interfacing
10 thermostat will need to be attached to System 2." MR. GIFFORD and MR. IRBY also
11 recommended Plaintiff lower the height of the existing conference room thermostat to standard
12 height, which, again, would be Plaintiff's responsibility.⁵⁶ In addition, MR. GIFFORD and MR.
13 IRBY opined: "The 6-ton shortfall we delineate above is the result of building system inadequacies
14 in design and/or operation as substantiated by Table 1 and the succeeding analysis. There is no
15 evidence that the building HVAC system was ever properly commissioned, an industry standard for
16 this quality and size of building. Hence, it is essential that property management commission and
17 balance the system. Based on this assumption, it is our opinion that the system, once properly
18 commissioned and balanced is capable of meeting the standard demands imposed by your office
19 square footage." In rendering their opinions, MR. GIFFORD and MR. IRBY reviewed and relied
20 upon mechanical drawings and construction plans for the 2904 Building, but not the 2900 Building
21 where Plaintiff's office suite is located.⁵⁷ In this regard, MR. GIFFORD noted he saw nothing to
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26 ⁵⁵See Joint Trial Exhibit 17 stipulated as admitted into evidence.

27 ⁵⁶*Id.*, p. 4.

28 ⁵⁷Only building plans for the 2904 Building were offered for admission into evidence. This Court understands MS. JORDAN went to the City of Henderson Building Department to acquire a copy of the Master Plan, and she

1 suggest the 2904 and 2900 Buildings were constructed differently. MR. IRBY admitted he had no
2 intimate knowledge of the air conditioning systems in the 2900 Building and each building should
3 have their individual or separate plans. He also noted the office in question was typical space that
4 did not generate a lot of heat. He saw no obvious problems with installation.

5 30. WILLIAM BIRD, an expert in HVAC and plumbing, testified on behalf of the
6 ASSOCIATION. He was retained to review the report authored by MR. GIFFORD and MR. IRBY.
7 He was not provided any documents, such as mechanical engineering and other building plans, for
8 the 2900 Building. He testified there had to be existing plans as one could not acquire a permit
9 without the submission of plans. He would not have rendered an opinion using plans of a different
10 building. Further, he did not know how MR. GIFFORD reached the conclusion there was a 6-ton
11 shortfall when neither he nor MR. IRBY did a design. MR. BIRD also was critical of MR. IRBY'S
12 position Plaintiff's suite was a "standard office," and the fact MR. GIFFORD inputted information
13 for standard office space when conducting load calculations using a HAP⁵⁸ software program, a tool
14 used by engineers to estimate loads and design HVAC systems. In MR. BIRD'S view, Plaintiff's
15 unit is not a standard office; it houses several employees and patients, and consist of medical suites
16 with examination rooms and equipment, such as EKGs, all of which generate heat.⁵⁹ In short,
17 Plaintiff's suite has different loads than a typical office. MR. BIRD further opined the existing duct
18 work should have been moved during the TI renovation if Plaintiff had intended to change the
19 previous office space to medical suites. In addition, the server room housing Plaintiff's computers
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24 received only that for the 2904 Building, although some mechanical engineering drawings for the 2900 Building were
25 contained in the city's file for 2904. No other efforts were made during the course of discovery by the Plaintiff to
26 acquire plans for the 2900 Building. Defense counsel subpoenaed the 2900 Building plans and received those for the
27 2904 Building. During the course of the trial, it became apparent Plaintiff and its experts were relying upon 2904
28 Building plans as those relating to the 2900 Building could not be found. MR. BRYAN of RYCON CONSTRUCTION,
LLC, a witness to the litigation, went to the City of Henderson Building Department as he had received a telephone call
from MS. JORDAN there was some confusion regarding the plans.

⁵⁸"HAP" is the acronym for "hourly analysis program."

⁵⁹"EKGs" is the acronym for "electrocardiograms."

1 should have been addressed; in this regard, MR. BIRD said it was not uncommon for a unit to have a
2 stand-alone HVAC to specifically service such needs.

3 MR. BIRD also explained RTUs, at discharge, pushes air through the primary ducting to the
4 medium pressure ducting, which, in turn, pushes air to the units' VAVs. A VAV will only output air
5 being delivered to it. A VAV can decrease amount of air received, but cannot increase it. He found
6 MR. GIFFORD at fault for not checking to see if the unit's VAVs were fully open. MR. BIRD also
7 noted the unit's thermostat in the conference room was misplaced too high, ten (10) feet above the
8 floor when it should be located "where the people are," 48 inches is the standard height for
9 thermostat placement. All in all, MR. BIRD opined the air conditioning system could be repaired
10 without Plaintiff suffering a market loss.

12 31. HORIZON HOLDINGS 2900, LLC presented the testimony of an appraisal expert,
13 MATTHEW LUBAWY, MAI, CVA, to attest to its losses and damages. As set forth in his
14 appraisal report,⁶⁰ MR. LUBAWY opined, if there were no HVAC issues, the market value of
15 Plaintiff's 5,206 square foot office as of February 7, 2019 is \$1,800,000;⁶¹ assuming the HVAC
16 issue cannot be resolved, the value decreases to \$990,000 or is \$810,000 less. Loss in rental income
17 and increased expenses in light of the unusable area of 2,237 square feet in the south portion of the
18 office from August 1, 2015 through January 24, 2019 was \$225,000. In rendering his opinion, MR.
19 LUBAWY noted: "Ideally, the 'cost to cure' would be considered in this situation with the
20 installation of a new HVAC unit. However, given the condominium ownership of the subject office,
21 this may not be allowed."⁶² In this regard, MR. LUBAWY admitted he made "extraordinary
22 assumptions the HVAC issue could never be resolved and estimated the value of the subject
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26 ⁶⁰See Joint Trial Exhibit 24, Appraisal Report by VALBRIDGE PROPERTY ADVISORS, stipulated by the
27 parties as admitted into evidence.

28 ⁶¹MR. LUBAWY testified he appraised the subject property in December 2017 at a value of \$1,700,000. MS. JORDAN did not tell him there were HVAC issues at that time.

⁶²*Id.*

1 property based on the revised size of 3,850 square feet (6,087 less the 2,327 unusable square feet).

2 As set forth by MR. LUBAWY in his report:

3 The subject's HVAC issues have been ongoing for several years and have not been resolved.
4 It would be difficult for the subject owner to install their own HVAC system due to the
5 condominium ownership which would likely prevent installation of ground-mounted or roof-
6 mounted units. Therefore, we have employed an extraordinary assumption the HVAC issue
could never be resolved. Use of this assumption would have an affect (sic) on the
conclusions herein if found to be false.⁶³

7 MR. LUBAWY testified he considered the "cost to cure," but did not investigate whether the HVAC
8 maladies could be repaired. He also indicated if the assumptions change, his opinion as to market
9 value also was subject to amendment. He also testified he did not review any leases, and his opinion
10 as to lost rents were not based upon "actual" loss, but rather, a consideration of how the market
11 reacts. He acknowledged the entities renting space from HORIZON HOLDINGS 2900, LLC are
12 controlled by MS. JORDAN; that is, the leases were not arms-length transactions, and they, in
13 essence, were "pocket to pocket."
14

15 CONCLUSIONS OF LAW

16 1. As noted above, HORIZON HOLDINGS 2900, LLC has sued the ASSOCIATION,
17 asserting three causes of action: (1) breach of contract, (2) breach of covenant of good faith and fair
18 dealing and (3) declaratory relief. NRS 30.030 specifically provides the courts shall have the power
19 to declare rights, status and other legal relations whether or not further relief is or could be claimed.
20

21 The court's declaration may be either affirmative or negative in form and effect; such declaration
22 shall have the force and effect of a final judgment or decree.
23

24 2. In this case, HORIZON HOLDINGS 2900, LLC asserts a "breach of contract" claim
25 against the ASSOCIATION, arguing it is entitled to certain rights and privileges by way of the
26 Declaration or CC&Rs, including but not limited to the full benefit of all common elements,
27

28 ⁶³Id.

1 “including the cool air provided by the HVAC.” Such is being refused by the ASSOCIATION,
2 resulting in breach and causing Plaintiff to suffer damages.⁶⁴ While, by the terms of the CC&Rs,
3 NRS Chapter 116 does not apply as the Project is a commercial or non-residential common-interest
4 community, this chapter’s statutory scheme nevertheless is instructive in determining whether
5 CC&Rs here impose contractual obligations between HORIZON HOLDINGS 2900, LLC and the
6 ASSOCIATION.
7

8 3. NRS 116.2101 permits the creation of a common-interest community “by recording a
9 declaration executed in the same manner as a deed and, in a cooperative, by conveying the real
10 estate subject to that declaration to the association.” A declaration must contain a number of
11 required statements⁶⁵ and “may contain any other matters the declaration considers appropriate.”
12 NRS 116.2105(2). “CC&Rs become a part of the title to property.” NRS 116.41095(2). By law, a
13 person who buys a home subject to CC&Rs must receive as information statement warning “[b]y
14 purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your
15 lifestyle and freedom of choice” and the CC&Rs “bind you and every future owner of the property
16 whether or not you have read them or had them explained to you.” *Id.* The statement must further
17 advise the prospective home buyer “[t]he law generally provides for a 5-day period in which you
18 have the right to cancel the purchase agreement.” NRS 116.41095(1).
19
20

21 4. The proposition CC&Rs create contractual obligations, in addition to imposing
22 equitable servitudes, is widely accepted. U.S. Home Corporation v. Michael Ballesteros Trust, 134
23 Nev. 180, 183, 415 P.3d 32, 36 (2018), *citing* Restatement (Third) of the Law of Property:
24 Servitudes, ch. 4 intro. Note (Am. Law Inst. 2000) (“one of the basic principles underlying the
25 Restatement is that the function of the law is to ascertain and give effect to the likely intentions and
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27
28 ⁶⁴*Id.*

⁶⁵*See* NRS 116.2105(1).

1 legitimate expectations of the parties who create servitudes, *as it does with respect to other*
2 *contractual arrangements.*”) (Emphasis added). By accepting the deed or other possessory interest
3 in a unit, the owner manifests his or her assent to the CC&Rs.⁶⁶ Thus, this Court accepts the premise
4 CC&Rs can impose contractual obligations upon both the association and unit owner.

5 5. Generally speaking, when a contract is clear on its face, it “will be construed from the
6 written language and enforced as written.” Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771,
7 776, 121 P.3d 599, 603 (2005). The Court has no authority to alter the terms of an unambiguous
8 contract. *Id.*, citing Renshaw v. Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).⁶⁷ An
9 ambiguity in the agreement’s terms, however, shall be resolved against the contract’s drafter. *See*
10 Sullivan v. Dairyland Insurance Company, 98 Nev. 364, 366, 649 P.2d 1357, 1358 (1982).

11
12 6. A breach of contract occurs where a party does not perform a duty arising under the
13 agreement, and such failure is material. *See* Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d
14 1259, 1263 (2000), *reversed on other grounds*, Olson v. Richard, 120 Nev. 240, 89 P.3d 31 (2004).

15
16 7. As pertinent to this case, the CC&Rs’ Article I entitled “Definitions” specifically
17 defines certain verbiage. Section 1.11 defined “Common Elements” as:

18 ...all portions of the Project, other than the Units, and all improvements thereon. Subject to
19 the foregoing, Common Elements may include, without limitation: Building roof, exterior
20 walls, and foundations, hardscape and parking area, greenbelt, all water and sewer systems,
21 lines and connections, from the boundaries of the Project, to the boundaries of Units (but not
22 including such internal lines and connections located inside Units); pipes, ducts, flues,
23 chutes, conduits, wires, and other utility systems and installations (other than outlets located
24 within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air
25 conditioning, as installed by Declaration for common use of Units within each Building (but
26 not including HVAC which serves a single Unit exclusively).

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⁶⁶ *Also see* CC&Rs’ Section 16.1: “The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, successor Owners and assigns.”

⁶⁷ In interpreting a contract, “the court shall effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself.” Sheehan & Sheehan v. Nelson Malley & Company, 121 Nev. 481, 488, 117 P.2d 219, 224 (2005), *quoting* NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997), and Davis v. National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987).

1 “Exclusive Use Areas” is defined in Section 1.17 in pertinent part:

2 ...any portion of the Project, other than Units, and allocated exclusively to individual Units,
3 together with such HVAC designed to serve a single Unit, but located outside of the Unit’s
4 boundaries. Use, maintenance, repair and replacement of Exclusive Use Areas shall be as set
5 forth in this Declaration. *If any chute, flue, duct, wire, conduit, bearing wall, bearing column*
6 *or any other fixture lies partially within and partially outside the designated boundaries of a*
7 *Unit, any portion respectively thereof serving only the Unit is an Exclusive Use Area*
8 *allocated solely to that Unit, and any portion respectively thereof serving more than one Unit*
9 *or any portion of the Common Elements is part of the Common Elements. ... (Emphasis*
10 *added)*

11 “HVAC” is defined in Section 1.19 as:

12 ...heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on
13 easements in Common Elements, which serve one Unit exclusively, shall constitute
14 Exclusive Use Areas as to such Unit, pursuant to Section 2.10, ...

15 “Unit” is defined in Section 1.34 as:

16 ...each Unit space, and shall consist of a fee simple interest having the following boundaries
17 all as originally constructed by Declarant and consisting of: (a) the exterior surface of
18 exterior walls; (b) the exterior surface of interior walls that are not party walls; (c) the
19 exterior surface of exterior windows and doors; (d) the interior surface of party walls; (e) the
20 interior surface commencing with and including the finished floor; (f) the interior surface
21 commencing with and including the finished ceiling; and (g) the airspace encompassed
22 within the foregoing boundaries; together with the exclusive right to use, possess and occupy
23 the Exclusive Use Areas (if any) serving such Unit exclusive; an undivided pro-rata
24 fractional interest as tenants in common in the Common Elements (other than any Common
25 Element conveyed in fee to the Association); easements of ingress and egress over and across
26 all entry or access areas and of use and enjoyment of all other Common Elements; and
27 membership and voting rights in the Association as set forth in the Governing Documents
28 (which membership and vote shall be appurtenant to the Unit).

8. Article 2 of the CC&Rs addresses “Owners’ Property Rights; Easements.” Of
significance here, Section 2.10 addresses easements and property rights related to HVAC; it states:

Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association,
for the purpose or maintenance, repair and replacement of any heating, ventilation, and/or air
conditioning and/or heating equipment and systems (“HVAC”) located in the Common
Elements; *provided, however, that no HVAC shall be placed in any part of the Common*
Elements other than its original location as installed by Declarant, unless the approval of the
Board is first obtained. Notwithstanding the foregoing or any other provision in this
Declaration, any HVAC which is physically located within the Common Elements, but
which serves an individual Unit exclusively, shall constitute a Exclusive Use Area as to the
Unit exclusively served by such HVAC, and the Owner of the Unit shall have the duty, at the

1 Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving
2 the Unit, subject to the original appearance and condition thereof as originally installed by
3 Declarant, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads
underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common
Elements. (Emphasis added)

4 9. Article 6, Section 6.1 provides the ASSOCIATION has the power and duty to
5 "reasonably cause the Common Elements to be maintained in a neat and attractive condition, and
6 kept in good repair, ..." Article 9, Section 9.1 sets forth each Owner shall, at its sole expense, keep
7 the interior of its Unit, equipment and appurtenances in good, clean and sanitary order and condition.
8

9 10. Article 16, "Additional Provisions," particularly Section 16.12 entitled "Limited
10 Liability" sets forth:

11 Except to the extent, if any, expressly prohibited by applicable Nevada law, none of
12 Declarant, Association, ARC, Declarant and/or *Association*, and *none of their respective*
13 *directors, officers, any committee representatives, employees, or agents, shall be liable to*
14 *any Owner or any other Person for any action or for any failure to act with respect to any*
15 *matter if the action taken or failure to act was reasonable or in good faith.* The Association
shall indemnify every present and former Officer and Director and every present and former
committee representative against all liabilities incurred as a result of holding such office, to
the full extent permitted by law. (Emphasis added)

16 11. In this case, HORIZON HOLDINGS 2900, LLC claims it suffered loss of rents and
17 property value as the ASSOCIATION has refused or failed to abide by its responsibility under the
18 CC&Rs to provide Plaintiff its *pro rata* share of the cooler air. Plaintiff's position is based upon the
19 opinions rendered by its electrical and mechanical engineering experts, MR. GIFFORD and MR.
20 IRBY, respectively. While these experts did opine "[t]he 6-ton shortfall we delineate...is the result
21 of building system inadequacies in design and/or operation as substantiated by Table 1 and the
22 succeeding analysis," and "[t]here [was] no evidence that the building HVAC system was ever
23 properly commissioned" or balanced, they also noted the lack of cooler air was caused, in part, by
24 Plaintiff's own failure to take measures to remedy the system for which it is responsible pursuant to
25 the CC&Rs. For example, these experts' report dated March 2017 indicates HORIZON
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1 HOLDINGS 2900, LLC should have retained a contractor to add a twelfth (12th) VAV to the suite's
2 northeast office, including an in-office thermostat, which all evidence showed Plaintiff never did.
3 Further, these experts also recommended Plaintiff lower the height of the existing conference room
4 thermostat from its current location near the ceiling to standard height, another task Plaintiff did not
5 undertake in efforts to remedy the situation. In short, these experts opined the HVAC issues are and
6 were caused in part by HORIZON HOLDINGS 2900, LLC'S inaction; they are and were not the
7 solely caused by the ASSOCIATION'S refusal or failure to balance or "properly commission" the
8 building's HVAC system.
9

10 12. Further, while MR. GIFFORD and MR. IRBY opined Plaintiff suffered a 6-ton
11 shortfall in air given their assessment of building system inadequacy in design and operation, the
12 evidence showed such was based, at least in part, upon their review of the 2904 Building plans.
13 They were not afforded the opportunity to review the 2900 Building plans and specifications and
14 made the supposition the 2900 and 2904 Buildings were identical. Such an assumption, however,
15 dismisses the fact the two buildings are unique, by way of, *inter alia*, grading, location and facing.
16 Further, the evidence showed the buildings' interiors or office suites were not identical or utilized in
17 the same way. For example, Suites 100 and 110 in the 2900 Building cover 4,052 square feet
18 (7.43% of building), whereas Suites 100 and 110 in the 2904 Building embody 3,989 square feet
19 (7.21% of building).⁶⁸ Suites 101, 111, 120 and 121 in the 2900 Building occupy 9,664 square feet
20 (17.5% of building) and the same numbered suites in the 2904 Building comprise 9,727 square feet
21 (17.6% of building). While the business of HORIZON HOLDINGS 2900, LLC involves the
22 leasing to medical offices providing on-site health services and diagnostic testing to patients, the
23 work of its neighbor, MR. BORDERS, consists of market research. As MR. BORDERS testified,
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28 ⁶⁸See Joint Trial Exhibit 2, First Amendment to Declaration of Commercial Office Subdivision Covenants,
Conditions & Restrictions and Reservation of Easements for Shea At Horizon Ridge, Bates No. TAM0352-TAM0353.

1 every build-out is different. In short, the opinions rendered by MR. GIFFORD and MR. IRBY
2 Plaintiff suffered a 6-ton shortfall given the building's inadequacy in design and operation are
3 somewhat flawed given their reliance upon another building's construction plans and assumptions
4 the 2900 and 2904 Buildings were identical. Further, MR. GIFFORD'S load calculations are
5 likewise flawed as such were based upon data Plaintiff's suite was typical office space, and ignored
6 the demands of medical facilities.
7

8 13. Plaintiff's experts were not the only ones to cast partial blame upon Plaintiff for its
9 HVAC issues. Defense expert, MR. BIRD, noted it was not uncommon for office occupants to
10 acquire a stand-alone HVAC unit to service the computer server room. While Plaintiff proposed it
11 was precluded from installing its own separate HVAC unit within the Common Elements to service
12 its medical suites, the evidence belied that supposition. Section 2.10 of the CC&Rs provided "no
13 HVAC shall be placed in any part of the Common Elements other than its original location as
14 installed by Declarant, *unless* the approval of the Board is first obtained." (Emphasis added) No
15 evidence was presented to suggest HORIZON HOLDINGS 2900, LLC ever sought the approval of
16 the Board to install a stand-alone HVAC unit within the Common Elements; it follows, then,
17 Plaintiff also was never denied Board approval. Further, precedent showed the Board had never
18 denied such approval to any of its owners; if anything, MR. BORDERS testified the
19 ASSOCIATION Board had granted approval at least twice before. Stand-alone HVAC units did
20 exist on the rooftops of both the 2900 and 2904 Buildings. Further, MR. KAPETANSKY also noted
21 it appeared air shortfall had also been caused by RYCON CONSTRUCTION, LLC when it
22 constructed the TIs in Plaintiff's office suite in 2015.
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25 14. While the evidence showed the lack of cool air to Plaintiff's suite was caused, in part,
26 by HORIZON HOLDINGS 2900, LLC not installing a twelfth VAV and/or stand-alone HVAC, and
27 physically lowering its thermostat in the conference room from ceiling height to 48 inches from the
28

1 floor, evidence was presented by way of MR. BUFORD'S recommendation the building's HVAC
2 system be balanced. Such recommendation was not ignored by the ASSOCIATION, and the
3 evidence showed there was an intention for balancing to take place. However, prior to incur the
4 expenses of balancing the entire building, the ASSOCIATION'S Board decided such would take
5 place after certain repair work and replacement of old and deficient equipment was completed. In
6 this Court's view, a decision to balance the system after the deficient HVAC equipment by both the
7 ASSOCIATION and owners was repaired and/or replaced is reasonable and does not constitute a
8 breach of the CC&Rs. Liability on part of the ASSOCIATION and its Board members cannot stand
9 where their action taken or their failure to act is reasonable and in good faith. *See* CC&Rs Section
10 16.12. This Court concludes the ASSOCIATION did not breach the CC&Rs or contract with
11 HORIZON HOLDINGS 2900, LLC.
12

13 **15.** Notwithstanding its conclusion actual breach is lacking, this Court also finds
14 HORIZON HOLDINGS 2900, LLC did not suffer damages or losses as a result of the
15 ASSOCIATION'S action or inaction. With respect to Plaintiff's alleged loss in property value,
16 HORIZON HOLDINGS 2900, LLC'S appraiser, MR. LUBAWY, made certain assumptions, such
17 as the impossibility of the HVAC system being remedied to provide Plaintiff adequate cool air,
18 when he determined Plaintiff suffered \$810,000 loss in fair market value. MR. LUBAWY'S
19 assumptions were flawed as the evidence showed the HVAC systems within the Common Elements
20 and Owners' exclusive use could be repaired and/or replaced. Further, it was not impossible, given
21 the condominium restrictions, for HORIZON HOLDINGS 2900, LLC to seek Board approval to
22 install a stand-alone HVAC system. MR. LUBAWY admitted his opinion as to fair market value
23 would change if his assumptions were not correct. With respect to loss of rents, there was no
24 evidence Plaintiff suffered an actual deficit. The leases between HORIZON HOLDINGS 2900,
25 LLC and its tenants were "pocket to pocket," meaning all entities were controlled by one managing
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1 member/principal, MS. JORDAN. No evidence was presented to show the tenants were unable to
2 pay the landlord rent; if anything, the evidence showed at least one tenant, QUALITY NURSING,
3 LLC, had adequate cash flow to pay rent as it loaned money to its landlord on a consistent basis. To
4 wit, notwithstanding this Court's conclusion the ASSOCIATION did not breach the CC&Rs or
5 contract, the First Claim for Relief cannot stand as the preponderance of the evidence showed
6 Plaintiff did not suffer damages resulting therefrom.
7

8 16. HORIZON HOLDINGS 2900, LLC also made a claim for breach of implied
9 covenant of good faith and fair dealing. There is no question "[t]he covenant of good faith and fair
10 dealing is implied into every commercial contract...." Ainsworth v. Combined Insurance Co. of
11 America, 104 Nev. 587, 592 n.1, 763 P.2d 673, 676 n. 1 (1988). Under the implied covenant of
12 good faith and fair dealing, each party must act in a manner that is faithful "to the purpose of the
13 contract and the justified expectations of the other party." Morris v. Bank of America, 110 Nev.
14 1274, 1278, 866 P.2d 454, 457 (1994), *quoting* Hilton Hotels v. Butch Lewis Productions, 107 Nev.
15 226, 234, 808 P.2d 919, 923 (1991). Such position is true even where, ultimately, there is no breach
16 of contract; a plaintiff "may still be able to recover damages for breach of the implied covenant of
17 good faith and fair dealing." Hilton Hotels, 107 Nev. at 232, 808 P.2d at 922. To wit, whether a
18 breach of the *letter* of the contract exists, the implied covenant of good faith is an obligation
19 independent of the consensual contractual covenants. Morris, 110 Nev. at 1278, 886 P.2d at 457.
20 Given the evidence presented in this case, this Court concludes the ASSOCIATION acted in a
21 manner faithful to the CC&Rs' purpose and justified expectations of HORIZON HOLDINGS 2900,
22 LLC. As noted above, the ASSOCIATION and its property manager, TAM, was responsive
23 whenever MS. JORDAN complained about the lack of cool air in Plaintiff's medical suites. The
24 ASSOCIATION made necessary repairs to the old and deficient equipment. Its HVAC vendors
25 informed MS. JORDAN what needed to be done to accord Plaintiff and its tenants adequate cooling
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1 of air. Accordingly, this Court finds in favor of the ASSOCIATION as against HORIZON
2 HOLDINGS 2900, LLC with respect to Plaintiff's Second Claim for Relief.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** judgment is rendered in
5 favor of Defendant SHEA AT HORIZON RIDGE OWNERS ASSOCIATION as against Plaintiff
6 HORIZON HOLDINGS 2900, LLC, whereby Plaintiff takes nothing by way of its Second Amended
7 Complaint on file herein.
8

9 DATED this 26th day of May 2020.

10 
11 SUSAN H. JOHNSON, DISTRICT COURT JUDGE

12 **CERTIFICATE OF SERVICE**

13 I hereby certify, on the 26th day of May 2020, I electronically served (E-served), placed
14 within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true
15 and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND
16 JUDGMENT to the following counsel of record, and first-class postage was fully prepaid thereon:
17

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25 300 South Fourth Street, Suite 150
26 Las Vegas, Nevada 89101
rschumacher@grsm.com
bwalters@grsm.com

27 
28 Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Exhibit 20

ODM
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PEEL BRIMLEY LLP
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Facsimile: (702) 990-7273
ezimbelman@peelbrimley.com
Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company,

CASE NO.: A-17-758435-C
DEPT. NO.: XXII

Plaintiff,
vs.

**ORDER DENYING DEFENDANT
TAYLOR ASSOCIATION
MANAGEMENT'S MOTION FOR
AN AWARD OF ATTORNEY'S
FEES AND INTEREST**

SHEA AT HORIZON RIDGE OWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; TAYLOR MANAGEMENT
ASSOCIATION, a Nevada Limited Liability
Company;
Defendants.

On April 14, 2020, a hearing was conducted in Dept. XXII before the Hon. Susan Johnson on Defendant Taylor Association Management's ("TAM")¹ Motion for An Award of Attorney's Fees and Interest as against Plaintiff HORIZON HOLDINGS 2900, LLC' ("Plaintiff"). Brian K. Walters, Esq. of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf of TAM. Eric Zimbelman, Esq. of PEEL BRIMLEY, LLP appeared on behalf of Plaintiff.

///

///

///

¹ TAM is erroneously identified as "Taylor Management Association in the caption.

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(702) 990-7272 ♦ FAX (702) 990-7273

Horizon Holdings v. Shea @ Horizon, et al.

Case No: A-17-758435-C

ORDER DENYING TAM'S MOTION FOR ATTORNEY'S FEES

After reviewing the Motion, Defendant's Opposition, and Plaintiff's Reply and arguments of counsel during the hearing, and for good cause appearing:

IT IS THEREFORE ORDERED that TAM's Motion for Attorney's Fees and Interest is **DENIED.**

DATED this ____ day of July 2020

Dated this 24th day of July, 2020



DISTRICT COURT JUDGE
0CB 925 B8EC 9AFD
Susan Johnson
District Court Judge

Approved as to form and content:

**GORDON REES SCULLY
MANSUKHANI, LLC**

/s/ Brian K. Walters

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

300 South 4th Street, Suite 1550

Las Vegas, Nevada 89101

Attorneys for Defendants,

Taylor Association Management,

and Shea at Horizon Ridge Owners' Association

Respectfully submitted by:

PEEL BRIMLEY, LLP

/s/ Eric Zimbelman

ERIC ZIMBELMAN, ESQ.

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Facsimile: (702) 990-7273

ezimbelman@peelbrimley.com

Attorneys for Plaintiff Horizon Holdings 2900, LLC

prohibited. If you have received this transmission in error, please notify us immediately by telephone, fax or e-mail, and delete the original message and any attachments.

From: Brian Walters <bwalters@grsm.com>
Sent: Friday, July 24, 2020 9:08 AM
To: Eric Zimbelman <ezimbelman@peelbrimley.com>
Cc: Robert Schumacher <rschumacher@grsm.com>
Subject: RE: Horizon Holdings 2900 v. Shea at Horizon et al.

Approved.

From: Eric Zimbelman <ezimbelman@peelbrimley.com>
Sent: Thursday, July 23, 2020 12:04 PM
To: Brian Walters <bwalters@grsm.com>
Subject: Horizon Holdings 2900 v. Shea at Horizon et al.

Brian,

I realized that we neglected to submit the Order denying TAM's motion for fees (I believe you did an NOE on the costs order already). The attached is very basic – motion filed, opposed, heard and denied. Let me know if you have any concerns or if I am authorized to submit the same with your signature. Thank you.

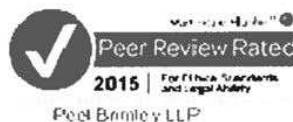
Sincerely,

Eric Zimbelman
Partner



 NEVADA OFFICE: 3333 E. Serene Avenue - Suite 200 - Henderson - Nevada - 89074
 NEVADA OFFICE PHONE: (702) 990-7272
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 ezimbelman@peelbrimley.com
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Horizon Holdings 2900 LLC,
7 Plaintiff(s)

CASE NO: A-17-758435-C

8 vs.

DEPT. NO. Department 22

9 Shea at Horizon Ridge Owners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
15 system to all recipients registered for e-Service on the above entitled case as listed below:

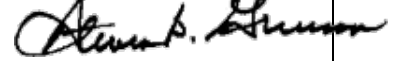
Service Date: 7/24/2020

16 Rosey Jeffrey	rjeffrey@peelbrimley.com
17 Terri Hansen	thansen@peelbrimley.com
18 Amanda Armstrong	aarmstrong@peelbrimley.com
19 Eric Zimbelman	ezimbelman@peelbrimley.com
20 Brian Walters	bwalters@grsm.com
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4	E-serve GRSM	WL_LVSupport@grsm.com
5	Nathan Lawrence	nlawrence@vegascase.com
6	Matthew Ekins	matt@utahcase.com

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Exhibit 21



ERIC ZIMBELMAN, ESQ.
Nevada Bar No. 9407
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ezimbelman@peelbrimley.com
Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

HORIZON HOLDINGS 2900, LLC, a Nevada
Limited Liability Company,

CASE NO.: A-17-758435-C
DEPT. NO.: XXII

Plaintiff,

vs.

NOTICE OF ENTRY OF ORDER

SHEA AT HORIZON RIDGE OWNERS
ASSOCIATION, a Domestic Non-Profit
Corporation; TAYLOR MANAGEMENT
ASSOCIATION, a Nevada Limited Liability
Company;

Defendants.

PLEASE TAKE NOTICE that an Order Denying Defendant Taylor Association
Management's Motion for an Award of Attorney's Fees and Interest was filed on July 24, 2020, a
copy of which is attached as Exhibit 1.

Dated this 24th day of July, 2020.

PEEL BRIMLEY LLP

/s/ Eric Zimbelman

ERIC ZIMBELMAN, ESQ.
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Attorneys for Plaintiff
HORIZON HOLDINGS 2900, LLC

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 24th day of July, 2020, I caused the above and foregoing document, **NOTICE OF ENTRY OF ORDER**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below:

Shea at Horizon Ridge Owners Association:

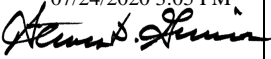
Robert E. Schumacher, Esq. (rschumacher@grsm.com)
Cristina B. Pagaduan (cpagaduan@grsm.com)
Chelsey J. Holland (cjholland@grsm.com)
Sean Owens (sowens@grsm.com)
Andrea C. Montero (amontero@grsm.com)
Brian Walters (bwalters@grsm.com)

Taylor Management Association:

Brian Walters (bwalters@grsm.com)

/s/ Amanda Armstrong
An employee of **PEEL BRIMLEY, LLP**

Exhibit 1


CLERK OF THE COURT

1 **ODM**
2 ERIC ZIMBELMAN, ESQ.
3 Nevada Bar No. 9407
4 **PEEL BRIMLEY LLP**
5 3333 E. Serene Avenue, Suite 200
6 Henderson, Nevada 89074-6571
7 Telephone: (702) 990-7272
8 Facsimile: (702) 990-7273
9 ezimbelman@peelbrimley.com
10 *Attorneys for Plaintiff*
11 *HORIZON HOLDINGS 2900, LLC*

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 HORIZON HOLDINGS 2900, LLC, a Nevada
11 Limited Liability Company,

12 Plaintiff,

13 vs.

14 SHEA AT HORIZON RIDGE OWNERS
15 ASSOCIATION, a Domestic Non-Profit
16 Corporation; TAYLOR MANAGEMENT
17 ASSOCIATION, a Nevada Limited Liability
18 Company;

19 Defendants.

CASE NO.: A-17-758435-C
DEPT. NO.: XXII

**ORDER DENYING DEFENDANT
TAYLOR ASSOCIATION
MANAGEMENT'S MOTION FOR
AN AWARD OF ATTORNEY'S
FEES AND INTEREST**

20 On April 14, 2020, a hearing was conducted in Dept. XXII before the Hon. Susan Johnson
21 on Defendant Taylor Association Management's ("TAM")¹ Motion for An Award of Attorney's
22 Fees and Interest as against Plaintiff HORIZON HOLDINGS 2900, LLC' ("Plaintiff"). Brian K.
23 Walters, Esq. of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf of TAM.
24 Eric Zimbelman, Esq. of PEEL BRIMLEY, LLP appeared on behalf of Plaintiff.

25 ///

26 ///

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Horizon Holdings v. Shea @ Horizon, et al.

Case No: A-17-758435-C

ORDER DENYING TAM'S MOTION FOR ATTORNEY'S FEES

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DATED this ____ day of July 2020

Dated this 24th day of July, 2020



DISTRICT COURT JUDGE
0CB 925 B8EC 9AFD
Susan Johnson
District Court Judge

Approved as to form and content:

**GORDON REES SCULLY
MANSUKHANI, LLC**

/s/ Brian K. Walters

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

300 South 4th Street, Suite 1550

Las Vegas, Nevada 89101

Attorneys for Defendants,

Taylor Association Management,

and Shea at Horizon Ridge Owners' Association

Respectfully submitted by:

PEEL BRIMLEY, LLP

/s/ Eric Zimbelman

ERIC ZIMBELMAN, ESQ.

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ezimbelman@peelbrimley.com

Attorneys for Plaintiff Horizon Holdings 2900, LLC

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Sincerely,

Eric Zimbelman
Partner



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1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Horizon Holdings 2900 LLC,
7 Plaintiff(s)

CASE NO: A-17-758435-C

8 vs.

DEPT. NO. Department 22

9 Shea at Horizon Ridge Owners
10 Association, Defendant(s)

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5	Nathan Lawrence	nlawrence@vegascase.com
6	Matthew Ekins	matt@utahcase.com

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