

DOC # 846690
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OFFICIAL RECORD

Requested By:

First American Title State

Douglas County - NV

Karen Ellison - Recorder

Page: 1 of 12 Fee: \$25.00

BK-714 PG-4551 RPTT: 0.00



Affect APN's:

- 1318-22-001-012
- 1318-23-310-061
- 1318-23-310-070
- 1318-23-214-001
- 1318-23-210-036
- 1318-23-211-022
- 1318-23-217-015
- 1318-23-212-076
- 1318-23-213-037
- 1318-23-201-001
- 1318-23-201-002
- 1318-23-212-068
- 1318-23-212-069
- 1318-23-212-071
- 1318-23-212-072
- 1318-23-212-073
- 1318-23-212-074

Recording Requested By/Return To:
George W. Echan
1680 Evergreen Drive
Carson City, CA 89703

DEVELOPMENT AGREEMENT

**THIS INSTRUMENT IS BEING RECORDED AS AN
ACCOMMODATION ONLY. NO LIABILITY, EXPRESS
OR IMPLIED, IS ASSUMED AS TO ITS REGULARITY
OR SUFFICIENCY NOR AS TO ITS AFFECT, IF ANY,
UPON TITLE TO ANY REAL PROPERTY DESCRIBED
THEREIN.**

FIRST AMERICAN TITLE CO.



DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into as of the 27th day of May, 2014 by LENNY WERBIN, in his capacity as Trustee of the Werbin Family Trust, and LNJ, Inc., a California corporation, with joint and several liability, (Lenny Werbin, in his capacity as Trustee, and LNJ, Inc., shall be collectively referred to herein as collectively “Werbin”), and the LAKE VILLAGE HOMEOWNERS ASSOCIATION, a nonprofit corporation incorporated under the laws of the State of Nevada with its principal place of business in Douglas County, Nevada (“LVHOA”).

RECITALS

A. Whereas, Alfred J. R. Villalobos, Trustee of the Alfred J.R. Villalobos Family Trust (subject to the filing of a petition on June 9, 2010, under chapter 11 of the Bankruptcy Act, in the U.S. Bankruptcy Court, District of Nevada, Case No. 10-52248-gwz; Case No. 13-05017-gwz; Case No. 13-05028-gwz)(“Villalobos”) is the record title owner of real property commonly referred to as 1000 Holly Lane, (“1000 Holly Lane”), 1010 Holly Lane, (“1010 Holly Lane”), and 119 Snowbird Court, Lots 27 A, B, C, D and 120 Snowbird Court, Lots 28 A and B (“the Snowbird Lots”), which are all located in Douglas County, Nevada, 89448; the foregoing properties will be referred to collectively herein as “the Properties.”

B. Whereas, on or about June 9, 2010, Villalobos filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court in and for the District Court of Nevada, Case No. BK-10-524480-GWZ. The Properties are property of the bankruptcy estate under 11 U.S.C. §541 (“the Villalobos Estate”).

C. Whereas, prior to the filing of the Bankruptcy Case, Villalobos and LVHOA entered into an agreement entitled “Settlement Agreement” as of May 21, 2002 relative to certain litigation then pending in the United States District Court, District of Nevada, Case No. CV-N-01-0243-DWH (VPC) (“First Action”) and relative to certain matters pertaining to the Properties (“Settlement Agreement”).

D. Whereas, subsequent to the Settlement Agreement, Villalobos and LVHOA entered into an agreement entitled “Amendment to Settlement Agreement” relative to extending one of the time provisions set forth in the Settlement Agreement, up to December 31, 2002, all as more particularly set forth therein (“First Amendment”).

E. Whereas, subsequent to the Amendment to Settlement Agreement Villalobos and the LVHOA entered into a Second Settlement Agreement dated November 21, 2003 (“Second Settlement Agreement”).

F. Whereas, certain matters set forth in the Second Settlement Agreement remain to



be performed.

G. Whereas, on or about April 14, 2014, a Motion for Order Authorizing and Ratifying Sale of 1000 Holly Lane, 1010 Holly Lane and Six Snowbird Lots to Werbin Family Trust, Payment of Commission, and Settlement of Dispute; Request for Waiver of 14-Day Stay Under Fed. R. Bank. P. 6004(h) was filed (“Sale Motion”).

H. Whereas, on or about April 28, 2014, the LVHOA filed its Response to the Sale Motion, raising its objection that the Sale Motion does not address the issues raised in LVHOA’s Motion to Compel Cure of Defaults under Second Settlement Agreement, Docket No. 1836 (“Motion to Compel”) and requesting that any order approving the sale contain a specific assumption of the Second Settlement Agreement by the buyer.

I. Whereas, the hearing on the Sale Motion has been continued until June 12, 2014, inter alia, so that Werbin and the LVHOA may reach an agreement regarding the development of the Properties and other matters which are the subject of the Second Settlement Agreement, and which are shown in Exhibit A as hereafter referenced, including, but not limited to, dedication of coverage to the Properties, easements, boundary line adjustments, and development of 1010 Holly Lane and the Snowbird Lots with certain development conditions.

J. Whereas, the parties hereto wish to enter into this Agreement to facilitate Werbin’s acquisition of the Properties and their development.

K. Whereas, the parties also wish to hereby confirm that all obligations under the Settlement Agreement, the First Amendment and the Second Settlement Agreement have either been performed or waived and that this Agreement represents the only remaining agreement to be performed by and between the parties, their predecessors and successors, regarding the real property described herein. Except as set forth in this Agreement, there are no other surviving obligations under the Settlement Agreement, the First Amendment and the Second Settlement Agreement to be performed and this Agreement is intended to replace, abrogate and supersede such agreements.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Werbin and LVHOA hereby agree as follows:

1. The occurrence, satisfaction or waiver of the each of the following material conditions is a condition precedent to the enforceability of this Agreement and to each party’s obligations under this Agreement: (a) the Bankruptcy Court’s entry of an order granting the Sale Motion for the sale of the Properties to Werbin free and clear of liens and encumbrances under 11 U.S.C. §363(f) and with a finding that Werbin is a good faith purchaser under 11 U.S.C. §363(m); (b) the closing of the escrow or escrows for the sale of the Properties to Werbin and the recording of the deed or deeds conveying all of the Properties to Werbin, with title insurance



policies, endorsements and exceptions reasonably acceptable to Werbin, on or before June 16, 2014; (c) the execution and delivery of a Mutual Release agreement by LVHOA, the Villalobos estate and its representatives, Clint Schue and Werbin (with the exception of obligations arising hereunder between Werbin and LVHOA) for any and all claims arising prior to the closing of the escrow for the sale of the Properties to Werbin, substantially in the form or forms attached Exhibit B (it being understood that persons or entities may be added or deleted as the parties thereto may agree) hereto; and (d) the execution of this Agreement by all parties and the timely approval of this Agreement by the LVHOA, Board of Directors and the LVHOA membership, prior to the June 12, 2014 hearing. All of the conditions precedent must be satisfied in order for this Agreement to be effective and binding upon the parties hereto.

2. Settlement Agreement, First Amendment and Second Settlement Agreement Superseded: This Agreement is designed to address the subject matter of the Settlement Agreement, First Amendment and Second Settlement Agreement. Any claims arising under the Settlement Agreement, First Amendment, and/or Second Settlement Agreement between the parties thereto are being concurrently released pursuant to the mutual releases outlined in Paragraph 1. Werbin is not assuming the Settlement Agreement, First Amendment, or Second Settlement Agreement and Villalobos Estate is not assigning or delegating the Settlement Agreement, First Amendment or Second Settlement Agreement to Werbin. By executing this Agreement, each party acknowledges and agrees that this Agreement abrogates and supersedes the following: (A) the Second Settlement Agreement, (B) the Settlement Agreement, and (C) the First Amendment.

3. Development Restrictions.

- a. Height and Other Restrictions for Development 1010 Holly Lane: The pitched roof ridge elevation of any structure built on 1010 Holly Lane shall not exceed that height which is twenty-four (24) inches below the highest roof ridge elevation of the existing single family home located on 1000 Holly Lane. The siding material of any structure built on 1010 Holly Lane shall be, subject to the approval of TRPA, and any other governing body, consistent with the existing siding material of the house on 1000 Holly Lane.
- b. Height and Other Restrictions for Development of Snowbird Lots: The density of any structures to be built by Werbin upon the Snowbird Lots will not exceed two (2) free-standing or attached Townhomes with garages. Further, the heights of the Townhomes will not exceed the finished floor height of the lower deck of 118 A and B, Snowbird Court, as currently built. The siding material of any structures built on the Snowbird Lots shall be consistent with the written policies and procedures of LVHOA and subject to approval by the Board of Directors.



- c. Access Easement/Roadway. Exhibit "A" hereto shows the proposed location of a driveway and access road which includes a 12 foot wide, non-exclusive easement, for the purposes of for ingress and egress, utilities, trash, snow removal, maintenance, in favor of 1000 Holly, 1010 Holly and LVHOA (the "Roadway"). The Roadway shall be constructed upon completion of the various contemplated boundary line adjustments and land swaps (pursuant to paragraph 4, below) shown on Exhibit A. Werbin shall, at Werbin's cost, install the pavement the subject of the Roadway and consisting of approximately 2629 square feet. LVHOA shall thereafter be responsible for all maintenance and repair thereof, excepting therefrom repairs required as a result of damage occurring as a result of Werbin's construction activities on the Properties.

- d. Exhibit A. The parties acknowledge that Exhibit A represents an unapproved proposed development plan which includes a single family dwelling on 1010 Holly, 2 town homes on the Snowbird Lots and various boundary line adjustments to accommodate Roadway which includes a 12 foot wide easement as shown thereon (these parameters are referred to herein as the "General Intended Development"). Therefore, Exhibit A is subject to modification to the extent necessary to achieve permit approvals so long as modifications do not deviate substantially from the General Intended Development parameters.

4. Boundary Line Adjustments and Land Swaps for Creation of New Common Area and Easements Thereon: The parties agree to the following boundary line adjustments and land swaps for the creation of "New Common Area" and related easements as depicted on Exhibit A attached hereto and agree to jointly submit any and all reasonably required applications to the appropriate governing agencies.

5. Assignment of Coverage by LVHOA to Properties: LVHOA shall assign, transfer and convey 3,600 square feet of LVHOA's banked land coverage (represented to be at least 3,600 square feet), which is evidenced by LVHOA's TRPA Banking Application or Land Coverage Verification/Survey approved by TRPA on August 23, 2002 under TRPA File No. 20010708 as may be necessary for development of 1000 Holly Lane, 1010 Holly Lane and the Snowbird Lots, which transfer shall occur expeditiously following the recordation of the boundary line adjustments and amended subdivision map. The coverage shall be utilized for development in accordance with Exhibit A, as may be modified as provided for herein, with coverage first being allocated to the Roadway. Any coverage not so utilized shall be returned to LVHOA at no cost to LVHOA.

6. Cooperation for Applications and Permits:

- a. The parties agree to cooperate, support and/or jointly submit all applications necessary to carry out this Agreement. LVHOA and Werbin



will execute the applications and other documents that are reasonably necessary or appropriate for submission to Douglas County, Nevada, and/or the TRPA to support and facilitate approval and issuance of permits for the structures for 1010 Holly Lane and the Snowbird Lots. The parties anticipate that at least the following applications may be required: One or more separate or joint applications for boundary line adjustments, an application for 1010 Holly Lane; and an application by Werbin for the Snowbird Lots and an application to transfer land coverage, an application to amend subdivision map or maps all of which shall be consistent with the General Intended Development parameters. Werbin shall pay all fees and costs in connection with applications and permits.

Exhibit "A" contemplates the consolidation of the six (6) separate Snowbird Lots into two (2) lots. The current configuration of the six (6) lots are, in some instances, separated by common area of the Association. The consolidation will require the exchange of portions of common area of LVHOA for portions of the six (6) separate lots, in equal square footage, more or less. Werbin, with the cooperation of the LVHOA, shall seek approval and recordation of a final amended subdivision map or Boundary Line Adjustment for the consolidation the Snowbird Lots on or before June 16, 2015.

- b. In the event any governing agency (not including the LVHOA) rejects or does not approve any application or other submittal contemplated or required by this Agreement, the parties shall cooperate in the modification of Werbin's development plan; however, no such modification shall alter or abrogate the General Intended Development parameters, without mutual written consent by both parties. The disapproval of any application or submittal by any governing agency, shall not constitute a breach of this Agreement, so long as each party has operated in good faith and made diligent efforts to pursue the application or submittal in accordance with the General Intended Development parameters.

7. Retention of Professionals and Payment of Fees and Costs: Werbin may engage persons or entities to assist in obtaining the TRPA and Douglas County approvals for permits as set forth in Paragraph 6. Werbin shall pay the fees associated with surveying, preparation of legal descriptions, engineering, and any other fees, expenses, and costs necessary to support and facilitate approval and issuance of the permits referenced in Paragraph 6 above.

8. Prior Recordations Under Settlement Agreements:

- a. That certain Memorandum of Agreement recorded as Document No. 0602864 at Page 08431 in Book 104, on January 26, 2004, O.R., Douglas County, Nevada, and memorializing the obligations of the Second



Settlement Agreement, shall be abrogated and fully superseded by this Agreement.

- b. The Settlement Agreement, Amendment to Settlement Agreement and Second Settlement Agreement are abrogated and fully superseded by this Agreement.
- c. Easement in favor of 1010 Holly Lane: The Easement Deed recorded as Document No. 0602865 on Page No. 08434 in Book 0104 recorded January 26, 2004, O.R., Douglas County, Nevada shall continue to benefit 1010 Holly Lane.
- d. 1000 and 1010 Holly Lane are Not Subject to Lake Village CC&Rs: LVHOA agrees, and shall cooperate with any title company to verify, that 1000 Holly Lane and 1010 Holly Lane are not a part of Lake Village and are not subject to the Lake Village CC&Rs

9. Snow Removal, Trash Disposal and Guest Parking: The parties agree that Werbin will not become a member of the LVHOA by virtue of owning 1000 Holly Lane and 1010 Holly Lane and shall have none of the rights of a member of the LVHOA based upon his ownership of 1000 Holly Lane and 1010 Holly Lane and is not required to pay dues to the LVHOA. Notwithstanding the foregoing sentence, LVHOA agrees to sell to Werbin and his successors-in-interest to 1000 Holly Lane and 1010 Holly Lane all or any portion of the following package of services (collectively the "Services") and privileges, but for residential uses only: (a) trash removal; (b) snow removal for the 1000 Holly Lane and 1010 Holly Lane up to their respective garages; and (c) non-overnight guest parking within Lake Village to be used for construction activities. Werbin and his successors-in-interest shall pay an annual fee for each of 1000 Holly Lane and 1010 Holly Lane, in the amount of \$825 to LVHOA for Services (as defined above), which amount may be paid in advance annually and is fixed for five (5) years. The term shall commence when this Agreement is effective as set forth in Paragraph 1. 1010 Holly Lane shall not pay \$825 per year, or any other fees for any Services unless and until a certificate of occupancy is issued for any improvements thereon. Every five (5) years thereafter, LVHOA may increase the annual fee by 10%, which amount shall be fixed for the next five (5) year period. In the event the owner of the 1000 Holly Lane, and 1010 Holly Lane becomes a different person or entity than Werbin or his entity and such third party is unrelated to Werbin, then LVHOA shall sell to said third party and its successor-in-interests the same package of Services and privileges on the same terms and conditions.

10. Authority to Bind and Indemnity: LVHOA represents and warrants that all necessary procedures under its governing documents and applicable law were or will be properly followed and all necessary votes of the LVHOA Board of Directors and LVHOA members (if this Agreement is approved by LVHOA members and LVHOA Board) have been properly obtained to authorize LVHOA to enter into and carry out the provisions of this Agreement; and LVHOA agrees to indemnify and hold Werbin, his successors and assigns, harmless from any



claim (made in or out of court) by any LVHOA member(s) that such procedures and votes were not properly followed and/or obtained or otherwise relating to the subject matter of this Agreement.

11. Attorney's Fees and Costs: The undersigned parties, and each of them, hereby acknowledge and agree that all parties shall bear their own attorneys' fees and costs in connection with the negotiation and drafting of this Agreement.

12. Entire Agreement: The undersigned parties, and each of them, understand and agree that this Agreement sets forth the full and complete agreement of the parties, that no statement or representation, other than those contained herein, have been made or relied upon by the undersigned as an inducement for executing this Agreement.

13. Successors-in-Interest: The undersigned parties, and each of them, agree that this Agreement shall be binding upon and shall inure to the benefit of their agents, employees, servants, successors and assigns. With reference to deed restrictions, easements, development plans, and exchanges of property, the same shall be covenants running with the land and equitable servitudes, in perpetuity.

14. Time is of the essence: Time is of the essence of this Agreement and with respect to the performance of any acts described herein.

15. Representation by Counsel: The undersigned hereby acknowledge that they have or have had the opportunity to discuss this Agreement with their respective counsel to explain this document, and the undersigned acknowledge that they understand all of the terms and conditions of this Agreement, that this is a final compromise of all claims being released, and that each party hereto is voluntarily entering into this Agreement.

16. Governing Law and Arbitration: The laws of Nevada shall govern the interpretation and enforcement of this Agreement. The parties agree that any dispute regarding the enforcement of this Agreement shall be arbitrated in accordance with the rules of the American Arbitration Association. Venue for such arbitration shall be Douglas County, Nevada. The parties shall be entitled to discovery, including depositions, document production, inspection and interrogatories.

17. Prevailing Party Attorney's Fees and Costs: In the event of any dispute or legal proceeding arising out of or in connection with the interpretation or enforcement of this Agreement, the prevailing party shall be paid, and in the event of a legal proceeding shall be awarded, its costs, expenses and attorney's fees.

18. Interpretation of Agreement: The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not for or against any of the parties.



19. Enforceability: Should any provision of this Agreement other than Paragraph 1 be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby.

20. No Third Party Beneficiary: Except with respect to covenants and easements running with the land, this Agreement is not intended, and shall not be construed to confer any right or remedy upon any person or entity other than the parties hereto and their respective successors and assigns with respect to their separate properties.

21. Execution in Counterparts; Facsimile Signatures: This Agreement may be executed in counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on the parties hereto. Facsimile signatures on this Agreement shall have the same force and effect as original signatures.

22. Authority to Bind and No Prior Assignments: The parties hereto each warrant that they have the authority to enter into this Agreement. All parties further represent, warrant, and agree that they have not assigned any portion of any claim that is the subject matter of this Agreement to any third party not a signatory hereto.

23. Further Instruments. The parties agree to execute, acknowledge and/or deliver such further instruments and documents necessary to consummate this Agreement. By approving this agreement, the LVHOA and its membership hereby authorize the Board and executive officers of the LVHOA to approve, ratify and execute, acknowledge and deliver, permits, applications, deeds, maps, instruments and documents of every kind and nature which may be necessary, expedient or appropriate to carry out the terms of this agreement or any modification thereto which is generally consistent with the General Intended Development parameters , without the necessity of additional membership approval.

24. Form of Releases: The releases referenced in Paragraph 1 to be executed by the parties referenced above shall be substantially in the form attached hereto as Exhibit B.

25. Recording of this Agreement or Abstract: The parties hereto agree to record this Agreement or an abstract summarizing the terms that affect the Properties at close of escrow by Werbin for the Properties in advance of any financing security instrument and of any other matter of title which would compromise this Agreement. Any recording as to 1000 Holly Lane shall specifically be limited to the burden of the easement that is the subject of the Roadway.

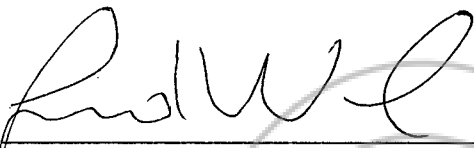
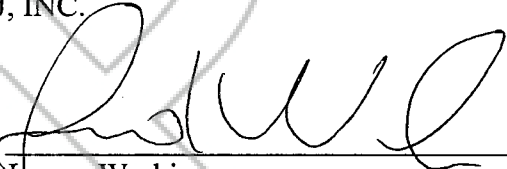
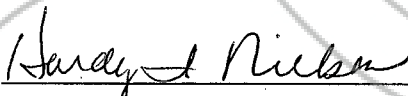
26. Notices: Any notice to be given to any party shall be in writing and personally delivered or sent via certified mail, return receipt requested, or by a nationally recognized overnight courier service for next business day delivery, charges prepaid, addressed as follows:

LVHOA c/o George Echan, Esq.	Lenny Werbin 3567 Serra Road
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1680 Evergreen Drive Carson City, NV 89703	Malibu, CA 90265
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or to such other address as either party hereafter notifies the other. Notices will be deemed received when served if given by personal service, three (3) business days after deposit in the United States mails, postage prepaid and properly addressed, if given by certified mail return receipt requested, and on the next business day after deposit with a nationally recognized overnight courier service, charges prepaid, if given by deposit with a nationally recognized courier service.

<p>Dated this <u>21</u> day of <u>JULY</u>, 2014.</p> <p>By: <u></u> Lenny Werbin, in his capacity as Trustee of the Werbin Family Trust</p>	<p>Dated this <u>21</u> day of <u>JULY</u>, 2014.</p> <p>LNJ, INC.</p> <p>By: <u></u> Lenny Werbin Its: President</p>
<p>Dated this <u>21st</u> day of <u>July</u>, 2014.</p> <p>LAKE VILLAGE HOMEOWNERS ASSOCIATION</p> <p>By: <u></u> Its: <u>PRESIDENT</u></p>	

(NOTARY JURATS ON FOLLOWING PAGES)



ACKNOWLEDGMENT

STATE OF NEVADA)

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on July 21 2014, 2014 by Harold I. Nelson, President of LAKE VILLAGE HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, who proved to me on the basis of satisfactory evidence to be the person, whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC for said County
and State



ACKNOWLEDGMENT

STATE OF NEVADA)

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on July 21 2014, 2014 by LENNY WERBIN, Trustee of THE WERBIN FAMILY TRUST, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC for said County
and State





ACKNOWLEDGMENT

STATE OF NEVADA)

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on July 21, 2014 by LENNY WERBIN, President of LNJ, INC., a California corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC for said County
and State

