  
CLERK OF THE COURT

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Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOAS**  
2 **Bogatz Law Group**  
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14 *Desert Equities, LLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **SOUTHWEST DESERT EQUITIES, LLC, a**  
12 **Nevada corporation,**

13 **Plaintiff,**

14 **vs.**

15 **BUILDER'S CAPITAL, INC., a Nevada**  
16 **corporation; DOES I through X, inclusive;**  
17 **and ROE ENTITIES I through X, inclusive,**

18 **Defendants.**

Case No.: A-11-650952-B  
Dept. No.: XIII

**NOTICE OF APPEAL**

18 **NOTICE OF APPEAL**

19 Plaintiff, Southwest Desert Equities, LLC ("SWDE" or "Plaintiff"), through its counsel  
20 of record, the law firm of Bogatz Law Group, hereby appeals to the Supreme Court of Nevada  
21 from the July 29, 2014 Findings of Fact and Conclusions of Law, attached hereto as **Exhibit A**.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

1 Dated this 7th day of August, 2014.

2 BOGATZ LAW GROUP

3  
4 By: /s/ Charles M. Vlasic  
5 I. Scott Bogatz, Esq.  
6 Nevada Bar No. 3367  
7 Charles M. Vlasic III, Esq.  
8 Nevada Bar No. 11308  
9 3883 Howard Hughes Parkway, Suite 790  
10 Las Vegas, Nevada 89169  
11 *Attorneys for Plaintiff, Southwest*  
12 *Desert Equities, LLC*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of August, 2014, I served a copy of the foregoing  
**NOTICE OF APPEAL** in accordance with Administrative Order 14-2.

/s/ Jennifer Moran  
An employee of Bogatz Law Group

**EXHIBIT A**

**EXHIBIT A**

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Attorneys for Defendants

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CLERK OF THE COURT

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

SOUTHWEST DESERT EQUITIES, LLC, a  
Nevada corporation,

Plaintiff,

vs.

BUILDER'S CAPITAL, INC., a Nevada  
corporation; DOES I through X, inclusive; and  
ROE ENTITIES I through X, inclusive,

Defendants.

Case No.: A-11-650952-B  
Dept. No.: XIII

**NOTICE OF ENTRY OF ORDER**

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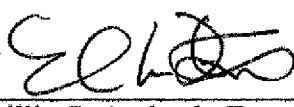
1 Please take notice that an Order based upon the Findings of Fact and Conclusions of Law  
2 was entered in the above-captioned matter on the 29th day of July, 2014, a copy of which is  
3 attached hereto.

4 Dated this 29<sup>th</sup> day of July, 2014.

5 August

6 MARQUIS AURBACH COFFING

7  
8 By

  
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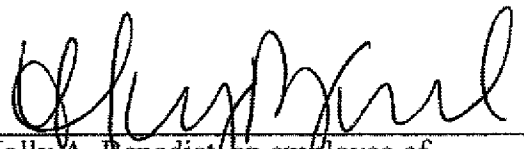
MARQUIS AURBACH COFFING

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(702) 382-0711 FAX: (702) 382-5816

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6<sup>th</sup> day of ~~July~~ August, 2014. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Bogatz Law Group  
Charles M. Vlasic, III, Esq. (*cvlasic@isbmv.com*)  
Jenn Moran (*jmoran@isbmv.com*)  
Scott Bogatz (*sbogatz@isbmv.com*)

  
\_\_\_\_\_  
Holly A. Benedict, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

  
CLERK OF THE COURT

**FFCO**  
**Marquis Aurbach Coffing**  
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Attorneys for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**SOUTHWEST DESERT EQUITIES, LLC, a**  
Nevada corporation,

Plaintiff,

vs.

**BUILDER'S CAPITAL, INC., a Nevada**  
corporation; DOES I through X, inclusive; and  
**ROE ENTITIES I through X, inclusive,**

Defendants.

Case No.: A-11-650952-B  
Dept. No.: XIII

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

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

The above-captioned matter having come on for trial before this Court commencing on March 3, 2014, continuing on March 4 and concluding on March 5, and the Court having considered the evidence presented by the parties, the testimonies of witnesses, and the arguments of counsel, and good cause appearing therefore, the Court hereby makes the following Findings of Fact and Conclusions of Law:

///

///

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**JUL 24 2014**

**DISTRICT COURT DEPT. XIII**

## FINDINGS OF FACT

1. Subject Matter Jurisdiction. The Plaintiff's claims do not raise issues that are within the original jurisdiction of the Justice Court because the amounts claimed due exceed the Justice Court Jurisdictional limit.

2. Personal Jurisdiction. The Defendant, Builder's Capital, Inc. (BCI), made a general appearance in this action.

3. On December 8, 2005, a group of lenders (hereinafter the "Lender Group") pooled funds of \$4,675,000 and lent those funds pursuant to a promissory note between Southwest Desert Equities ("SWDE") and Lender Group (the "Lender Group Loan").

4. BCI was a member of the Lender Group Loan.

5. SWDE received the Lender Group Loan from the Lender Group in the amount of \$4,675,000.

6. SWDE secured the loan by a Deed of Trust and a personal guarantee (the "Personal Guarantee") that was signed by John A. Ritter ("Ritter"), allowing BCI and the Lender Group to pursue Ritter personally in the event of default on the loan by SWDE.

7. The Personal Guaranty holds Ritter personally liable in the event of default by SWDE.

8. The Personal Guaranty stands independent from the Lender Group Loan, and has been determined to be enforceable against Ritter, pursuant to the judgment in *Builders Capital Inc. v. John A. Ritter*, case no. A-11-637783-C (the "Ritter Lawsuit").

9. SWDE is part of the "FOCUS" group of entities, which includes Focus Investment Group, Focus Management Services, Inc., and SWDE, amongst others (the "FOCUS Group").

10. Focus Management Group, Inc. and SWDE are majority owned by Focus Investment Group.

11. Ritter owns a 52% interest in the Focus Investment Group, and is the primary member of Focus Investment Group.

12. SWDE and Focus Investment Group have entered into agreements to indemnify Ritter.

13. SWDE defaulted on the Lender Group Loan.

14. BCI successfully sued Ritter under the Personal Guarantee, and was awarded a \$8,330,265.37 judgment in its favor in the Ritter Lawsuit.

15. SWDE brought this action against BCI on November 1, 2011.

16. SWDE premised this action on common law indemnity and on an Indemnification Agreement (Trial Ex. 21) wherein Focus Investment Group, LLC, expressly agreed to indemnify and defend Ritter from any claims or amounts due as result of actions or judgments entered against Ritter.

17. Ritter sought to consolidate the Ritter Lawsuit with this action, asking the District Court to allow the Ritter Lawsuit to be removed into the business court with the present case, but that court denied the consolidation motion and retained jurisdiction over the Ritter Lawsuit.

18. BCI moved this Court for summary judgment, and on May 16, 2013, this Court partially granted BCI's Motion for Summary Judgment in regards to SWDE's claim that Ritter was insulated from liability to the holder of the senior loan in the Ritter Lawsuit, and SWDE's claim that this Court should restrain the court in the Ritter Lawsuit from proceeding to enforce its determinations.

19. On May 16, 2013, this Court also partially denied BCI's motion to the extent that it would have the Court preclude SWDE's action seeking damages for attorneys' fees and costs for breach of the Intercreditor and Subordination Agreement, and moved to trial.

20. Trial on the issue of damages, breach of the Intercreditor and Subordination Agreement, and declaratory relief was held on March 3, 4 and 5, 2014.

21. This Court issued its Decision dated March 31, 2014 stating, "the Court agrees with the Defendant that there is no basis for recovery by Plaintiff on any of its causes of action herein, and thus finds for Defendant, meaning that there is no need to address the damages issues."

22. To the extent that any of the Findings of Fact are deemed to be Conclusions of Law, the same are incorporated by reference into the Conclusions of Law.

**CONCLUSION OF LAW**

NOW, THEREFORE, based upon the foregoing findings, the Court hereby makes the following conclusions of law:

23. The Personal Guarantee has been determined in the Ritter Lawsuit to be enforceable against Ritter at the time of the Ritter Lawsuit. The Court deems such guaranty to be a part of the subordinate loan documents.

24. The Personal Guarantee remains enforceable pursuant to the Ritter Lawsuit (case no. A-11-637783-C).

25. The Intercreditor and Subordination Agreement did not require BCI to wait to pursue enforcement of the Personal Guarantee or the Lender Loan until the Bank was repaid. The Intercreditor and Subordination Agreement was designed and intended to govern the priority relationship between the senior lender and the subordinate lender. BCI was not agreeing with SWDE that it would not collect from it; it was agreeing with the senior lender that collections would recognize its priority.

26. BCI may enforce the Personal Guarantee at any time after SWDE's default.

27. BCI did not breach the Intercreditor and Subordination Agreement by bringing the Ritter Lawsuit.

28. BCI did not breach its duty of good faith and fair dealing to SWDE by bringing the Ritter Lawsuit.

29. SWDE is not entitled to damages, attorney fees or costs for defending Ritter in the Ritter Lawsuit.

30. SWDE is not entitled to Declaratory relief against BCI.

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**ORDER**

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. BCI did not breach the Intercreditor and Subordination Agreement with SWDE.
2. Judgment is entered against SWDE and in favor of BCI as to all claims raised by SWDE in its Complaint.
3. SWDE and FOCUS Group are denied attorney fees.
4. SWDE and FOCUS Group are denied damages.
5. Declaratory relief against BCI is denied.

Dated this 28<sup>th</sup> day of July, 2014.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

Dated this 29<sup>th</sup> day of July, 2014.

**MARQUIS AURBACH COFFING**

By: 

Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Erik W. Fox, Esq.  
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Las Vegas, Nevada 89145

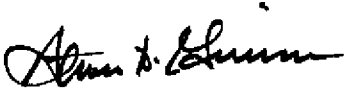
Techlaw LLP  
Dana B. Robinson, Esq.  
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La Jolla, California 92038  
Attorneys for Defendants

Dated this 23<sup>rd</sup> day of July, 2014.

**BOGATZ LAW GROUP**

By: 

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Attorneys for Plaintiff

  
CLERK OF THE COURT

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Desert Equities, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SOUTHWEST DESERT EQUITIES, LLC, a  
Nevada corporation,

Plaintiff,

Case No.: A-11-650952-B

Dept. No.: XIII

vs.

BUILDER'S CAPITAL, INC., a Nevada  
corporation; DOES I through X, inclusive;  
and ROE ENTITIES I through X, inclusive,

Defendants.

**CASE APPEAL STATEMENT**

Plaintiff, Southwest Desert Equities, LLC, through its counsel of record, the law firm of  
Bogatz Law Group, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Southwest Desert Equities, LLC.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Mark R. Denton.

3. Identify each appellant:

Southwest Desert Equities, LLC.

...

...

Identify the name and address of counsel for each appellant:

I. Scott Bogatz, Esq.  
Nevada Bar No. 3367  
Charles M. Vlastic, Esq.  
Nevada Bar No. 11308  
BOGATZ LAW GROUP  
3883 Howard Hughes Parkway, Suite 790  
Las Vegas, Nevada 89169

4. Identify each respondent:

Builder's Capital, Inc.

Identify the name and address of counsel for each respondent:

Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Erik W. Fox, Esq.  
Nevada Bar No. 8804  
MARQUIS AURBACH COFFING  
10001 Park Run Drive  
Las Vegas, Nevada 89145

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Nevada Bar No. 7157  
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PO Box 1416  
La Jolla, California 92038

5. Indicate whether appellant was represented by appointed or retained counsel in the District Court:

Retained counsel.

6. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel.

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

No such order was requested or entered.

8. Indicate the date the proceedings commenced in the District Court:

The Complaint was filed on November 1, 2011.

1           9.     Provide a brief description of the nature of the action and result in the District  
2 Court, including the type of judgment or order being appealed and the relief granted by the  
3 District Court:

4     **I.     RELEVANT FACTUAL HISTORY**

5     **A.           BACKGROUND OF THE KYLE CANYON PROJECT**

6           Over several years, various investment entities which are part of the Focus Property  
7 Group family of companies ("Focus"), acquired numerous privately owned parcels of real  
8 property located in the Northwest corner of the Las Vegas Valley in the area known as Kyle  
9 Canyon. SWDE is one of those Focus investment entities.

10          The subject matter parcels of land, commonly known as APNs 126-01-601-002; 126-01-  
11 601-014; 126-01-301-004; and 126-01-701-006 (collectively referred to herein as the  
12 "Property"), constituting approximately 42.5 acres of land, were purchased by SWDE with the  
13 intention of them becoming part of a larger assemblage under the same ownership/control, which  
14 would be located in an anticipated Focus master planned community known as "Kyle Canyon  
15 Gateway North."

16     **B.           THE FNB LOAN**

17          Focus, on behalf of SWDE and other Focus related entities, set about to obtain financing  
18 for, plan, and entitle the Kyle Canyon Gateway North master planned community. In August  
19 2005, Builder's Capital brokered a loan from First National Bank to SWDE specifically to  
20 acquire a portion of the Property ("FNB Loan"). The FNB Loan was evidenced by a promissory  
21 note in the amount of \$11,900,000, dated August 1, 2005 ("FNB Note"). The FNB Loan was  
22 secured by a Deed Of Trust With Assignment Of Rents, dated July 13, 2005, and recorded with  
23 the Clark County, Nevada, Recorder's Office in Book No. 20050801 as Instrument No. 0004722  
24 ("FNB Deed of Trust"). The FNB Loan was also secured by a Guaranty issued by Mr. Ritter,  
25 dated August 1, 2005 ("FNB Guaranty").  
26  
27  
28

1                   **C.                   THE REFINANCE OF THE FNB LOAN**

2                   Just a few months later on in October 2005, Focus contacted Builder's Capital to inquire  
3 whether Builder's Capital would be interested in assisting with refinancing portions of the  
4 Property being assembled for the proposed Kyle Canyon Gateway North master-planned  
5 community. Builder's Capital informed SWDE that it was interested in arranging additional  
6 financing for SWDE, but that Builder's Capital and FNB did not want to retire the FNB Loan.  
7 Instead, Builder's Capital wanted to assist in providing additional funds in the form of a second  
8 loan secured by a second deed of trust on the Property, behind the FNB Loan.

9                   **D.                   THE BUILDER'S CAPITAL LOAN**

10                  Thereafter, in December, 2005 SWDE borrowed \$4,675,000 ("Builder's Capital Loan")  
11 from a group of ten lenders brought together by Builder's Capital ("Lender Group"). The  
12 Builder's Capital Loan was evidenced by a Promissory Note, dated December 7, 2005  
13 ("Builder's Capital Note"). The Builder's Capital Loan was secured by a Short Form Deed Of  
14 Trust And Assignment Of Rents, dated December 7, 2005, and recorded against the Property  
15 with the Clark County, Nevada, Recorder's Office in Book No. 20051313 as Instrument No.  
16 0001693 ("Builder's Capital Deed of Trust"). The Builder's Capital Loan was also secured by a  
17 Guaranty issued by Mr. Ritter, dated December 7, 2005 ("Builder's Capital Guaranty,"  
18 collectively with the Builder's Capital Loan, Builder's Capital Note and Builder's Capital Deed  
19 of Trust, the "Subordinate Indebtedness").

20                  Importantly, the Builder's Capital Note expressly defined the Builder's Capital "Deed of  
21 Trust and Assignment of Rents . . . *and the [Builder's Capital] Guarant[y] of John A. Ritter,*"  
22 as "Related Documents". The Builder's Capital Guaranty states in relevant part: "Guarantor  
23 unconditionally guarantees the timely payment of all indebtedness *owed* under the Note . . . ."

24                  **E.                   THE SUBORDINATION AGREEMENT**

25                  Because FNB and Builder's Capital expressly and specifically did not wish to have the  
26 FNB Loan paid off as a result of the refinance, the Builder's Capital Loan was structured so that  
27 the entire Builder's Capital Loan, including the Builder's Capital Note, the Builder's Capital  
28

1 Deed of Trust and the Builder's Capital Guaranty, were all subordinate to the FNB Loan,  
2 including the FNB Note, FNB Deed of Trust and the FNB Guaranty. To accomplish this goal,  
3 FNB, SWDE, Builder's Capital and the Lender Group entered into a document entitled  
4 "Intercreditor And Subordination Agreement", dated December 7, 2005 ("Subordination  
5 Agreement").

6 In the Subordination Agreement, the Builder's Capital Note, the Builder's Capital Deed  
7 of Trust and "*all other documents evidencing or securing the [Builder's Capital Loan]* [were]  
8 defined as the "Subordinate Loan Documents." Other relevant Sections of the Subordination  
9 Agreement provided as follows:

10 2. Subordinate Lender agrees that its right to receive payments from  
11 Borrower of *any amount due under the Subordinate Loan Documents* shall be  
12 subordinated to Bank's right to receive payments from Borrower under the Senior  
13 Loan Documents; provided, however, so long as there does not exist any default  
14 under the Senior Loan Documents, Subordinate Lender shall have the right to  
15 receive payments due to Subordinate Lender under the Subordinate Loan  
16 Documents . . . .

17 . . .

18 4. In the event that Subordinate Lender receives any payment from Borrower  
19 *or from any other source whatsoever in respect of all, or any part of the*  
20 *Subordinate Indebtedness* other than as expressly permitted by the terms of this  
21 Agreement, such payment shall be received and held by Subordinate Lender in  
22 trust for Senior Lender and, upon request from Senior Lender, shall be promptly  
23 paid over by Subordinate Lender to Senior Lender . . . .

24 . . .

#### 25 **F. THE FORBEARANCE AGREEMENT.**

26 Beginning in the fall of 2007, the credit markets dramatically tightened. As a result,  
27 Focus and SWDE were unable to obtain the financing required to continue developing the Kyle  
28 Canyon Gateway North master-planned community and to service the interest on both the FNB  
Loan and the Builder's Capital Loan.

Eventually Builder's Capital, the Lender Group, SWDE and Mr. Ritter all entered into a  
Loan Forbearance Agreement, dated June 30, 2008 ("Forbearance Agreement"), wherein  
Builder's Capital and the Lender Group specifically and agreed to forbear from taking any action

1 to enforce the Builder's Capital Note, the Builder's Capital Deed of Trust and/or the ***Builder's***  
2 ***Capital Guaranty*** for an eighteen month period provided SWDE's interest payments on the  
3 Builder's Capital Loan remained current. Notably, the Forbearance Agreement also specifically  
4 referenced the Subordination Agreement and expressly defined the Builder's Capital "Loan  
5 Documents" as the Builder's Capital Note, Builder's Capital Deed of Trust ***and the Builder's***  
6 ***Capital Guaranty***.

7 **G. BUILDER'S CAPITAL'S BREACH OF THE SUBORDINATION**  
8 **AGREEMENT.**

9 On July 25, 2008, FNB was closed by the Office of the Comptroller of the Currency and  
10 the Federal Deposit Insurance Corporation ("FDIC") was named as Receiver. On that same day,  
11 the FNB Loan was acquired by Mutual of Omaha Bank pursuant to a Purchase And Assumption  
12 Agreement. Stearns Bank, N.A. ("Stearns") thereafter acquired the FNB Loan.

13 Meanwhile, in or around January 2008, SWDE ceased paying interest on both the  
14 Builder's Capital Note the FNB Note. Although SWDE has participated in, and continues to  
15 have conversations with Stearns concerning resolution of the FNB Loan, Stearns filed a lawsuit  
16 based on the alleged breach of the FNB Loan ("Stearns Case"). The Stearns Case is currently  
17 pending in the United States District Court for the Nevada and the FNB Loan remains  
18 unresolved.

19 Despite Builder's Capital's knowledge of the SWDE's alleged default under the FNB  
20 Loan, and despite the fact that Builder's Capital expressly agreed that they would not seek or  
21 recover any payments from any of the Builder's Capital Note, Builder's Capital Deed of Trust or  
22 Builder's Capital Guaranty in the event of a breach of the FNB Loan until such time as the FNB  
23 Loan was repaid in full or the default was cured, Builder's Capital filed a lawsuit styled as  
24 ***Builder's Capital, Inc. v. John A. Ritter***, Case No. A-11-637783-C on March 25, 2011, to collect  
25 under the Builder's Capital Guaranty ("Guaranty Lawsuit").

26 In May 2012, the Court in the Guaranty Lawsuit granted Builder's Capital's Motion for  
27 Summary Judgment (the "Guaranty Lawsuit Judgment") finding Mr. Ritter liable for breach of  
28

1 the Builder's Capital Guaranty, and denied Mr. Ritter's Counter-Motion for Summary Judgment  
2 on the issue of Builder's Capital's lack of standing to sue under the Builder's Capital Guaranty.  
3 Following the denial of Mr. Ritter's Writ on the standing issue, Builder's Capital moved to  
4 dismiss its remaining claims against Mr. Ritter and to Lift the Stay so it could attempt to collect  
5 on the Guaranty Lawsuit Judgment. On February 12, 2014, the District Court granted Builder's  
6 Capital's Motion to Lift the Stay and Dismiss All Remaining Claims. Builder's Capital is now  
7 pursuing collection efforts on the Guaranty Lawsuit Judgment.

#### 8 **H. THE UNDERLYING LITIGATION**

9 As a result of Builder's Capital disregard for and breach of the Subordination Agreement,  
10 SWDE filed the underlying Complaint against Builder's Capital on November 1, 2011 for: (1)  
11 breach of contract; (2) breach of the implied covenant of good faith and fair dealing – tort and  
12 contract; (3) injunctive relief; and (3) declaratory relief. On January 1, 2012, the Court  
13 dismissed SWDE's claims for breach of the implied covenant of good faith and fair dealing- tort,  
14 and for injunctive relief against Builder's Capital.

15 On March 31, 2014, following a three-day bench trial, the District Court issued a written  
16 Decision wherein it ruled in favor of Builder's Capital and against SWDE on all of SWDE's  
17 remaining claims against Builder's Capital. In its March 31, 2014 Decision, the Court ordered  
18 Builder's Capital to submit a Findings of Fact, Conclusions of Law and Order consistent with its  
19 March 31, 2014 Decision. On or about April 21, 2014, Builder's Capital did submit a Findings  
20 of Fact, Conclusions of Law and Order to the Court, but it was not consistent with the Court's  
21 March 31, 2014 Decision. The following day on April 22, 2014, Builder's Capital filed a Notice  
22 of Entry of the April 21, 2014 Findings of Fact, Conclusions of Law and Order. Shortly  
23 thereafter on May 8, 2014, however, SWDE timely filed Motion to Amend the April 21, 2014  
24 Findings of Fact, Conclusions of Law and Order filed by Builder's Capital, which tolled the time  
25 to file this appeal. On July 1, 2014 the Court granted SWDE's Motion to Amend in part and  
26 ordered Builder's Capital to submit a revised Findings of Fact, Conclusions of Law and Order  
27 consistent with the Court's July 1, 2014 ruling. On July 29, 2014, Builder's Capital filed its  
28

1 second Findings of Fact, Conclusions of Law and Order. On August 7, 2014, Builder's Capital  
2 filed a Notice of Entry of the August 7, 2014 Findings of Fact, Conclusions of Law and Order.

3 Because the District Court improperly ruled on SWDE's claims against Builder's Capital,  
4 SWDE has been forced to file this appeal to the Supreme Court of Nevada. Specifically, SWDE  
5 is appealing to the Supreme Court of Nevada from the July 29, 2014 Findings of Fact,  
6 Conclusions of Law and Order on file herein.

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

10 No.

11 11. State whether the appeal involves child custody or visitation:

12 No.

13 12. State whether the appeal involves the possibility of settlement:

14 Yes.

15 Dated this 7th day of August, 2014.

16 BOGATZ LAW GROUP

17  
18 By: /s/ Charles M. Vlastic  
19 I. Scott Bogatz, Esq.  
20 Nevada Bar No. 3367  
21 Charles M. Vlastic, Esq.  
22 Nevada Bar. No. 11308  
23 3883 Howard Hughes Parkway, Suite 790  
24 Las Vegas, Nevada 89169  
25 *Attorneys for Plaintiff, Southwest*  
26 *Desert Equities, LLC*  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of August, 2014, I served a copy of the foregoing  
**CASE APPEAL STATEMENT** in accordance with Administrative Order 14-2.

/s/ Jennifer Moran  
An employee of Bogatz Law Group

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

**Southwest Desert Equities LLC, Plaintiff(s)**  
**vs.**  
**Builder's Capital Inc, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 13**  
Judicial Officer: **Denton, Mark R.**  
Filed on: **11/01/2011**  
Cross-Reference Case Number: **A650952**

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CASE INFORMATION

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Case Type: **Business Court**  
Subtype: **Other Business Court Matters**  
Case Flags: **Discovery heard by Department  
Appealed to Supreme Court  
Automatically Exempt from  
Arbitration**

---

DATE

CASE ASSIGNMENT

---

**Current Case Assignment**

Case Number	A-11-650952-B
Court	Department 13
Date Assigned	11/01/2011
Judicial Officer	Denton, Mark R.

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PARTY INFORMATION

---

**Plaintiff**

**Southwest Desert Equities LLC**

*Lead Attorneys*

**Bogatz, I. Scott**  
*Retained*  
702-776-7000(W)

**Defendant**

**Builder's Capital Inc**

**Aurbach, Phillip S.**  
*Retained*  
7029422155(W)

---

DATE













EVENTS & ORDERS OF THE COURT

INDEX

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11/01/2011	Case Opened
11/01/2011	Discovery Heard by Department/Deemed Complex
11/01/2011	 Complaint (Business Court) Filed By: Plaintiff Southwest Desert Equities LLC <i>Complaint</i>
11/02/2011	 Initial Appearance Fee Disclosure Filed By: Plaintiff Southwest Desert Equities LLC <i>Initial Appearance Fee Disclosure</i>
11/10/2011	 Acceptance of Service Filed By: Plaintiff Southwest Desert Equities LLC <i>Acceptance of Service</i>
12/01/2011	 Motion to Dismiss Filed By: Defendant Builder's Capital Inc <i>Defendant's Motion to Dismiss</i>
12/01/2011	 Initial Appearance Fee Disclosure













DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

	Filed By: Defendant Builder's Capital Inc <i>Defendant's Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
12/02/2011	 Certificate of Mailing Filed By: Defendant Builder's Capital Inc <i>Certificate of Mailing</i>
12/20/2011	 Opposition to Motion to Dismiss Filed By: Plaintiff Southwest Desert Equities LLC <i>Opposition to Motion to Dismiss</i>
12/28/2011	 Reply in Support Filed By: Defendant Builder's Capital Inc <i>Defendant's Reply in Support of Motion to Dismiss</i>
01/05/2012	 <b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion to Dismiss</i> Granted in Part; <i>Granted in Part</i>
01/12/2012	 Order Granting Filed By: Defendant Builder's Capital Inc <i>Order Granting in Part and Denying in Part Defendant's Motion to Dismiss</i>
01/12/2012	<b>Order of Dismissal</b> (Judicial Officer: Denton, Mark R.) Debtors: Southwest Desert Equities LLC (Plaintiff) Creditors: Builder's Capital Inc (Defendant) Judgment: 01/12/2012, Docketed: 01/19/2012 Comment: Certain Claims
01/17/2012	 Notice of Entry of Order Filed By: Defendant Builder's Capital Inc <i>Notice of Entry of Order</i>
02/06/2012	 Answer to Complaint Filed by: Plaintiff Southwest Desert Equities LLC <i>Builder's Capital, Inc.'s Answer to Complaint</i>
03/06/2012	 Business Court Order <i>Business Court Order</i>
03/19/2012	 <b>Mandatory Rule 16 Conference</b> (2:15 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
03/26/2012	 Order <i>Order Re Rule 16 Conference</i>
03/27/2012	 Motion to Consolidate Filed By: Plaintiff Southwest Desert Equities LLC <i>Motion to Consolidate</i>
04/04/2012	 Joint Case Conference Report Filed By: Plaintiff Southwest Desert Equities LLC <i>Joint Case Conference Report</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

04/12/2012	 Scheduling Order <i>Scheduling Order</i>
04/16/2012	<b>CANCELED Status Check: Compliance (9:00 AM) (Judicial Officer: Denton, Mark R.)</b> <i>Vacated</i> <i>JCCR filed 4/4/12</i>
05/17/2012	 Order Setting Civil Non-Jury Trial Filed By: Plaintiff Southwest Desert Equities LLC <i>Order Setting Civil Non-Jury Trial And Calendar Call</i>
06/11/2012	 Motion to Dismiss Filed By: Defendant Builder's Capital Inc <i>Defendant's Motion to Dismiss</i>
06/14/2012	 Notice of Hearing Filed By: Defendant Builder's Capital Inc <i>Notice of Hearing on Defendant's Motion to Dismiss</i>
07/02/2012	 Opposition to Motion to Dismiss Filed By: Plaintiff Southwest Desert Equities LLC <i>Opposition to Builder's Capital Inc.'s Motion to Dismiss</i>
07/12/2012	 Reply in Support Filed By: Defendant Builder's Capital Inc <i>Reply in Support of Defendant's Motion to Dismiss</i>
07/13/2012	 Stipulation and Order Filed by: Defendant Builder's Capital Inc <i>Stipulation and Order to Continue Hearing</i>
07/19/2012	 <b>Motion to Dismiss (9:00 AM) (Judicial Officer: Denton, Mark R.)</b> <i>Defendant's Motion to Dismiss</i> Motion Denied; <i>Motion Denied</i>
09/27/2012	 Order Denying Motion Filed By: Plaintiff Southwest Desert Equities LLC <i>Order Denying Motion to Dismiss</i>
10/05/2012	 Notice of Entry of Order Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Entry of Order Denying Motion to Dismiss</i>
12/05/2012	 Motion to Extend Discovery Filed By: Plaintiff Southwest Desert Equities LLC <i>Motion to Extend Discovery on OST</i>
12/05/2012	 Notice of Hearing Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Hearing on Motion to Extend Discovery</i>
12/13/2012	 Opposition to Motion











DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

	Filed By: Defendant Builder's Capital Inc <i>Builder's Capital, Inc.'s Opposition to Motion to Extend Discovery Deadlines on OST (First Request)</i>
12/14/2012	 Reply in Support Filed By: Plaintiff Southwest Desert Equities LLC <i>Reply In Support of Motion to Extend Discovery Deadlines on OST</i>
12/17/2012	 <b>Motion to Extend Discovery</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff's Motion to Extend Discovery on OST (First Request)</i> Motion Granted; <i>Motion Granted</i>
12/27/2012	 Business Court Order <i>Supplemental Business Court Order</i>
01/03/2013	 Order Granting Motion Filed By: Plaintiff Southwest Desert Equities LLC <i>Order Granting Motion to Extend Discovery Deadlines</i>
01/04/2013	 Motion for Summary Judgment Filed By: Defendant Builder's Capital Inc <i>Defendant's Motion for Summary Judgment</i>
01/04/2013	 Notice of Entry of Order Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Entry of Order</i>
01/08/2013	 Notice of Hearing Filed By: Defendant Builder's Capital Inc <i>Notice of Hearing on Defendant's Motion for Summary Judgment</i>
01/22/2013	 <b>Mandatory Rule 16 Conference</b> (3:30 PM) (Judicial Officer: Denton, Mark R.) <b>01/22/2013, 02/19/2013</b> Matter Continued; Matter Heard; Matter Continued; Matter Heard; <i>Matter Continued</i>
02/01/2013	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Southwest Desert Equities LLC <i>Opposition to Defendant's Motion for Summary Judgment</i>
02/19/2013	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
02/19/2013	 Stipulation and Order Filed by: Plaintiff Southwest Desert Equities LLC <i>Stipulation and Order to Continue Hearing on Defendant's Motion for Summary Judgment</i>
02/21/2013	 Order <i>Order RE Rule 16 Conference</i>
02/26/2013	 Notice of Entry of Order









DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

	Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Entry of Order</i>
02/26/2013	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
02/27/2013	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
04/05/2013	 Stipulation and Order Filed by: Plaintiff Southwest Desert Equities LLC <i>Stipulation and Order to Continue Hearing on Defendant's Motion for Summary Judgment</i>
04/30/2013	 Reply in Support Filed By: Defendant Builder's Capital Inc <i>Defendant's Reply in Support of Motion for Summary Judgment</i>
05/02/2013	 <b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion for Summary Judgment</i> Denied in Part; <i>Denied in Part</i>
05/16/2013	 <b>Minute Order</b> (8:52 AM) (Judicial Officer: Denton, Mark R.) <i>Decision Re: Deft's Motion for Summary Judgment</i> Denied in Part; Decision: Deft's Motion for Summary Judgment <i>Denied in Part</i>
05/16/2013	 Decision <i>Decision Re Deft's Motion for Summary Judgment, Heard 5/2/13</i>
05/21/2013	 Pre-Trial Disclosure Party: Defendant Builder's Capital Inc <i>Defendant's Pre-Trial Disclosures</i>
06/10/2013	 <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) Reset; <i>Reset</i>
06/13/2013	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Builder's Capital Inc <i>Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part, Defendant's Motion for Summary Judgment</i>
06/13/2013	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
06/13/2013	<b>Partial Summary Judgment</b> (Judicial Officer: Denton, Mark R.) Debtors: Southwest Desert Equities LLC (Plaintiff) Creditors: Builder's Capital Inc (Defendant) Judgment: 06/13/2013, Docketed: 06/20/2013
06/17/2013	 Notice of Change of Firm Name Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Change of Firm Name and Firm Address</i>















DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

06/18/2013	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
06/25/2013	 Order <i>Order Rescheduling Calendar Call</i>
07/29/2013	 <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) Trial Date Set; <i>Trial Date Set</i>
08/05/2013	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
08/13/2013	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
08/22/2013	 <b>Minute Order</b> (8:27 AM) (Judicial Officer: Denton, Mark R.) <i>Minute Order Re: Resetting of Trial</i> Minute Order - No Hearing Held; Minute Order Re: Resetting of Trial <i>Minute Order - No Hearing Held</i>
08/26/2013	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
08/27/2013	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i> <i>Stand-by Date 8/21/13 2PM</i>
11/25/2013	 <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) Reset; <i>Reset</i>
12/02/2013	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
12/03/2013	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
02/10/2014	 <b>Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) Trial Date Set; <i>Trial Date Set</i>
02/19/2014	<b>CANCELED Bench Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i>
02/25/2014	 Joint Pre-Trial Memorandum Filed By: Plaintiff Southwest Desert Equities LLC <i>Joint Pre-Trial Memorandum</i>
03/03/2014	 Brief Filed By: Defendant Builder's Capital Inc <i>Defendant's Trial Brief</i>
03/03/2014	 Brief <i>Trial Brief Pursuant to EDCR 7.27</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

03/03/2014	 <b>Bench Trial</b> (2:30 PM) (Judicial Officer: Denton, Mark R.) <b>03/03/2014-03/05/2014</b> Trial Continues; Trial Continues; Decision Made; Trial Continues; Trial Continues; Decision Made; Trial Continues; Trial Continues; Decision Made; <i>Trial Continues</i>
03/12/2014	 Reporters Transcript <i>Transcript of Proceedings Bench Trial Day 1 - Volume 1 Hearing March 3, 2014</i>
03/12/2014	 Reporters Transcript <i>Transcript of Proceedings Bench Trial Day 2- Volume 2- Hearing March 4, 2014</i>
03/12/2014	 Reporters Transcript <i>Transcript of Proceedings Bench Trial Day 3 - Volume 3 Hearing March 5, 2014</i>
03/19/2014	 Receipt of Copy Filed by: Plaintiff Southwest Desert Equities LLC <i>Receipt of Copy</i>
03/31/2014	 Decision <i>Decision</i>
03/31/2014	 <b>Decision</b> (3:45 PM) (Judicial Officer: Denton, Mark R.) Decision Made; <i>Decision Made</i>
04/21/2014	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Builder's Capital Inc <i>Findings of Fact, Conclusions of Law and Order</i>
04/21/2014	<b>Judgment</b> (Judicial Officer: Denton, Mark R.) Debtors: Southwest Desert Equities LLC (Plaintiff) Creditors: Builder's Capital Inc (Defendant) Judgment: 04/21/2014, Docketed: 04/28/2014
04/22/2014	 Notice of Entry of Order Filed By: Defendant Builder's Capital Inc <i>Notice of Entry of Order</i>
04/25/2014	 Memorandum of Costs and Disbursements Filed By: Defendant Builder's Capital Inc <i>Defendants' Verified Memorandum of Costs and Disbursements</i>
05/08/2014	 Motion to Amend Judgment Filed By: Plaintiff Southwest Desert Equities LLC <i>Motion to Amend Judgment</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

05/09/2014	 Errata Filed By: Plaintiff Southwest Desert Equities LLC <i>Errata to Motion to Amend Judgment</i>
05/22/2014	 Opposition to Motion Filed By: Defendant Builder's Capital Inc <i>Opposition to Motion to Amend Judgment</i>
06/04/2014	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Stipulation and Order to Continue Hearing on Plaintiff's Motion to Amend Judgment</i>
06/04/2014	 Stipulation and Order Filed by: Plaintiff Southwest Desert Equities LLC <i>Stipulation and Order to Continue Hearing Plaintiff's Motion to Amend Judgment</i>
06/11/2014	 Stipulation and Order Filed by: Plaintiff Southwest Desert Equities LLC <i>Second Stipulation and Order to Continue Hearing on Plaintiff's Motion to Amend Judgment</i>
06/13/2014	 Reply Filed by: Plaintiff Southwest Desert Equities LLC <i>Reply in Support of Motion to Amend Judgment</i>
06/19/2014	 <b>Motion to Amend Judgment</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff's Motion to Amend Judgment</i> Granted in Part; <i>Granted in Part</i>
07/01/2014	 Notice of Change of Address Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Change of Firm Address</i>
07/02/2014	 Decision <i>Decision</i>
07/02/2014	 <b>Decision</b> (9:54 AM) (Judicial Officer: Denton, Mark R.) Decision Made; <i>Decision Made</i>
07/29/2014	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Builder's Capital Inc <i>Findings of Fact, Conclusions of Law and Order</i>
08/07/2014	 Notice of Entry of Order Filed By: Defendant Builder's Capital Inc <i>Notice of Entry of Order</i>
08/07/2014	 Notice of Appeal Filed By: Plaintiff Southwest Desert Equities LLC <i>Notice of Appeal</i>
08/07/2014	 Case Appeal Statement

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-11-650952-B**

Filed By: Plaintiff Southwest Desert Equities LLC  
*Case Appeal Statement*

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Builder's Capital Inc
	Total Charges 1,763.50
	Total Payments and Credits 1,763.50
	<b>Balance Due as of 8/11/2014 0.00</b>
	<b>Plaintiff</b> Southwest Desert Equities LLC
	Total Charges 1,561.00
	Total Payments and Credits 1,561.00
	<b>Balance Due as of 8/11/2014 0.00</b>
	<b>Plaintiff</b> Southwest Desert Equities LLC
	Appeal Bond Balance as of 8/11/2014 <b>500.00</b>

## CIVIL COVER SHEET

Clark County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

A- 11- 650952- B

XIII

**I. Party Information**

Plaintiff(s) (name/address/phone):

Southwest Desert Equities, LLC

Attorney (name/address/phone):

I. Scott Bogatz, Esq.  
3455 Cliff Shadows Pkwy., Ste. 110  
Las Vegas, NV 89129  
(702) 776-7001

Defendant(s) (name/address/phone):

Builder's Capital, Inc.  
c/o Financial Success Institute, Resident Agent  
3431 E. Sunset Road  
Las Vegas, Nevada 89120

Attorney (name/address/phone):

TBD

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

**Probate****Other Civil Filing Types**

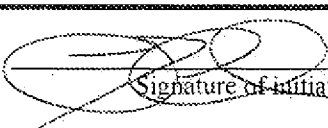
<b>Estimated Estate Value: _____</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Accet/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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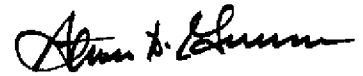
**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input checked="" type="checkbox"/> Other Business Court Matters
--	---	--

11-1-2011

Date


 Signature of initiating party or representative



CLERK OF THE COURT

**FFCO**

**Marquis Aurbach Coffing**  
PHILLIP S. AURBACH, ESQ.  
Nevada Bar No. 1501  
ERIK W. FOX, ESQ.  
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**Techlaw LLP**

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Facsimile: (858) 777-3347  
[dana@techlawllp.com](mailto:dana@techlawllp.com)  
Attorneys for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SOUTHWEST DESERT EQUITIES, LLC, a  
Nevada corporation,

Plaintiff,

vs.

BUILDER'S CAPITAL, INC., a Nevada  
corporation; DOES I through X, inclusive; and  
ROE ENTITIES I through X, inclusive,

Defendants.

Case No.: A-11-650952-B  
Dept. No.: XIII

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

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

The above-captioned matter having come on for trial before this Court commencing on March 3, 2014, continuing on March 4 and concluding on March 5, and the Court having considered the evidence presented by the parties, the testimonies of witnesses, and the arguments of counsel, and good cause appearing therefore, the Court hereby makes the following Findings of Fact and Conclusions of Law:

///

///

MARQUIS & AURBACH

10001 Park Run Drive

Las Vegas, Nevada 89145

(702) 382-0711 FAX: (702) 382-5816

RECEIVED

JUL 24 2014

DISTRICT COURT DEPT#13

## FINDINGS OF FACT

1  
2           1.       Subject Matter Jurisdiction. The Plaintiff's claims do not raise issues that are  
3 within the original jurisdiction of the Justice Court because the amounts claimed due exceed the  
4 Justice Court Jurisdictional limit.

5           2.       Personal Jurisdiction. The Defendant, Builder's Capital, Inc. (BCI), made a  
6 general appearance in this action.

7           3.       On December 8, 2005, a group of lenders (hereinafter the "Lender Group")  
8 pooled funds of \$4,675,000 and lent those funds pursuant to a promissory note between  
9 Southwest Desert Equities ("SWDE") and Lender Group (the "Lender Group Loan").

10          4.       BCI was a member of the Lender Group Loan.

11          5.       SWDE received the Lender Group Loan from the Lender Group in the amount of  
12 \$4,675,000.

13          6.       SWDE secured the loan by a Deed of Trust and a personal guarantee (the  
14 "Personal Guarantee") that was signed by John A. Ritter ("Ritter"), allowing BCI and the Lender  
15 Group to pursue Ritter personally in the event of default on the loan by SWDE.

16          7.       The Personal Guaranty holds Ritter personally liable in the event of default by  
17 SWDE.

18          8.       The Personal Guaranty stands independent from the Lender Group Loan, and has  
19 been determined to be enforceable against Ritter, pursuant to the judgment in *Builders Capital*  
20 *Inc. v. John A. Ritter*, case no. A-11-637783-C (the "Ritter Lawsuit").

21          9.       SWDE is part of the "FOCUS" group of entities, which includes Focus  
22 Investment Group, Focus Management Services, Inc., and SWDE, amongst others (the "FOCUS  
23 Group").

24          10.       Focus Management Group, Inc. and SWDE are majority owned by Focus  
25 Investment Group.

26          11.       Ritter owns a 52% interest in the Focus Investment Group, and is the primary  
27 member of Focus Investment Group.  
28

12. SWDE and Focus Investment Group have entered into agreements to indemnify Ritter.

13. SWDE defaulted on the Lender Group Loan.

14. BCI successfully sued Ritter under the Personal Guarantee, and was awarded a \$8,330,265.37 judgment in its favor in the Ritter Lawsuit.

15. SWDE brought this action against BCI on November 1, 2011.

16. SWDE premised this action on common law indemnity and on an Indemnification Agreement (Trial Ex. 21) wherein Focus Investment Group, LLC, expressly agreed to indemnify and defend Ritter from any claims or amounts due as result of actions or judgments entered against Ritter.

17. Ritter sought to consolidate the Ritter Lawsuit with this action, asking the District Court to allow the Ritter Lawsuit to be removed into the business court with the present case, but that court denied the consolidation motion and retained jurisdiction over the Ritter Lawsuit.

18. BCI moved this Court for summary judgment, and on May 16, 2013, this Court partially granted BCI's Motion for Summary Judgment in regards to SWDE's claim that Ritter was insulated from liability to the holder of the senior loan in the Ritter Lawsuit, and SWDE's claim that this Court should restrain the court in the Ritter Lawsuit from proceeding to enforce its determinations.

19. On May 16, 2013, this Court also partially denied BCI's motion to the extent that it would have the Court preclude SWDE's action seeking damages for attorneys' fees and costs for breach of the Intercreditor and Subordination Agreement, and moved to trial.

20. Trial on the issue of damages, breach of the Intercreditor and Subordination Agreement, and declaratory relief was held on March 3, 4 and 5, 2014.

21. This Court issued its Decision dated March 31, 2014 stating, "the Court agrees with the Defendant that there is no basis for recovery by Plaintiff on any of its causes of action herein, and thus finds for Defendant, meaning that there is no need to address the damages issues."

22. To the extent that any of the Findings of Fact are deemed to be Conclusions of Law, the same are incorporated by reference into the Conclusions of Law.

**CONCLUSION OF LAW**

NOW, THEREFORE, based upon the foregoing findings, the Court hereby makes the following conclusions of law:

23. The Personal Guarantee has been determined in the Ritter Lawsuit to be enforceable against Ritter at the time of the Ritter Lawsuit. The Court deems such guaranty to be a part of the subordinate loan documents.

24. The Personal Guarantee remains enforceable pursuant to the Ritter Lawsuit (case no. A-11-637783-C).

25. The Intercreditor and Subordination Agreement did not require BCI to wait to pursue enforcement of the Personal Guarantee or the Lender Loan until the Bank was repaid. The Intercreditor and Subordination Agreement was designed and intended to govern the priority relationship between the senior lender and the subordinate lender. BCI was not agreeing with SWDE that it would not collect from it; it was agreeing with the senior lender that collections would recognize its priority.

26. BCI may enforce the Personal Guarantee at any time after SWDE's default.

27. BCI did not breach the Intercreditor and Subordination Agreement by bringing the Ritter Lawsuit.

28. BCI did not breach its duty of good faith and fair dealing to SWDE by bringing the Ritter Lawsuit.

29. SWDE is not entitled to damages, attorney fees or costs for defending Ritter in the Ritter Lawsuit.

30. SWDE is not entitled to Declaratory relief against BCI.

///

///

///

///

**ORDER**

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. BCI did not breach the Intercreditor and Subordination Agreement with SWDE.
2. Judgment is entered against SWDE and in favor of BCI as to all claims raised by SWDE in its Complaint.
3. SWDE and FOCUS Group are denied attorney fees.
4. SWDE and FOCUS Group are denied damages.
5. Declaratory relief against BCI is denied.

Dated this 28<sup>th</sup> day of July, 2014.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

Dated this 29<sup>th</sup> day of July, 2014.

**MARQUIS AURBACH COFFING**

By: 

Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Erik W. Fox, Esq.  
Nevada Bar No. 8804  
10001 Park Run Drive  
Las Vegas, Nevada 89145

Techlaw LLP  
Dana B. Robinson, Esq.  
Nevada Bar No. 7157  
P.O. Box 1416  
La Jolla, California 92038  
Attorneys for Defendants

Dated this 23<sup>rd</sup> day of July, 2014.

**BOGATZ LAW GROUP**

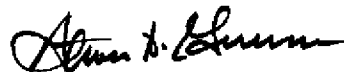
By: 

I. Scott Bogatz, Esq.  
Nevada Bar No. 3367  
Charles M. Vlasic III, Esq.  
Nevada Bar No. 11308  
3883 Howard Hughes Parkway  
Suite 790  
Las Vegas, Nevada 89169  
Attorneys for Plaintiff

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dana@techlawllp.com  
Attorneys for Defendants

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CLERK OF THE COURT

# **DISTRICT COURT**

## **CLARK COUNTY, NEVADA**

SOUTHWEST DESERT EQUITIES, LLC, a  
Nevada corporation,

Plaintiff,

vs.

BUILDER'S CAPITAL, INC., a Nevada  
corporation; DOES I through X, inclusive; and  
ROE ENTITIES I through X, inclusive,

Defendants.

Case No.: A-11-650952-B  
Dept. No.: XIII

## **NOTICE OF ENTRY OF ORDER**

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1 Please take notice that an Order based upon the Findings of Fact and Conclusions of Law  
2 was entered in the above-captioned matter on the 29th day of July, 2014, a copy of which is  
3 attached hereto.

4 Dated this 29<sup>th</sup> day of July, 2014.

5 August

6 MARQUIS AURBACH COFFING

7  
8 By 

9 Phillip S. Aurbach, Esq.  
10 Nevada Bar No. 1501  
11 Erik W. Fox, Esq.  
12 Nevada Bar No. 8804  
13 10001 Park Run Drive  
14 Las Vegas, Nevada 89145  
15 Attorneys for Defendants  
16  
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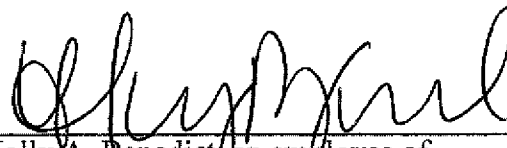
MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6<sup>th</sup> day of ~~July~~ August, 2014. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Bogatz Law Group  
Charles M. Vlasic, III, Esq. (*cvlasic@isbmv.com*)  
Jenn Moran (*jmoran@isbmv.com*)  
Scott Bogatz (*sbogatz@isbmv.com*)

  
\_\_\_\_\_  
Holly A. Benedict, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

  
CLERK OF THE COURT

**FFCO**  
**Marquis Aurbach Coffing**  
**PHILLIP S. AURBACH, ESQ.**  
Nevada Bar No. 1501  
**ERIK W. FOX, ESQ.**  
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[efox@maclaw.com](mailto:efox@maclaw.com)

**Techlaw LLP**  
**DANA B. ROBINSON, ESQ.**  
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[dana@techlawllp.com](mailto:dana@techlawllp.com)  
Attorneys for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**SOUTHWEST DESERT EQUITIES, LLC, a**  
Nevada corporation,

Plaintiff,

vs.

**BUILDER'S CAPITAL, INC., a Nevada**  
corporation; DOES I through X, inclusive; and  
**ROE ENTITIES I through X, inclusive,**

Defendants.

Case No.: A-11-650952-B  
Dept. No.: XIII

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

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

The above-captioned matter having come on for trial before this Court commencing on March 3, 2014, continuing on March 4 and concluding on March 5, and the Court having considered the evidence presented by the parties, the testimonies of witnesses, and the arguments of counsel, and good cause appearing therefore, the Court hereby makes the following Findings of Fact and Conclusions of Law:

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///

**MARQUIS & AURBACH**  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**RECEIVED**  
**JUL 24 2014**

**DISTRICT COURT DEPT. XIII**

## FINDINGS OF FACT

1. Subject Matter Jurisdiction. The Plaintiff's claims do not raise issues that are within the original jurisdiction of the Justice Court because the amounts claimed due exceed the Justice Court Jurisdictional limit.

2. Personal Jurisdiction. The Defendant, Builder's Capital, Inc. (BCI), made a general appearance in this action.

3. On December 8, 2005, a group of lenders (hereinafter the "Lender Group") pooled funds of \$4,675,000 and lent those funds pursuant to a promissory note between Southwest Desert Equities ("SWDE") and Lender Group (the "Lender Group Loan").

4. BCI was a member of the Lender Group Loan.

5. SWDE received the Lender Group Loan from the Lender Group in the amount of \$4,675,000.

6. SWDE secured the loan by a Deed of Trust and a personal guarantee (the "Personal Guarantee") that was signed by John A. Ritter ("Ritter"), allowing BCI and the Lender Group to pursue Ritter personally in the event of default on the loan by SWDE.

7. The Personal Guaranty holds Ritter personally liable in the event of default by SWDE.

8. The Personal Guaranty stands independent from the Lender Group Loan, and has been determined to be enforceable against Ritter, pursuant to the judgment in *Builders Capital Inc. v. John A. Ritter*, case no. A-11-637783-C (the "Ritter Lawsuit").

9. SWDE is part of the "FOCUS" group of entities, which includes Focus Investment Group, Focus Management Services, Inc., and SWDE, amongst others (the "FOCUS Group").

10. Focus Management Group, Inc. and SWDE are majority owned by Focus Investment Group.

11. Ritter owns a 52% interest in the Focus Investment Group, and is the primary member of Focus Investment Group.

12. SWDE and Focus Investment Group have entered into agreements to indemnify Ritter.

13. SWDE defaulted on the Lender Group Loan.

14. BCI successfully sued Ritter under the Personal Guarantee, and was awarded a \$8,330,265.37 judgment in its favor in the Ritter Lawsuit.

15. SWDE brought this action against BCI on November 1, 2011.

16. SWDE premised this action on common law indemnity and on an Indemnification Agreement (Trial Ex. 21) wherein Focus Investment Group, LLC, expressly agreed to indemnify and defend Ritter from any claims or amounts due as result of actions or judgments entered against Ritter.

17. Ritter sought to consolidate the Ritter Lawsuit with this action, asking the District Court to allow the Ritter Lawsuit to be removed into the business court with the present case, but that court denied the consolidation motion and retained jurisdiction over the Ritter Lawsuit.

18. BCI moved this Court for summary judgment, and on May 16, 2013, this Court partially granted BCI's Motion for Summary Judgment in regards to SWDE's claim that Ritter was insulated from liability to the holder of the senior loan in the Ritter Lawsuit, and SWDE's claim that this Court should restrain the court in the Ritter Lawsuit from proceeding to enforce its determinations.

19. On May 16, 2013, this Court also partially denied BCI's motion to the extent that it would have the Court preclude SWDE's action seeking damages for attorneys' fees and costs for breach of the Intercreditor and Subordination Agreement, and moved to trial.

20. Trial on the issue of damages, breach of the Intercreditor and Subordination Agreement, and declaratory relief was held on March 3, 4 and 5, 2014.

21. This Court issued its Decision dated March 31, 2014 stating, "the Court agrees with the Defendant that there is no basis for recovery by Plaintiff on any of its causes of action herein, and thus finds for Defendant, meaning that there is no need to address the damages issues."

22. To the extent that any of the Findings of Fact are deemed to be Conclusions of Law, the same are incorporated by reference into the Conclusions of Law.

**CONCLUSION OF LAW**

NOW, THEREFORE, based upon the foregoing findings, the Court hereby makes the following conclusions of law:

23. The Personal Guarantee has been determined in the Ritter Lawsuit to be enforceable against Ritter at the time of the Ritter Lawsuit. The Court deems such guaranty to be a part of the subordinate loan documents.

24. The Personal Guarantee remains enforceable pursuant to the Ritter Lawsuit (case no. A-11-637783-C).

25. The Intercreditor and Subordination Agreement did not require BCI to wait to pursue enforcement of the Personal Guarantee or the Lender Loan until the Bank was repaid. The Intercreditor and Subordination Agreement was designed and intended to govern the priority relationship between the senior lender and the subordinate lender. BCI was not agreeing with SWDE that it would not collect from it; it was agreeing with the senior lender that collections would recognize its priority.

26. BCI may enforce the Personal Guarantee at any time after SWDE's default.

27. BCI did not breach the Intercreditor and Subordination Agreement by bringing the Ritter Lawsuit.

28. BCI did not breach its duty of good faith and fair dealing to SWDE by bringing the Ritter Lawsuit.

29. SWDE is not entitled to damages, attorney fees or costs for defending Ritter in the Ritter Lawsuit.

30. SWDE is not entitled to Declaratory relief against BCI.

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///

///

**ORDER**

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. BCI did not breach the Intercreditor and Subordination Agreement with SWDE.
2. Judgment is entered against SWDE and in favor of BCI as to all claims raised by SWDE in its Complaint.
3. SWDE and FOCUS Group are denied attorney fees.
4. SWDE and FOCUS Group are denied damages.
5. Declaratory relief against BCI is denied.

Dated this 28<sup>th</sup> day of July, 2014.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

Dated this 29<sup>th</sup> day of July, 2014.

**MARQUIS AURBACH COFFING**

By: 

Phillip S. Aurbach, Esq.  
Nevada Bar No. 1501  
Erik W. Fox, Esq.  
Nevada Bar No. 8804  
10001 Park Run Drive  
Las Vegas, Nevada 89145

Techlaw LLP  
Dana B. Robinson, Esq.  
Nevada Bar No. 7157  
P.O. Box 1416  
La Jolla, California 92038  
Attorneys for Defendants

Dated this 23<sup>rd</sup> day of July, 2014.

**BOGATZ LAW GROUP**

By: 

I. Scott Bogatz, Esq.  
Nevada Bar No. 3367  
Charles M. Vlasic III, Esq.  
Nevada Bar No. 11308  
3883 Howard Hughes Parkway  
Suite 790  
Las Vegas, Nevada 89169  
Attorneys for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**January 05, 2012**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**January 05, 2012      9:00 AM      Motion to Dismiss**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Denman

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Charles Vlasic, Esq., for Plaintiff  
Eric Fox, Esq., for Builder's Capital

**DEFENDANT'S MOTION TO DISMISS**

Mr. Fox advised this matter is a linked to a case presently pending before Judge Walsh involving Plaintiff's owner, John Ritter, personally. He continued that the lawsuit hinges on the contention that the subordination agreement between FNB as senior lender and BCI as junior lender impacts the guaranty agreement between BCI and John Ritter. Since Mr. Ritter was not a party to the original loan contract, Judge Walsh dismissed all of his counterclaims leading him to file this duplicative lawsuit in the name of Southwest Desert Equities (SDE) of which he is President. In this Complaint, SDE is request injunctive relief based on the Walsh case, breach of contract; and breach of implied covenant of good faith and fair dealing. He concluded that BCI is proceeding on the guaranty agreement action.

Mr. Vlasic gave the Court a brief background on the parties involved in the case. He stated that BCI agreed they would not try and collect on their loan until the senior loan was resolved. BCI is attempting to go around the subordination agreement and collect on the debt.

Following further discussion, COURT ORDERED Defendant's Motion GRANTED IN PART as to the Injunctive Relief and the Breach of Implied Covenant of Good Faith and Fair Dealing action and DENIED WITHOUT PREJUDICE to the other causes of action to further proceedings on a summary judgment.

Mr. Fox to prepare proposed Order and submit to opposing counsel for approval as to form and content.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**March 19, 2012**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**March 19, 2012      2:15 PM      Mandatory Rule 16  
Conference**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Denman

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Charles Vlasik, Esq., for Plaintiff  
Erik Fox, Esq., for Defendant

**MANDATORY RULE 16 CONFERENCE**

**CHAMBERS:** Colloquy on claims remaining. Counsel advised the JCCR had been drafted but they needed to put some dates in and then it will be filed. Upon inquiry of the Court as to a settlement conference, parties advised they were amenable to one but needed to check on dates with their clients first. Court explained that once they had reached a consensus, to contact the Department's JEA and she will walk them through the process.

Court explained that as a Business Court case, all Discovery motions are heard in the Department; however, the Discovery Commissioner sets the scheduling order upon receipt of the CCR so Counsel should make sure one is provided. The trial order will be issued by the Department upon receipt of the scheduling order.

As to other case management concerns, Mr. Vlasik advised there is a corresponding case in Department X and asked about the possibility, if the cases are consolidated, could the matter remain in Business Court. The Court replied there are different ways that such a request has been handled but they needed to start with motion practice. Mr. Vlasik also advised that if this other case is consolidated, issues of confidential financial records may arise. Upon inquiry of the Court, Counsel advised no jury demand had been filed.

CLERK'S NOTE: Following the Conference, COURT ORDERED the JCCR be filed by 4/6/2012 and FURTHER ORDERED a status check SET for COMPLIANCE, to which the parties do not need to appear if proof of filing is provided.

4/16/2012 AT 9:00AM STATUS CHECK: COMPLIANCE FILING JCCR

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**July 19, 2012**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**July 19, 2012      9:00 AM      Motion to Dismiss**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Denman

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Scott Bogatz, Esq., and Michael Hogue, Esq., for Plaintiff  
Erik Fox, Esq., for Defendant

**DEFENDANT'S MOTION TO DISMISS**

Argument by Counsel to Dismiss under 12(b)5 for failure to plead damages appropriately and provide a calculation of damages. Court stated the Motion was being considered as a Discovery motion and ORDERED Motion to Dismiss DENIED WITHOUT PREJUDICE as to future filing under Rule 37 once defendants have proceeded to obtain what they believe they are entitled to and plaintiff's have failed to provide as required.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Business Court

## COURT MINUTES

December 17, 2012

A-11-650952-B Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

**December 17, 2012      9:00 AM      Motion to Extend  
Discovery**

**HEARD BY:** Denton, Mark R.

COURTROOM: RJC Courtroom 12A

**COURT CLERK:** Linda Denman

**RECORDER:** Cynthia Georgilas

**REPORTER:**

## PARTIES

**PRESENT:** Bogatz, I. Scott Attorney  
Fox, Erik W. Attorney  
Vlastic, Charles Attorney

## JOURNAL ENTRIES

- Arguments by counsel as to Plaintiff's Motion to Extend Discovery on OST (First Request) included counsel's prior injury, nature of original alleged claims, and case management. COURT ORDERED motion GRANTED but limited Plaintiff to 5 depositions completed by January 25, 2013, calendar call and trial date STAND, matter SET for another Rule 16 Conference in January regarding effect of this ruling on trial date.

Mr. Vlasic to submit proposed Order; Mr. Fox to approve as to form and content.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**January 22, 2013**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**January 22, 2013      3:30 PM      Mandatory Rule 16  
Conference**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Denman

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Fox, Erik W.      Attorney  
                 Vlasic, Charles      Attorney

**JOURNAL ENTRIES**

- At the MANDATORY RULE 16 CONFERENCE, Counsel advised that the additional depositions granted by the Court had not been taken as yet, so there was nothing to report at this time. Counsel requested that Defendant's Motion for Summary Judgment, currently set on calendar for 2/07/13, be extended for a week. COURT SO ORDERED. Given that the depositions hadn't been taken, Counsel also requested this Conference be continued but heard before the Calendar Call. COURT SO ORDERED but stated TRIAL DATE STANDS.

2/14/2013 at 9:00AM DEFENDANT S MOTION FOR SUMMARY JUDGMENT

2/19/2013 at 1:45PM MANDATORY RULE 16 CONFERENCE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**February 19, 2013**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**February 19, 2013      1/1/1900      Mandatory Rule 16  
Conference**

**HEARD BY:**   Denton, Mark R.

**COURTROOM:**

**COURT CLERK:**   Linda Denman

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Fox, Erik W.      Attorney  
                     Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Counsel and Court met in Chambers for a Mandatory Rule 16 Conference. Counsel advised they were stipulating to continuing the trial and would like the trial date reset to sometime after the upcoming Motion for Summary Judgment is heard as the parties are currently in settlement negotiations. Mr. Fox also advised that due to the settlement negotiations, all depositions the Court had previously allowed plaintiff to conduct, had been put on hold pending settlement. For the record, Mr. Fox stated defendant had no objection to plaintiff setting depositions when appropriate. COURT ORDERED calendar call and bench trial dates VACATED and advised a new trial order would be forthcoming for a trial stack after April 8, 2013.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**May 02, 2013**

---

A-11-650952-B	Southwest Desert Equities LLC, Plaintiff(s) vs. Builder's Capital Inc, Defendant(s)
---------------	---

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May 02, 2013	9:00 AM	Motion for Summary Judgment
--------------	---------	--------------------------------

HEARD BY: Denton, Mark R.	COURTROOM: RJC Courtroom 12A
---------------------------	------------------------------

COURT CLERK: Noelle Peguese

RECORDER: Cynthia Georgilas

REPORTER:

**PARTIES**

PRESENT:	Bogatz, I. Scott	Attorney
	Fox, Erik W.	Attorney
	Vlasic, Charles	Attorney

**JOURNAL ENTRIES**

- This matter came before the Court , for hearing on Deft's Motion for Summary Judgment . Counsel presented their case and submitted matter to the Court. COURT ORDERED matter taken UNDER ADVISEMENT

Mr. Fox noted there are two claims, Breach of Contract and Declaratory Relief, and argued there cannot be a breach of contract with no damages. Discussions as to previously granted motions. Arguments by counsel as to the Subordination Agreement. Following arguments, COURT ORDERED, matter TAKEN UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**May 16, 2013**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**May 16, 2013      8:52 AM      Minute Order      Decision: Deft's  
Motion for Summary  
Judgment**

**HEARD BY:**   Denton, Mark R.

**COURTROOM:**

**COURT CLERK:**   Sharon Chun

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- DECISION

THIS MATTER having come before the Court on May 2, 2013 for hearing on Defendant s Motion for Summary Judgment, and the Court, having considered the papers submitted in connection with such item and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration; NOW, THEREFORE, the Court decides the submitted issues as follows: MOTION DENIED IN PART; GRANTED IN PART.

PLEASE SEE THE COURT'S COMPLETE WRITTEN DECISION, FILED 5/16/13 AT 8:52 A.M.

CLERK'S NOTE: A copy of the Court's filed Decision has been distributed to appropriate parties by the Department XIII Judicial Executive Assistant.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**June 10, 2013**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**June 10, 2013      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Sharon Chun  
Ying Pan

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:** Bogatz, I. Scott      Attorney  
Fox, Erik W.      Attorney  
Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Bogatz advised Trial is anticipated to last about 5 days depending on the Court's calendar. Mr. Fox indicated his witness will not be available in the next few weeks, and the Defense is contemplating a request to continue the Trial. Colloquy regarding the Trial Stack. COURT ORDERED, the 6/18/13 Trial Date VACATED and Trial RESET to the 8/13/13 Non-Jury Trial Stack. Upon Court's inquiry, Mr. Fox stated parties are not interested in the settlement conference as there had been something similar conducted previously. An Order regarding Defendant's prior Motion for Summary Judgment SUBMITTED by Mr. Fox IN OPEN COURT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**July 29, 2013**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

---

**July 29, 2013      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Sharon Chun

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Bogatz, I. Scott      Attorney  
                    Fox, Erik W.      Attorney  
                    Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- - Mr. Bogatz stated that to be safe they'll require 3-5 days for trial completion. Also, Mr. Bogatz requested the trial set later in the stack or bumped to the next stack because both parties will have clients who will be out of town in August.

Upon agreement of all counsel, COURT ORDERED, TRIAL RESET for 9:00 A.M. on 8/27/13 ON STAND-BY. Counsel will be notified by 2:00 P.M. on 8/21/13 if this trial will be going forward. COURT NOTED that no due date for the Pretrial Memo has yet been set.

8/27/13 9:00 AM BENCH TRIAL (STAND-BY)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**August 22, 2013**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**August 22, 2013      8:27 AM      Minute Order      Minute Order Re:  
Resetting of Trial**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Sharon Chun

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As the stand-by time has run in this case and the other trial is proceeding, COURT ORDERED trial date of August 27, 2013, VACATED; matter to be RESET for Trial.

**CLERK'S NOTE:** The Judicial Executive Assistant will distribute a copy of this minute order to the following attorneys:

I. Scott Bogatz, Esq./Charles Vlastic, Esq. (By facsimile: 776-7900)

Erik W. Fox, Esq. (By facsimile: 382-5816)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**November 25, 2013**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**November 25, 2013      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Ying Pan

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Fox, Erik W.      Attorney  
                 Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Colloquy between the Court and counsel as to trial scheduling. COURT ORDERED, Trial date VACATED and RESET.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**February 10, 2014**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**February 10, 2014      2:00 PM      Calendar Call**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Shelly Landwehr

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Bogatz, I. Scott      Attorney  
                    Fox, Erik W.      Attorney  
                    Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Parties announced ready for trial, with trial to last 3 days. COURT ORDERED, matter SET for trial.  
Pre-Trial Memorandum due 2/27/14.

03/03/2014 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**March 03, 2014**

---

A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**March 03, 2014      2:30 PM      Bench Trial**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Ying Pan

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Bogatz, I. Scott      Attorney  
                    Fox, Erik W.      Attorney  
                    Robinson, Dana B.      Attorney  
                    Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Plaintiff's representative, Thomas DeVore, present.

Defense counsel invoked Exclusionary Rule. Colloquy between counsel regarding Proposed Exhibit Nos. 124, 125, and 126. Mr. Fox indicated he reserves the right to object to the admission. Opening statements by parties. Testimony and exhibits presented (see worksheets). COURT ORDERED, Trial CONTINUED.

3-4-14 9:15 AM BENCH TRIAL - CONTINUED

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Business Court

## COURT MINUTES

**March 04, 2014**

A-11-650952-B Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

**March 04, 2014      9:15 AM      Bench Trial**

**HEARD BY:** Denton, Mark R.

COURTROOM: RJC Courtroom 12A

**COURT CLERK:** Keri Cromer

**RECORDER:** Cynthia Georgilas

**REPORTER:**

## PARTIES

**PRESENT:** Bogatz, I. Scott Attorney  
Fox, Erik W. Attorney  
Robinson, Dana B. Attorney  
Vlasic, Charles Attorney

## JOURNAL ENTRIES

- Bench Trial reconvened.

Further testimony, depositions published and exhibits presented (see worksheets). MORNING RECESS. Further testimony, depositions published and exhibits presented. LUNCH RECESS. Further testimony and depositions published. AFTERNOON RECESS. Plaintiffs rested. Upon Court's inquiry, defense counsel advised they had no more witnesses. Defense rested. Court advised evidence was closed and Bench Trial would reconvene tomorrow at 9:00 AM. Due to a scheduling conflict, Mr. Fox requested Bench Trial reconvene at 10:00 AM. No opposition by Plaintiffs. COURT SO ORDERED.

CONTINUED TO: 3/5/14 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Business Court

## COURT MINUTES

**March 05, 2014**

A-11-650952-B Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

**March 05, 2014      10:00 AM      Bench Trial**

**HEARD BY:** Denton, Mark R.

COURTROOM: RJC Courtroom 12A

**COURT CLERK:** Keri Cromer

**RECORDER:** Cynthia Georgilas

**REPORTER:**

## PARTIES

**PRESENT:** Bogatz, I. Scott Attorney  
Fox, Erik W. Attorney  
Robinson, Dana B. Attorney  
Vlasic, Charles Attorney

## JOURNAL ENTRIES

- Bench Trial reconvened.

Mr. Robinson stated Mr. Fox was running late from his Henderson Court matter, but would be present shortly to make closing arguments. Upon Court's inquiry, counsel stipulated to begin closing arguments without Mr. Fox present. Closing arguments by counsel. Colloquy between Court and Mr. Fox regarding judicial notice. COURT advised matter would stand submitted and ORDERED, matter taken UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**March 31, 2014**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**March 31, 2014      3:45 PM      Decision**

**HEARD BY:** Denton, Mark R.      **COURTROOM:**

**COURT CLERK:** Keri Cromer

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- This matter came before the Court on March 3, 4, and 5 for non-jury trial. Counsel presented their case and Court took matter under advisement. After carefully considering the papers submitted and hearing arguments, Court issued its Decision this 31st day of March, 2014. COURT FINDS for Defendant on the liability issues, meaning that there is no need to address the damages issues. See Court's Decision filed for full context. Counsel for Defendant is directed to submit proposed findings of fact, conclusions of law, and judgment consistent with the foregoing.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**June 19, 2014**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**June 19, 2014      9:00 AM      Motion to Amend  
Judgment**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Keri Cromer

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Bogatz, I. Scott      Attorney  
                 Fox, Erik W.      Attorney  
                 Vlastic, Charles      Attorney

**JOURNAL ENTRIES**

- Court disclosed to counsel that the Department Law Clerk had recently accepted a position with Marquis Aurbach Coffing and could not work on any matters related to this law firm. Arguments by counsel regarding whether or not the Findings of Fact and Conclusions of Law submitted by defense counsel needed to be consistent with the Court's decision. Court advised the matter would stand submitted and ORDERED, matter taken UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Business Court**

**COURT MINUTES**

**July 02, 2014**

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A-11-650952-B      Southwest Desert Equities LLC, Plaintiff(s)  
vs.  
Builder's Capital Inc, Defendant(s)

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**July 02, 2014      9:54 AM      Decision**

**HEARD BY:** Denton, Mark R.      **COURTROOM:**

**COURT CLERK:** Keri Cromer

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- This matter came before the Court on June 19, 2014 for hearing on Plaintiff's Motion to Amend Judgment. Counsel presented their case and Court took matter under advisement. After carefully considering the papers submitted and hearing arguments, Court issued its Decision this 2nd day of July, 2014. COURT ORDERED, Motion GRANTED IN PART. See Court's Decision and Order filed for full context. Counsel for Defendant is directed to submit a proposed Order and proposed Amended Findings of Fact and Conclusions of Law consistent with the foregoing.

# Exhibit List

Case: A-11-550952-B Party: Sort Order: Status Case Southwest Desert Equities LLC, Plaintiff  
(s)  
vs.  
Builder's Capital Inc, Defendant(s)

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
Depo 4	Plaintiff		Destroy 03/05/2016	Document Depo of Todd Slusher 4/6/13		Bogatz, I. Scott		
Joint 1	Other	Admitted 03/03/2014	Destroy 03/05/2016	Document Complete Appraisal presented in a Summary Appraisal Report		Bogatz, I. Scott		
Comment: for complete listing - please see exhibits tab for exhibits list								
Depo 1	Plaintiff	Marked 03/04/2014	Destroy 03/05/2016	Document Depo of Stephen Brockman 4/12/13		Southwest Desert Equities LLC		
Depo 2	Plaintiff	Marked 03/04/2014	Destroy 03/05/2016	Document Depo of Vincent Cervoni 4/16/13		Southwest Desert Equities LLC		
Depo 3	Plaintiff	Marked 03/04/2014	Destroy 03/05/2016	Document Depo of Roland Sturm 4/8/13		Bogatz, I. Scott		

SOUTHWEST DESERT EQUITIES, LLC, a  
Nevada limited liability corporation,

Plaintiff,

v.

BUILDER'S CAPITAL, INC., a Nevada  
corporation; DOES I through X, inclusive; and  
ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO.: A-11-650952-B

DEPT. NO.: XIII

**JOINT TRIAL EXHIBIT LIST**

EX #	DOCUMENT	BEG BATES #	END BATES #	DOC DATE	DEPO #	OFFER DATE	ADMIT	OBJ
<b>JOINT TRIAL EXHIBIT LIST</b>								
1.	Complete Appraisal presented in a Summary Appraisal Report	BCI000093	BCI000097	07/22/05, 07/28/05				
2.	\$11.9 MM Promissory Note	RITTER000006	RITTER000011	08/01/05		3-3-14	NO	3-3-14
3.	\$11.9 MM Guaranty	RITTER000012	RITTER000014	08/01/05				
4.	\$11.9 MM Deed of Trust	RITTER000015	RITTER000021	08/01/05		3-3-14	NO	3-3-14
5.	Cert. of Corp. Resolution	RITTER000022	RITTER000022	08/01/05				
6.	Emails between Focus and Builder's Capital Regarding Amount of Financing	RITTER000162	RITTER000162	10/27/05- 10/28/05		3-3-14	NO	3-3-14
7.	Complete Appraisal presented in a Summary Appraisal Report	BCI000030	BCI000032	12/01/05, 12/07/05				
8.	Letter from Ritter to Brockman Requesting Loan	SLUSHER000092	SLUSHER000092	12/07/05				
9.	\$4.675MM Promissory Note	RITTER000071	RITTER000077	12/07/05		3-3-14	NO	3-3-14
10.	\$4.675MM Guaranty	RITTER000078	RITTER000080	12/07/05		3-3-14	NO	3-3-14
11.	\$4.675MM Guaranty Exhibit "A"	BCI000045	BCI000045	12/07/05				
12.	Amendment to \$11.9 MM Promissory Note	RITTER000039	RITTER000041	12/07/05		3-3-14	NO	3-3-14
13.	Certificate of Corporate Resolution	RITTER000089	RITTER000089	12/07/05				
14.	BCI Loan Servicing Contract	BCI000071	BCI000073	12/07/05				
15.	Loan Servicing Department Fee Schedule	BCI000074	BCI000074	12/07/05				
16.	Intercreditor and Subordination Agreement	BCI000046	BCI000068	12/07/05		3-3-14	NO	3-3-14
17.	Modification to \$11.9MM Deed of Trust	RITTER000042	RITTER000045	12/13/05				
18.	\$4.675MM Deed of Trust	RITTER000081	RITTER000088	12/13/05		3-3-14	NO	3-3-14
19.	Intercreditor and Subordination Agreement Cover Page	BCI000070	BCI000070	12/21/05				
20.	Amendment to \$4.675MM Promissory Note	RITTER000140	RITTER000141	11/17/06				
21.	Ritter Indemnification Agreement	RITTER0000950	RITTER0000955	01/01/07		3-3-14	NO	3-3-14
22.	Investment Letters from Steve Brockman and Robert Ferra	BCI000098	BCI000108	05/24/07				

EX #	DOCUMENT	BEG DATES #	END DATES #	DOC DATE	DEPO #	OFFER DATE	ADMIT	OBJ
23.	Amendment to \$4.675MM Promissory Note	RITTER000142	RITTER000143	06/07/07				
24.	Amendment to \$11.9MM Promissory Note	RITTER000046	RITTER000047	12/07/07				
25.	Amendment to \$11.9MM Promissory Note	RITTER000048	RITTER000057	12/07/07				
26.	Loan Forbearance Agreement	RITTER000144	RITTER000161	05/14/08		3/4/14	3/4/14	NO
27.	Letters regarding Approval of Loan Forbearance	BCI000178	BCI000199	05/21/08				
28.	Email from Heidi Collins regarding the Forbearance Agreement	BCI000260	BCI000260	06/24/08				
29.	Letters regarding Loan Forbearance from Steve Brockman	BCI000152	BCI000173	07/03/08				
30.	Builder's Capital Letter to Slusher	BCI000442	BCI000442	07/03/08				
31.	Email and proposal between Michael R. Whalen, John Ritter, Tom DeVore	BCI000257	BCI000259	05/04/10				
32.	Letters regarding Default from Steve Brockman	BCI000109	BCI000151	01/19/11				
33.	Letters regarding Default from Steve Brockman	BCI000177	BCI000177	01/19/11				
34.	Letters regarding Foreclosure from Steve Brockman	BCI000174	BCI000176	01/27/11				
35.	Builder's Capital Letter to Perry	PETITIONER'S 000504	PETITIONER'S 000504	01/27/11				
36.	Guaranty Complaint			03/25/11		3-3-11	N/D	3-3-11
37.	Guaranty Answer, Counterclaim & Third Party Complaint			05/24/11		3/4/14	3/4/14	NO
38.	Guaranty Motion to Dismiss			06/14/11		↓	↓	↓
39.	Guaranty Opposition to Motion to Dismiss			07/01/11		↓	↓	↓
40.	Guaranty Reply in Support of Motion to Dismiss			07/11/11		↓	↓	↓
41.	Guaranty Errata to Opposition to Motion to Dismiss			07/25/11		↓	↓	↓
42.	Guaranty Minute Order Granting Motion to Dismiss			08/09/11		↓	↓	↓
43.	Guaranty Order Granting Motion to Dismiss			08/22/11		↓	↓	↓
44.	Stearns Complaint			11/18/11				
45.	Guaranty Responses to Interrogatories			12/05/11		3/4/14	3/4/14	NO
46.	Guaranty Responses to Request for Production of Documents			12/05/11		↓	↓	↓
47.	Guaranty Motion for Summary Judgment			03/02/12		↓	↓	↓
48.	Guaranty Motion for Summary Judgment			03/26/12		↓	↓	↓
49.	Guaranty Opposition to Motion for Summary Judgment			03/26/12		↓	↓	↓
50.	Guaranty Motion to Consolidate			03/28/12		↓	↓	↓
51.	Guaranty Reply in Support of Motion for Summary Judgment			04/03/12		↓	↓	↓

EX #	DOCUMENT	BEG BATES #	END BATES #	DOC DATE	DEPO #	OFFER DATE	ADMIT	OBJ
52.	Guaranty Errata to Reply in Support of Motion for Summary Judgment			04/04/12		3/4/14	3/4/14	NO
53.	Guaranty Opposition to Motion to Consolidate			04/06/12		↓	↓	↓
54.	Guaranty Opposition to Motion for Summary Judgment			04/06/12		↓	↓	↓
55.	Guaranty Minutes from hearing on Motion for Summary Judgment			04/17/12		↓	↓	↓
56.	Slusher Letter to Investors	BCI000385	BCI000386	04/25/12				
57.	Letter between Elizabeth Belcher and Rebecca Rose	BCI000390	BCI000390	04/25/12				
58.	Letter between Elizabeth Belcher and Vince Cervoni	BCI000392	BCI000392	04/25/12				
59.	Letter between Elizabeth Belcher and Vince Cervoni	BCI000396	BCI000396	04/25/12				
60.	Letter between Elizabeth Belcher and James Fisher	BCI000402	BCI000402	04/25/12				
61.	Letter between Elizabeth Belcher and Corey Jenkins on behalf of Norman Jenkins	BCI000405	BCI000405	04/25/12				
62.	Letter between Elizabeth Belcher and Jennifer Kalekas	BCI000407	BCI000407	04/25/12				
63.	Letter between Elizabeth Belcher and Harry and Maiye Kilpatrick	BCI000409	BCI000409	04/25/12				
64.	Letter between Elizabeth Belcher and Ralph and Merri Perry	BCI000411	BCI000411	04/25/12				
65.	Letter between Elizabeth Belcher and Jayne Anderson	BCI000414	BCI000414	04/25/12				
66.	Letter between Elizabeth Belcher and Lynn Thielke	BCI000416	BCI000416	04/25/12				
67.	Letter between Elizabeth Belcher and Frank Conlin	BCI000418	BCI000418	04/25/12				
68.	Guaranty Reply in Support of Motion for Summary Judgment			04/25/12		3/4/14	3/4/14	NO
69.	Letter between Diane King and Elizabeth Belcher	BCI000422	BCI000422	04/26/12				
70.	Letter between Elizabeth Belcher and Harry and Maiye Kilpatrick	BCI000424	BCI000424	04/26/12				
71.	Assignments of Rights	BCI000388	BCI000389	04/26/12				
72.	Assignment of Rights	BCI000428	BCI000430	04/26/12				
73.	E-mail between Merri Perry and Elizabeth Belcher	BCI000387	BCI000387	04/27/12				
74.	Guaranty Motion to Amend Complaint			04/27/12		3/4/14	3/4/14	NO
75.	Guaranty Reply in Support of Motion to Consolidate			04/29/12		↓	↓	↓
76.	Letter between Elizabeth Belcher and Ralph and Merri Perry	BCI000426	BCI000427	04/30/12				
77.	Guaranty Errata to Motion to Amend Complaint			04/30/12		3/4/14	3/4/14	NO
78.	Guaranty Minutes from hearing on Motion for Summary Judgment			05/08/12		↓	↓	↓
79.	Guaranty Minute Order			05/10/12		↓	↓	↓

EX #	DOCUMENT	BEG BATES #	END BATES #	DOC DATE	DEPO #	OFFER DATE	ADMIT	OBJ
80.	Guaranty Opposition to Motion to Amend Complaint			05/17/12		3/4/14	3/4/14	NO
81.	Guaranty Findings of Fact, Conclusions of Law and Order			05/31/12		↓	↓	↓
82.	Slusher Letter to Investors	BCI000441	BCI000441	06/19/12				
83.	Letter from Diane King to investors	BCI000431	BCI000431	06/21/12				
84.	Guaranty Writ Petition			06/21/12		3/4/14	3/4/14	NO
85.	Builder's Capital's Responses to Interrogatories			06/22/12				
86.	Builder's Capital's Responses to Requests for Production of Documents			06/22/12				
87.	Letter between Diane King and Todd Slusher	BCI000420	BCI000420	06/24/12				
88.	Guaranty Order Granting Writ Review			07/02/12		3/4/14	3/4/14	NO
89.	Guaranty Motion to Dismiss Writ			08/03/12		↓	↓	↓
90.	Guaranty Subpoena Duces Tecum			08/15/12		↓	↓	↓
91.	Guaranty Notice of Judgment Debtor Exam			08/15/12		↓	↓	↓
92.	Guaranty Response to Motion to Dismiss Writ			08/20/12		↓	↓	↓
93.	Guaranty Motion to Stay on OST			08/31/12		↓	↓	↓
94.	Guaranty Motion for Permission to File Late Reply			09/07/12		↓	↓	↓
95.	Guaranty Opposition to Motion to Stay on OST			09/10/12		↓	↓	↓
96.	Correspondence between Diane King and Harry Kilpatrick	BCI000432	BCI000433	09/11/12				
97.	Correspondence between Diane King and Harry Kilpatrick	BCI000435	BCI000437	09/11/12				
98.	Correspondence between Diane King and Harry Kilpatrick	BCI000439	BCI000439	09/11/12				
99.	Guaranty Response to Motion for Permission to File Late Reply			09/12/12		3/4/14	3/4/14	NO
100.	Guaranty Order Granting Motion to Stay			10/04/12		↓	↓	↓
101.	Guaranty Reply in Support of Motion to Dismiss Writ			10/29/12		↓	↓	↓
102.	Guaranty Order Denying Motion to Dismiss Writ			10/29/12		↓	↓	↓
103.	Guaranty Opposition to Writ			11/19/12		↓	↓	↓
104.	SWDE's Second Supplemental Disclosure			11/28/12				
105.	SWDE's Responses to Requests for Admissions			11/28/12				
106.	Builder's Capital's Verifications			12/04/12				
107.	Guaranty Reply in Support of Writ			12/11/12		3/4/14	3/4/14	NO
108.	Builder's Capital's Motion for Summary Judgment			01/04/13				
109.	SWDE's Opposition to Motion for Summary Judgment			02/01/13		3/4/14	3/4/14	NO



# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

SOUTHWEST DESERT EQUITIES, LLC,

Plaintiff(s),

vs.

BUILDER'S CAPITAL, INC.,

Defendant(s),

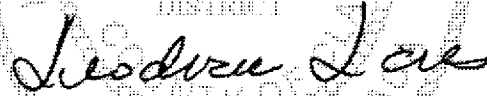
Case No: A650952

Dept No: XIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 14 day of August 2014.

Steven D. Grierson, Clerk of the Court



Teodora Jones, Deputy Clerk

2657

**BOGATZ LAW GROUP**3800 HOWARD HUGHES PARKWAY, STE. 1850  
LAS VEGAS, NEVADA 89169

DATE

8/7/14

94-169-1212

PAY  
TO THE  
ORDER OF

Clerk of the Supreme Court

\$ 250.00

Two hundred and fifty and 00/100

DOLLARS



All of us serving you®

FOR

A-11-650952-B



⑈002657⑈ ⑆121201694⑆ 153754434873⑈