

2005

MacDonald Redhawk Investors, Redhawk Development Company, LLC, MacDonald Utah Holdings, LLC v. The Ridges at Redhawk, LLC, Nielsen Red Hawk, LLC, Redhawk Management, LLC, C. Michael Nielsen : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MACDONALD REDHAWK INVESTORS, a
general partnership; REDHAWK
DEVELOPMENT COMPANY, LLC, a Utah
limited liability company; and MACDONALD
UTAH HOLDINGS, LLC, a Utah limited
liability company,

Plaintiffs and Appellees,

-vs-

THE RIDGES AT REDHAWK, LLC, a Utah
limited liability company; NIELSEN RED
HAWK, LLC, an expired Utah limited
liability company; REDHAWK MANAGEMENT,
LLC, an expired Utah limited liability
company; and C. MICHAEL NIELSEN, an
individual,

Defendants and Appellants.

Case No. 20051063-CA

District Court Case No. 050500229

REPLY BRIEF OF APPELLANTS

APPEAL FROM THE RULING AND ORDER OF THE HONORABLE
BRUCE C. LUBECK, DATED NOVEMBER 8, 2005

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UTAH APPELLATE COURTS
JUN 20 2006

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ARGUMENT

Appellees agreed to arbitrate this dispute: (1) in the Operating Agreement, as discussed in detail in the opening brief, and (2) when they agreed to have the arbitration award, with its express reservation of the determination of disputes arising in carrying out the winding up and distribution of partnership assets -- specifically the conveyance of properties -- to the arbitration panel.¹

Appellee asks this Court to abandon the Utah Legislature's strong public policy in favor of arbitration, as expressed by the Utah Legislature in UTAH CODE ANN. §§ 78-31a-101 to -131, *See Buckner v. Kennard*, 2004 UT 78, ¶ 16, 99 P.3d 842, 847 ("The Utah legislature promotes alternative dispute resolution, including arbitration, because it 'reduce[s] the need for judicial resources and the time and expense of the parties.'") The Utah Supreme Court has itself recognized the strong public policy favoring arbitration. *See id.*, at ¶ 17 ("This court has also recognized the strong public policy favoring arbitration 'as an approved, practical, and inexpensive means of settling disputes and easing court congestion.'")

The proffered especial circumstance for such abandonment of public policy argued by Appellee is the mere fact of judicial confirmation of an arbitration award entered between the parties some six years earlier. *See Appellee's Brief at 4.* Under Appellee's argued theory, the mere fact of confirmation by the Court

¹The confirmation was in fact effectuated upon stipulation of the parties. A copy of the Nielsen's Baseball Arbitration Proposal and the Stipulation to Confirm Arbitration Award, dated March 24, 2000, are attached as Appendix 1.

renders the agreements to arbitrate the disputes between the parties nugatory, as well as the confirmation order's own incorporation of the arbitration award's provision that the arbitration panel should reserve unto itself jurisdiction to resolve disputes concerning the carrying out of the partnership winding up and asset distribution. Appellees apparently posit that the policy of empowering courts to enforce their own judgments *per se* trumps the public policy favoring arbitration of disputes.

Appellees' focus on the power of the courts to enforce their own judgments is somewhat of a red herring, however, because the arbitration award did not purport to effectuate the final winding up and distribution of partnership assets, but provided only a roadmap that the arbitration panel recognized would entail further disputes, to be resolved by the arbitration panel. Therefore, the "enforcement" of the confirmation order would require that the dispute currently existing would be sent back to the arbitration panel. According to the Utah Uniform Arbitration Act, the plain language of the arbitration award itself mandating arbitration, the plain language of the Operating Agreement mandating arbitration and the public policy favoring arbitration, the district court must not be allowed, and cannot be allowed, to adjudicate this dispute.

The district court was correct when it recognized that "[t]he arbitration award is broad" R. 174. The district court erred, however, by failing to recognize that there was an agreement to arbitrate. When the district court

concluded that the arbitration award “does not constitute an agreement to arbitrate these issues[,]” it apparently overlooked the fact that the confirmation of the award by the court was upon stipulation, or in other words, by agreement, as to the term reserving jurisdiction to arbitrators. The district court further overlooked the plain language of the Operating Agreement, that makes arbitrable “[a]ny claim and disputes between the Members *arising out of or related to this [Operating] Agreement* . . .” R.24, 91. The distribution of partnership property upon dissolution plainly “aris[es] out of or relate[s] to” the Operating Agreement. The fact the neither the arbitration award nor the judicial confirmation thereof finally resolved all issues related to the partnership dissolution does not transform the arbitrable nature of such disputes into judicial controversies unrelated to the Operating Agreement. This dispute still concerns the distribution of partnership assets and remains subject to the broad language of the arbitration contract.

While the arbitration award may not be a contract to arbitrate, the award’s express admonition that the arbitration panel retain jurisdiction over certain issues, including the “conveyances of property,” is in effect a determination by the arbitrators that such disputes are governed by the arbitration contract and that those disputes are arbitrable. The component of the award that Appellees ignore encouraging the parties to work out disputes that arise in the dissolution and distribution of the partnership assets and settlement of partnership affairs, and then to return to the arbitration panel if they could not be resolved, was an aspect

of the award that was not challenged by Appellees within the time limit to do so. Instead, Appellees stipulated to the award's confirmation. They should thus be irrevocably bound to the award's requirement to return to the arbitration panel over this very dispute.²

I. APPELLEES AGREED TO HAVE THE FULL ARBITRATION PANEL HEAR THE DISPUTE WHEN THEY STIPULATED TO HAVE THE AWARD CONFIRMED.

Appellees, on page 9 of their brief, argue that "The parties have *only* agreed to arbitrate 'claims and disputes arising out of or related to' the Company's Operating Agreement [emphasis added.]" That argument ignores the fact that confirmation of the award, in its entirety, was based on an agreement between the parties– the confirmation order was expressly based on "the stipulation entered into by and between MacDonald Redhawk Investors, Redhawk Development LLC, and Nielsen Redhawk LLC," R. 124 (Order Confirming Arbitration Award).

That agreement to have the award confirmed, in its entirety and without challenge, is plainly an agreement to the retention of arbitrators' jurisdiction over this very dispute, retention of jurisdiction that the now-confirmed arbitration award requires. The arbitration award, confirmed by Appellees' agreement, states: "3. The Arbitration Panel *should retain jurisdiction over the conveyances of properties, assumption of debt, assignment of water rights, granting*

reciprocal easements and the like, subject to the prior efforts of the parties to first mutually consent and agree, which is to be encouraged.” R. 60 (emphasis added). Rather than agreeing to this provision, Appellees could have challenged the award within the appropriate time limit as insufficiently definite and final. They could have argued at the time that the reserved disputes would not be subject to further arbitration, but elected not to do so. See UTAH CODE ANN. § 78-31a-121(1)(b).³

Having agreed to the confirmation of this provision of the award through the stipulation to confirm the entire award, there is in fact an agreement for retention of jurisdiction by the panel of arbitrators. Appellees’ contention that there is no agreement cannot stand in the face of their stipulation to have this provision for arbitration of this very nature of dispute confirmed.

II. THE DISPUTE IN THIS CASE, ABOUT THE DISTRIBUTION OF PARTNERSHIP ASSETS, IS ARBITRABLE, EVEN IF ONE IGNORES THE AGREEMENT TO CONFIRM THE PROVISION OF THE AWARD TO RESERVE JURISDICTION TO THE ARBITRATION PANEL OVER THE DISPUTE.

Appellees cite a case from the United States Court of Appeals for the Ninth Circuit, *San Francisco Electrical Contractors Association, Inc. v. International Brotherhood of Electrical Workers*, 577 F.2d 529, 534 (9th Cir. 1978) [hereinafter,

³UTAH CODE ANN. § 78-31-13(13) (2001), which is the version of the Utah Uniform Arbitration Act that was in effect at the time of the entry of the award, afforded essentially the same possibility for Appellees to obtain relief from an award that was insufficiently definite and final, allowing an award to be modified if it was “imperfect as to form”

"*SFECA*"], as support for their position that this dispute is not arbitrable for no reason other than a confirmation of the award has been entered. See Appellees' Brief, at 9-10.

The question presented to the court in *SFECA* was not the question before this Court. Rather, the question in *SFECA* was whether an injunction, prohibiting a union from striking, violated the NORRIS-LAGUARDIA ACT, 29 U.S.C. § 104, or whether the injunction served to enforce a prior arbitration award, and therefore fell within an exception to the ACT. See *SFECA*, 577 F.2d at 530.

The case before this Court presents neither the imminency of a labor action nor the need for interpreting the NORRIS-LAGUARDIA ACT concerning the availability of injunctions against labor strikes. The reason that an anti-strike injunction was proper in *SFECA* was rooted in the district court's finding that the defendant union, in opposing the injunction against the strike, was merely seeking to revisit the existing arbitration award's determination that there was no violation of the collective bargaining agreement:

The district court found:

"12. There was before the arbitrator the specific question as to whether the installation of a complete Electro-Connect system was a violation of the collective bargaining agreement, and what defendant seeks herein to do is to take a portion of that installation and again engage in said grievance procedure despite the fact that the portion is part of the whole system, which point was fully discussed in its entirety before said arbitrator."

Id. at 534. Having found that the issue had already been arbitrated, the injunction

fell within an exception to the ACT.

The dispute here is not, as the district court found in *SFECA*, a revisiting of the arbitration. The arbitration award in this case plainly states:

As we were never permitted to have access to the map making technology that MacDonald used, we were reduced to an old masterplan and colored pencils. On the attached Exhibit “A,” we have tried to represent our proposal in a visual aid. It assumes that the unrecorded lots in Plats E and F will likely be redesigned and the roads relocated to make the concept of two distinct projects more feasible and the layout more functional.

R. 54 n.3. The colored pencil “visual aid” attached as Exhibit “A” thereto plainly divides down the middle one of the lots that Appellees now argue the award grants to them. R. 50. The arbitration award also plainly awards “Nielsen” “697.55 acres of property”. R. 54.⁴ Mr. Nielsen set forth in his affidavit that the deeds sought by Appellees would not leave him with the acreage that the award granted him. R. 34 at ¶ 7. While Appellees argue that the discussion of the Chudleigh and Romney appraisals in the arbitration award, at R. 55-56, somehow alters the plain award of *acreage* to Nielsen, or negates the required division of the lot in the colored pencil as shown in R. 50, it is clear that the ultimate award was based on acreage, not just lot numbers.

⁴Appellees have attempted to distort the award by suggesting that it awarded specific lots to “Nielsen.” A reading of the entire award shows that such contention is plainly false, as the award unquestionably awards acreage and attempts to estimate the partition of such acreage with the colored-pencil map. That map plainly divides a lot and shows part of it going to “Nielsen,” while appellees argue that they deserve a deed to the entire lot. See Point IV, below.

The award also clearly left the resolution of its fulfillment with the arbitration panel, as expressly set out in the award:

3. *The Arbitration Panel should retain jurisdiction over the conveyances of properties*, assumption of debt, assignment of water rights, granting reciprocal easements and the like, *subject to the prior efforts of the parties to first mutually consent and agree, which is to be encouraged.*

4. *A land bank of 100 acres (40 beneficially owned by Nielsen and 60 beneficially owned by MacDonald) should be established with corresponding deeds placed in escrow to deal with the assumption of unsecured debt and similar performance issues. This would work to secure each parties promised assumption of unsecured debts and other obligations. so that if one party does not timely perform, the other could perform instead and receive a greater share in the land bank.* The parties should be able to agree on a per acre valuation to make the land bank concept work. Failing that, the Panel could determine an appropriate value.

R. 60 (emphasis added). The parties in fact proceeded, post-award confirmation, in accordance with the language of the award, to attempt to resolve most of the remaining differences between them, using one of the arbitrators as a mediator. See, e.g., R. 40-48.

When there was no final agreement to have a single arbitrator decide the final remaining issues them, however, Appellees, rather than going back to the full panel as required by the arbitration award and the court's order confirming that award, filed this litigation. That is something neither the Operating Agreement, the confirmation order nor the arbitration award allows.

Appellees dispute that the award, which was drafted by Mr. Nielsen's

attorneys, means what it says about acreage. The fact that Appellees argue in this litigation for adoption of their proffered meaning of the award does not transform the dispute from being one about dissolution of the Partnership and distribution of Partnership assets and thereby one arising out of or related to the Partnership Agreement, into something else. The fact that the court confirmed the award does not mean that Appellees may ignore paragraph 3 of the confirmed award, which reserves to the arbitration panel jurisdiction over the “conveyances of properties,” but instead requires that this court’s confirmation order, agreed to by Appellees, be enforced, by sending the dispute back to the arbitration panel. *SFECA* is thus utterly distinguishable on its facts as well as on the legal issue before the court, from this case.

Appellees also cite the case of *Staniszewski v. Grand Rapids Packaging Corp.*, 125 Mich. App. 97, 336 N.W.2d 10 (1983). It first bears mentioning that, as to the point for which Appellees cite *Staniszewski*, *Staniszewski* itself cites only *SFECA*. See *Staniszewski*, 336 N.W.2d at 11. So *Staniszewski* really does not shed any additional light on the issue beyond what *SFECA* did.

Moreover, the procedural posture of *Staniszewski* is completely inapposite. There was no issue before the court in *Staniszewski* of whether the dispute was arbitrable and therefore should be sent to mandatory arbitration. Apparently, the defendant, if the dispute was arbitrable, chose to waive its right to compel arbitration. Instead, the trial court in *Staniszewski* took evidence, including

evidence from the arbitrator, to determine whether the “back pay” awarded in the arbitration should be calculated on a standard, 40-hour work week, or the 52-hour work week that the plaintiff actually worked. 336 N.W.2d at 10-11. The arbitrator testified that he was unaware of plaintiff’s atypical work hours but that, if he had know of that fact, he would have made the back pay award include sums based on a 52-hour work week. See *id.* at 11. The appellate court held that such a proceeding, to clarify the award, “did not exceed the very limited scope of judicial review of arbitration awards . . .” *Id.* The *Staniszewski* case thus had nothing at all to do with the issue in this case -- whether the dispute is subject to mandatory arbitration.

While courts must certainly have the power to enforce their judgments, it would be a grave reversal of the public policy of this state favoring arbitration, to allow a court to adjudicate clearly arbitrable issues in the guise of an enforcement proceeding. Such a result would be particularly perverse when the confirmation order sought to be enforced, itself, mandates a return of the disputes to an arbitration panel. Whether “Nielsen” is entitled to a distribution from the Partnership of the acreage that the award grants him, and the portion of the lot that the attachment to the award, R. 50, shows as divided, or whether Appellees are entitled to the lots they seek, without regard to acreage, is an arbitrable dispute within the meaning of the arbitration award that Appellees stipulated to have confirmed, as well as the Operating Agreement.. One may take issue with

the form the arbitrators chose to make their award, but any disputes in the winding up of the partnership and distribution of assets in furtherance of the award are to be resolved in arbitration. Nowhere did the parties agree to exempt from their broad mandatory arbitration clause or the award's requirement, confirmed by the parties' agreement, that disputes be returned to arbitration, disputes that arose during the process of Partnership dissolution, winding up and distribution of assets contemplated by the arbitration award, simply due to inartful resolution by the arbitrators.

“The propriety of remanding an ambiguous award to the arbitrator is reenforced by the strong federal policy favoring arbitration.” *M & C Corp. v. Erwin Behr GmbH & Co., KG*, 326 F.3d 772, 782 (6th Cir. 2003). *M & C Corp.* cites other decisions from the Sixth Circuit, as well as decisions from the United States Courts of Appeal for the Second, Third and Seventh Circuits, favoring remand to the arbitrators for determination of the meaning of ambiguous awards. See *id.* (citing *Americas Insurance Co. v. Seagull Compania Naviera, S.A.*, 774 F.2d 64, 67 (2d Cir.1985) (“An ambiguous award should be remanded to the arbitrators so that the court will know exactly what it is being asked to enforce.”); *Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co.*, 868 F.2d 52, 58 (3d Cir. 1989) (“A district court itself should not clarify an ambiguous arbitration award but should remand it to the arbitration panel for clarification.”); and *Tri-State Bus. Mach., Inc. v. Lanier Worldwide, Inc.*, 221 F.3d 1015, 1020 (7th Cir.2000)

“(reversing and remanding order executing post-arbitration judgment where district court erred in not remanding the ambiguous award to arbitration panel for clarification)”).

The strong public policy favoring arbitration in Utah is, likewise, furthered by having arbitrable issues arbitrated, rather than being decided by courts, even post-confirmation. To some degree, the recent decision of the Utah Supreme Court in *Buckner v. Kennard*, 2004 UT 78, ¶ 16, 99 P.3d 842, rested on just such principles. In *Buckner*, the plaintiffs obtained offensive preclusive effect in the district court with respect to a prior arbitration award against defendant. See *id.* ¶ 11, at 846. The Utah Supreme Court reversed, ruling that the offensive use of preclusive effect by non-parties to an arbitration, unlike the litigation equivalent, was contrary to the strong public policy favoring arbitration and therefore, unless expressly allowed in the arbitration contract, not allowable. See *id.* ¶¶ 16-18, 29, at 847-48, 850. The Court’s rationale was premised largely on the uncertainty that would obtain in such circumstances, which uncertainty might discourage the use of arbitration agreements. To no lesser extent, the uncertainty of having a second tribunal interpret the inartful rulings of an arbitration panel might discourage the use of arbitration agreements. Why spend the money to arbitrate, only to receive an award that, due to the informal nature of arbitration, leaves a dispute that a court will then resolve? Clearly, the purpose of arbitration is served by having the arbitrators answer those questions, not by allowing litigation of

those arbitrable issues.

III. THE DECISION OF THE SINGLE ARBITRATOR THAT HE WAS NOT AUTHORIZED TO DO MORE WAS CORRECT— ONLY THE FULL ARBITRATION PANEL COULD FURTHER CONTINUE THE ARBITRATION WITHOUT THE AGREEMENT OF THE PARTIES TO THE CONTRARY.

Appellees attempt to support their argument that the present dispute is not arbitrable not only by reference to judicial confirmation of the award, but also by reference to a single member of the arbitration panel's ruling that he was unable to proceed, absent agreement of the parties, to arbitrate the remaining disputes. Such ruling by the single arbitrator was manifestly correct, as the arbitration was to three, not one, arbitrators. While Appellants had offered to have the single member of the panel arbitrate all remaining disputes except for valuation of real property, which they offered to have arbitrated by the sole real estate appraiser on the panel, Appellees refused to have an arbitration go forward in that fashion. That does not mean that the sole arbitrator's recognition that he could not proceed without further agreement altered the award's express reservation to the entire panel of jurisdiction. To the contrary, a single arbitrator could not possibly overrule an existing arbitration award entered by a panel of three arbitrators.

In short, the sole arbitrator's order does not serve as recognition of any ruling that the dispute is not arbitrable, except insofar as Appellants desired something other than a full panel of arbitrators. Indeed, although Appellees try to distort Mr. Holbrook's ruling as applicable to the continuing jurisdiction reserved to the entire panel, Mr. Holbrook's Order, which dealt strictly with his own inability

to arbitrate and, therefore, the requirement that he release funds that had been paid into escrow in anticipation of such an arbitration, says no such thing.

Instead, Mr. Holbrook's references are each carefully tailored to note that no agreement had been entered to submit issues to "me" to be arbitrated, so he could not longer maintain the escrowed funds held by him pursuant to a post-confirmation side agreement. See R. 73-74. Contrary to Appellant's argument, Mr. Holbrook did not "suggest" that Appellees file suit in district court or that the dispute was not arbitrable.

The alternative was not, as elected by Appellees, to file an action in court over clearly arbitrable issues, but instead, to go back to the panel, as the confirmed award required, or to file a new arbitration proceeding, as the arbitration agreement allowed.

IV. APPELLEES' MISSTATEMENTS CONCERNING THE SUBSTANCE OF THE ARBITRATION AWARD DO NOT EARN THEM THE RIGHT TO AVOID ARBITRATING THE DISPUTE THEY CREATE.

Appellees continuously ignore the material portions of the arbitration award, in favor of their mischaracterization that the award is nothing but the Chudleigh analysis of particular lots. Appellees, for example, state: "Thus, the Nielsen Redhawk proposal, based on the Chudleigh valuation and division of the property by whole lots, was adopted by the arbitration panel in its entirety and without any modifications." Appellees' Brief, at 4. The misleading falsehood in that "fact" is that the Nielsen Baseball proposal was the equivalent of the

Chudleigh analysis. Although Mr. Nielsen based his proposal in large measure on the Chudleigh analysis, as arbitration award itself plainly states, Mr. Nielsen was not to receive lots, regardless of acreage, but rather was to receive “**697.55 acres.**” R. 54. Mr. Nielsen’s affidavit established that the deeds Appellees seek would leave him short approximately 20 acres from what the arbitration award awarded him in acreage. The discussion of Chudleigh’s proposal in the award does not specify, as the award does at R. 54, any number of acres going to Mr. Nielsen. Further, Appellants simply ignore the colored pencil approximation of the result of the award, R. 50, that shows one of the lots that Appellants seek to obtain in its entirety as going to half to Nielsen. Finally, Appellees’ distortion ignore the award’s mandate that the “conveyances of property” would remain within the jurisdiction of the arbitration panel. R. 60. All of these specific components of the award are ignored by Appellees because, if they were candid about them, their premise concerning the lot division by Chudleigh would be exposed for the falsehood it is.

In short, the arbitration panel recognized that much remained to do before properties were conveyed and that certain assumptions were being made which, if they later turned out to be incorrect, might necessitate adjustments on the conveyances of property. So jurisdiction was retained. To suggest that a court might now adequately interpret the vagaries of the award without a full-blown litigation, that the arbitration agreement prohibits, is simply not forthcoming. The

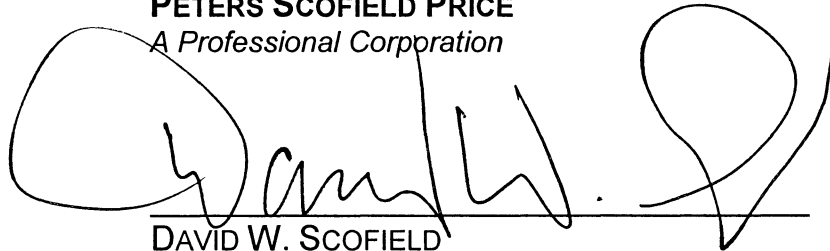
dispute was arbitrable, it remains arbitrable, and arbitrators, not the court, should be sorting out the remaining issues of this complex partnership dissolution.

CONCLUSION

For the foregoing reasons, the district court's denial of Appellants' motion to compel arbitration and to stay proceedings should be reversed, and the dispute over conveyances of property sent to arbitration.

RESPECTFULLY SUBMITTED this 20th day of June, 2006.

PETERS SCOFIELD PRICE
A Professional Corporation

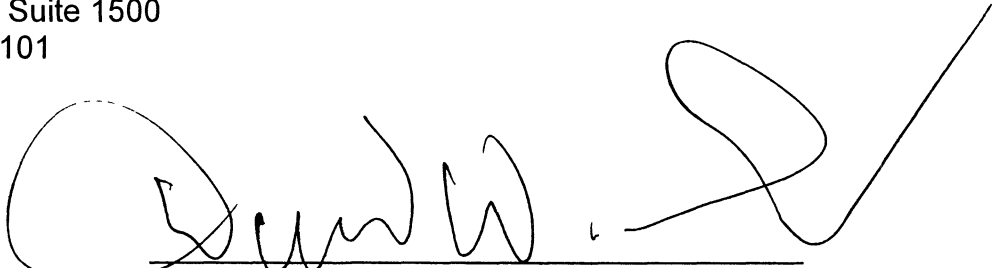
A large, stylized handwritten signature in black ink, appearing to read 'David W. Scofield', is written over a horizontal line.

DAVID W. SCOFIELD
Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the above and foregoing Reply Brief were mailed, postage prepaid, this 20th day of June, 2006, to the following:

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APPENDIX 1

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BEFORE THE ARBITRATION PANEL

MACDONALD REDHAWK INVESTORS,)
a Utah limited partnership,)
)
Plaintiff,)
)
v.)
)
NIELSEN REDHAWK, LLC, a Utah)
limited liability company, and REDHAWK)
DEVELOPMENT, LLC, a Utah limited)
company,)
)
Defendants.)

**NIELSEN'S BASEBALL
ARBITRATION PROPOSAL**

Arbitration Panel:
James R. Holbrook, Esq., Chair
Alan V. Funk, CPA
J. Philip Cook, MAI

Nielsen Redhawk, LLC ("Nielsen"), by and through its counsel, respectfully submits its Baseball Arbitration Proposal on the partition of the property and allocation of the related debt.

INTRODUCTION

It should be first said that we understand and accept the wisdom of the Arbitration Panel's ruling. Under the circumstances, a partition of the subject real property makes the most practical sense, and an allocation to Nielsen and MacDonald Redhawk Investors ("MacDonald") of 40% and 60%¹ respectively of net (after debt) property value is an appropriate and fair accounting of their interests.

¹ This ratio has been rounded from the interests amounts of \$3,797,155 as determined for Nielsen and \$5,830,509 as determined for MacDonald.

NARRATIVE DESCRIPTION

Our task is to implement the Panel's decision in the spirit it was reached, and we have endeavored to do just that.

We considered simply allocating 40% to Nielsen and 60% to MacDonald of *each and every plat* with the related debt. This approach would avoid the potential that either party may capture a windfall from a favorable sale, e.g. a possible sale to Grayhawk, of a single plat or group of plats. The Utah Supreme Court recognized the merit of this approach in cases where there is an economic disparity in prospects for different parcels. *See, Gillmor v. Gillmor*, 657 P.2d 736 (Utah 1982). While this approach would seem fair, it unfortunately will not work for the same practical reasons that persuaded the Panel to order a partition in the first place.

Instead, we make a proposal that takes account of practical considerations, including the debt structure, the existing creditor-debtor relationships, the potential seller-buyer relationships and a feasible design for two separate projects. The proposal fits the determined 40 - 60 ratio under both Mr. Chudleigh's "as-is" appraisal values *and* Mr. Romney's "as-is" appraisal values. If accepted by the Panel, our proposal will result in an allocation of property value and debt² that allocates a substantial portion of Sections 6&7 and the related debt (697.55 acres of property with debt of \$4,880,396.89) to Nielsen and the remaining portion of Sections 6&7 and all of Sections 5&8 and the related debt (762.16 acres of property with debt of \$4,540,571.43) to MacDonald, all as follows:³

² Under our proposal the unsecured debt would also be allocated 40% to Nielsen and 60% to MacDonald.

³ As we were never permitted to have access to the map making technology that MacDonald used, we were reduced to an old masterplan and colored pencils. On the attached Exhibit "A," we have tried to represent our proposal in a visual aid. It assumes that the unrecorded lots in Plats E and F will likely be redesigned and the roads relocated to make the concept of two distinct projects more feasible and the layout more functional.

Using Mr. Chudleigh's "As-Is" Appraisal Values

Allocated to Nielsen:

Property Allocation (total of 39 lots):

Plat A (18 lots) - 4, 5, 9, 11, 14, 16, 22, 25, 26, 30, 31, 32, 34, 35, 36, 37, 38, 39
Plat F (21 lots) - 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96,
97, 98, 99, 100

Property Value: \$9,430,000⁴

Secured Debt:

Beehive Credit Union	\$1,874,165.73
Westside Canadian	\$1,586,402.30
Zions Bank	423,101.25
Key Bank	537,770.55
Cape Trust	<u>458,957.06</u>
Total	\$4,880,396.89

Nielsen's Net (After Debt) Value: \$4,549,603 (40% of total net value)

Allocated to MacDonald:

Property Allocation (total of 44 lots):

Plat B (14 lots) - 41, 42, 43, 44, 45, 46, 49, 51, 52, 53, 54, 55, 56, 57
Plat C (3 lots) - 58, 59, 60
Plat D (8 lots) - 62, 63, 64, 65, 66, 67, 68, 69
Plat E (12 lots) - 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119
Plat F (7 lots) - 78, 101, 102, 103, 104, 105, 107

Property Value: \$11,340,000 (see fn.4)

Secured Debt:

Redenbaugh	\$2,550,000.00
Gaskill/Gillette	2,623,217.43
(less note payable assigned to G/G)	<u>(632,646.00)</u>
Total	\$4,540,571.43

MacDonald's Net (After Debt) Value: \$6,799,429 (60% of total net value)

⁴ Based upon Mr. Chudleigh's November 22, 1999 work sheets, which were previously forwarded to Phil Cook and are attached as Exhibit "B."

Using Mr. Romney's "As-Is" Appraisal Values

Allocated to Nielsen:

Property Allocation (total of 18 lots and 53% of Plats E&F):

Plat A (18 lots or 343.44 acres) - 4, 5, 9, 11, 14, 16, 22, 25, 26, 30, 31, 32, 34, 35, 36,
37, 38, 39

Plats E&F (53% of 668.13 acres) - 354.11 acres

Property Value: \$6,282,165

Plat A - \$3,627,757 (343.44 acres x \$10,563/acre - *see* Letter Addendum No.2, p. 3)

Plat E&F - \$ 2,650,558 (354.11 x \$7,496/acre - *see* Letter Addendum No.2, p. 3)

Secured Debt:

Beehive Credit Union	\$1,874,165.73
Westside Canadian	1,586,402.30
Zions Bank	423,101.25
Key Bank	537,770.55
Cape Trust	<u>458,957.06</u>
Total	\$4,880,396.89

Net Value: \$1,401,768 (40% of total net value)

Allocated to MacDonald:

Property Allocation (total of 44 lots):

Plat B (14 lots or 189.23 acres) - 41, 42, 43, 44, 45, 46, 49, 51, 52, 53, 54, 55, 56, 57

Plat C (3 lots or 125.29 acres) - 58, 59, 60

Plat D (133.62 acres) - 62, 63, 64, 65, 66, 67, 68, 69

Plat E&F (47% of 668.13 acres) - 314.02 acres

Property Value: \$6,677,783

Plat B - \$1,998,836 (189.23 acres x \$10,563/acre - *see* Letter Addendum No.2, p. 3)

Plat C - \$1,323,438 (125.29 acres x \$10,563/acre - *see* Letter Addendum No.2, p. 3)

Plat D - \$1,001,615 (133.62 x \$7,496/acre - *see* Letter Addendum No. 2, p. 3)

Plat E&F - \$2,357,796 (314.02 acres x \$7,496/acre - *see* Letter Addendum No.2,p.3)

Secured Debt:

Redenbaugh	\$2,550,000.00
Gaskill/Gillette	2,623,217.43
(less note payable assigned to G/G)	<u>(632,646.00)</u>
Total	\$4,540,571.43

Net Value: \$2,137,212 (60% of total net value)

Perhaps the Panel already knew, or at least suspected, that the use of a ratio would avoid the disparity between the Chudleigh and Romney "as-is" appraisals. It clearly does, as the allocation results using both approaches are essentially identical.⁵ We submit our proposal as a fair and practical allocation of property and debt that is sensitive to existing creditor-debtor relationships and potential seller-buyer relationships, as well as good project design that will allow each party to end up with two whole projects rather than two halves of one project.

COMPARISON WITH MACDONALD APPROACH

Nielsen and MacDonald agree that Nielsen should receive all of Plat A in Sections 6 and 7 and a portion of Plat F in Section 6 and that MacDonald should receive the remainder of Plat F in Section 6 and all of Plats B, C, D and E in Sections 5, 6, 7 and 8. The issue that keeps them apart is how much of Plat F in Section 6 each should receive. Nielsen believes he should receive approximately 354 acres with total debt allocation of \$4,880,396.89. MacDonald believes Nielsen should receive significantly less acreage and slightly less debt.

While we do not know what MacDonald's exact proposal to the Panel will be, we assume it will be based on the methodologies that he and his advisors have employed in our discussions. These methodologies include a hybrid of "retail" and "as-is" assumptions determined by Mr. Romney, as reflected in his Letter Addendum No. 2, at p.2, in his appraisal report (Claimant's Exhibit Tab 22). Mr. Romney uses "retail" values for Plats A, B and C and "as-is" values for Plats D, E and F. MacDonald may increase the "as-is" value for Plat D lots to \$12,000, as has been discussed, to reflect an increased value arising from speculation concerning Grayhawk's interest in that area. The effect of this approach is to create a significant disparity in value between Plats A,

⁵ Mr. Romney does not break-out individual lots in Plats E & F, as the lots are unrecorded. Instead, Mr. Romney uses the total acreage of 668.13. For comparison, 53% of the total number of unrecorded lots (i.e., 40 lots) in Plats E & F would be 21 lots, and 47% would be 19 lots, the exact same numbers of lots allocated to Nielsen and MacDonald, respectively, under Mr. Chudleigh's valuation.

B, C, and D acreage and Plats E and F acreage. On average, this disparity is three times greater using the hybrid approach than it is under either Mr. Chudleigh's or Mr. Romney's "as-is" approaches. This tends to frontload value in Plats A, B and C that is to then be adjusted back to the desired ratios by allocating more of the lower valued property in Plats D, E and F to MacDonald.⁶

The other methodology that MacDonald may employ is a variation on Mr. Romney's "as-is" appraisal values. Mr. Romney breaks out values for Plats A, B, C, D, E and F and then ratchets-up those values by a multiplier of something near 1.5 to produce total after debt value of \$9,627,664 (the combined total of Nielsen's \$3,797,155 interest and MacDonald's \$5,830,509 (*see fn. 1*)). The primary problem with this approach is the absorption assumptions made in support of the Plat A, B and C values. Mr. Romney places a significantly higher value on Plat A lots than Plat B lots and a significantly higher value on Plat B lots than Plat C, because he assumes sales will be completed in Plat A before they are started in Plat B and completed in Plat B before they are started in Plat C. This assumption may have made some sense when it was made in the context of a single project, but it would make no sense in the context of two separate projects. MacDonald is under no obligation to wait to market Plat B or Plat C lots until Nielsen completes the marketing of Plat A lots. In light of this, the average per acre price for Plats A, B and C, as determined by Mr. Romney, is a much better indicator of value (*see Mr. Romney's Letter Addendum No. 2, at p. 3*). This is the number we used in our "Using Mr. Romney's 'As-Is' Appraisal Values" section.⁷

⁶ It is also worth mentioning that the total net after debt value under the hybrid approach is considerably greater than that advocated by MacDonald in the hearing. In fact, the net value of \$11,069,603 exceeds the \$9,627,664 total for Nielsen's and MacDonald's interests (*see fn.1*). We would submit that if the Panel is tempted to use that value for any reason, it should consider applying the equity interest fractions, 60% to Nielsen and 40% to MacDonald, to the excess of \$1,441,939.

⁷ It should also be noted that Mr. Chudleigh saw this problem in preparing his November 22, 1999 work sheets. Mr. Chudleigh does two separate discounted cash flows, one for each project. This has the effect of creating two separate absorption periods, with the expectation that the respective sales efforts will be concurrent

OTHER FACTORS TO CONSIDER

There is a qualitative difference between the debt that Nielsen assumes under this proposal and the debt assumed by MacDonald; differences that cut both ways.

MacDonald is assuming the Redhawk Investors (or Gaskill and Gillette) debt and the Redenbaugh debt, both of which are in default. It might be argued that MacDonald should receive some kind of special dispensation for that. We do not think so. Please keep in mind the level of MacDonald's sophistication and his bent for calculation, both clear from the evidence that both sides submitted. Does anyone really believe that MacDonald seeks out Sections 5 and 8 and the related debt because he feels that is his cross to bear? No. MacDonald sees an advantage to taking Sections 5 and 8 and the related debt. The debt is not institutional debt. It can be paid in lots rather than cash, or, as MacDonald had previously discussed, at least the Redenbaugh debt may be converted to equity. Last, but certainly not least, it cannot be disputed that Grayhawk is interested in acquiring or joint venturing the Section 8 property, and perhaps more.

It may be said that Nielsen is getting the good debt owed to Robinson/Westside Canadian, which carries only a 5% interest rate. This is true, but in fairness, it should be noted that the Robinson debt is due in less than a year, making refinancing a necessity, and Nielsen is also assuming the Beehive Credit Union debt, among others.

CONCLUSION

We believe our proposal is fair and practical. To make it even better and to give Nielsen and MacDonald a genuine chance to get on with their lives and projects in a constructive and mutually beneficial fashion, Nielsen will agree, if the Panel selects its proposal, to enter a mutual, global release of all claims with MacDonald.

Nielsen suggests⁸ the following in addition:

1. To ensure a clean break and to avoid public confusion, neither party should use the word "Redhawk" in its future project names or marketing materials. The entities names should be changed accordingly.
2. To the fullest extent possible, both parties should agree to reciprocal, non-disparagement of the other.
3. The Arbitration Panel should retain jurisdiction over the conveyances of properties, assumption of debt, assignment of water rights, granting reciprocal easements and the like, subject to the prior efforts of the parties to first mutually consent and agree, which is to be encouraged.
4. A land bank of 100 acres (40 beneficially owned by Nielsen and 60 beneficially owned by MacDonald) should be established with corresponding deeds placed in escrow to deal with the assumption of unsecured debt and similar performance issues. This would work to secure each parties promised assumption of unsecured debts and other obligations. so that if one party does not timely perform, the other could perform instead and receive a greater share in the land bank. The parties should be able to agree on a per acre valuation to make the land bank concept work. Failing that, the Panel could determine an appropriate value.

Submitted this 8th day of December, 1999.

HOLME ROBERTS & OWEN LLP

By: 

Robert L. Stolebarger
Attorney for Nielsen Redhawk LLC

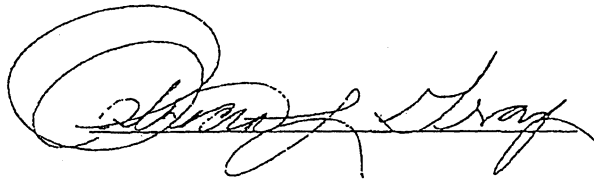
⁸ This suggestion is not part of the proposal per se, it is optional for inclusion by the Panel as it sees fit.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 1999, I caused to be hand-delivered,
the foregoing BASEBALL ARBITRATION PROPOSAL to the following:

Thomas T. Billings
VanCott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, UT 84144
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

STEVEN G. WOOD (C.A.S.B.N. 130050)
c/o Thomas T. Billings
The Downing House
706 Cowper Street, Suite 200
Palo Alto, CA 94301
Telephone: (650) 473-0395
Facsimile: (650) 473-0535
Attorneys for MacDonald Redhawk Investors

A handwritten signature in black ink, appearing to read "Steven G. Wood", with a large, stylized initial "S" and a horizontal line extending from the end of the signature.

facsimile
TRANSMITTAL

To: Bob Stolbarger
Fax: 801-524-9639
From: Walt Chudleigh (435-649-5906)
Pages: 10- including this cover sheet.
Date: 11/22/99

Notes on Partition DCF Analyses

Assumptions:

Lots are divided based on the color coded map.

Construction costs are based on the Beco estimates used in the Chudleigh appraisals

Costs for the road extending northeasterly between Plats E and F are allocated on a 50-50 basis based on the lineal footage. \$500,000 of the Plat F costs are allocated to the MacDonald lots and the balance to the Nielsen lots.

A loan to value ratio of approximately 38% is used in both projections for consistency.

Lot values are based on the same values used in the Chudleigh reports.

All of the other assumptions are identical to those found in the Chudleigh appraisal.

Walt

From the desk of...

Brown Chudleigh Schuler & Associates 000063

Summary of Assumptions

Redhawk- Nielsen Lots

No. of Lots	39
No. Periods/Year	4
Average base price/lot	\$377,500
Sale Commission & Promotion %	7.00%
Closing cost per lot	\$250
Periods until Sellout	13
RE Tax/lot/year	\$10
Common charges/lot/year	\$1,200
Tax Rollback per Lot	\$10,500
Developer's Overhead %	1.00%
Original Loan	\$3,600,000
Annual interest rate	8.500%
Release %	90.00%
Developer's Profit	12.00%
Discount Rate	12.00%
Annual Appreciation rate	3.00%
Periods delay	
Prior to appreciation	2
Expense Inflation Rate (Ann.)	3.00%
Tax Inflation Rate	3.00%
Original Mortgage Balance:	\$3,600,000
Mortgage Balance Per Lot:	\$92,308
Release Percent:	90%
Release Price Per Lot:	\$339,750
Interest Rate Per Period:	2.13%

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Discounted Cash Flow Analysis

	Quarter <u>1</u>	Quarter <u>2</u>	Quarter <u>3</u>	Quarter <u>4</u>	Quarter <u>5</u>	Quarter <u>6</u>	Quarter <u>7</u>	Quarter <u>8</u>
Plats A					Plat E			
Appreciation Rate:	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.750%
Lots Completed	14	0	0	12	0	0	0	13
Cumulative Lots Completed	14	14	14	26	26	26	26	39
Average Lot Price:	\$377,500	377,500	377,500	377,600	377,600	500,000	500,000	500,000
Sales per Period:	3	3	3	3	3	3	3	3
Cumulative Lots Sold:	3	6	9	12	15	18	21	24
Unsold Inventory:	11	8	5	14	11	8	5	15
Sales Income:	\$1,132,500	\$1,132,500	1,132,500	1,132,500	1,132,500	1,500,000	1,500,000	1,500,000
Acresage Sales:	0	0	0	0	0	0	0	0
Cumulative Income:	\$1,132,500	2,265,000	3,397,500	4,530,000	5,662,500	7,162,500	8,662,500	10,162,500
Expenses:								
Sales Commissions:	\$79,275	\$79,275	\$79,275	\$79,275	\$79,275	\$105,000	\$105,000	\$105,000
Closing Costs:	750	750	750	750	750	750	750	750
Property Taxes:	28	21	13	38	28	21	13	38
Onsite Road & Utility Costs:	354,026	0	0	824,271	830,453	0	0	0
HOA Dues	3,300	2,400	1,500	4,200	3,300	2,400	1,500	4,500
Tax Rollback	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500
Developer's Overhead:	13,600	13,600	13,600	13,600	13,600	13,600	13,600	13,600
Interest Expense:	<u>78,500</u>	<u>66,719</u>	<u>49,188</u>	<u>31,266</u>	<u>30,538</u>	<u>29,902</u>	<u>12,135</u>	<u>0</u>
Total Expenses:	(558,978)	(184,265)	(175,826)	(984,898)	(989,442)	(183,173)	(184,488)	(155,389)
Assumed Loan Draw:	558,978	194,265	175,826	984,898	989,442	183,173	184,488	155,389
Net Revenue Before Release:	<u>1,132,500</u>	<u>1,132,600</u>	<u>1,132,500</u>	<u>1,132,500</u>	<u>1,132,500</u>	<u>1,500,000</u>	<u>1,600,000</u>	<u>1,500,000</u>
Cash Flow Before Release:	1,132,500	1,132,500	1,132,500	1,132,500	1,132,500	1,500,000	1,600,000	1,500,000
Release Payment:	<u>1,019,250</u>	<u>1,019,250</u>	<u>1,019,250</u>	<u>1,019,250</u>	<u>1,019,250</u>	<u>1,019,250</u>	<u>735,580</u>	<u>155,389</u>
Cash Flow After Release:	113,250	113,250	113,250	113,250	113,250	480,750	764,420	1,344,611
Developer's Profit:	0	0	0	0	0	0	<u>764,420</u>	<u>1,344,611</u>
CF After Devel Profit:	\$113,250	\$113,250	\$113,250	\$113,250	\$113,250	\$480,750	\$0	\$0
Mortgage Schedule:								
Beginning Mortgage Balance:	\$3,600,000	\$3,139,728	\$2,314,742	\$1,471,318	\$1,138,966	\$1,407,159	\$571,081	\$0
Interest Expense Per Period:	78,500	66,719	49,188	31,266	30,538	29,902	12,135	0
Lot Sales Per Period:	3	3	3	3	3	3	3	3
Additional Loan Draw:	558,978	194,265	175,826	984,898	989,442	183,173	184,488	155,389
Intermediate Loan Balance:	4,158,978	3,333,992	2,490,568	2,458,216	2,426,409	1,590,331	735,580	155,389
Total Release Payment:	1,019,250	1,019,250	1,019,250	1,019,250	1,019,250	1,019,250	735,580	155,389
Ending Mortgage Balance:	3,139,728	2,314,742	1,471,318	1,436,966	1,407,159	671,081	0	0

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	Quarter <u>9</u>	Quarter <u>10</u>	Quarter <u>11</u>	Quarter <u>12</u>	Quarter <u>13</u>
Appreciation Rate:	0.750%	0.750%	0.750%	0.750%	0.750%
Lots Completed	0	0	0	0	0
Cumulative Lots Completed	39	39	39	39	39
Average Lot Price:	503,750	500,000	503,750	507,528	511,335
Sales per Period:	3	3	3	3	3
Cumulative Lots Sold:	27	30	33	36	39
Unsold Inventory:	12	9	6	3	0
Sales Income:	1,511,250	1,500,000	1,511,250	1,522,584	1,534,004
Acresage Sales:	0	0	0	0	0
Cumulative Income:	11,673,750	13,173,750	14,685,000	16,207,584	17,741,588
Expenses:					
Sales Commissions:	\$105,788	\$105,000	\$105,788	\$106,581	\$107,380
Closing Costs:	750	750	750	750	750
Property Taxes:	31	23	15	8	0
Onsite Road & Utility Costs:	0	0	0	0	0
HOA Dues	3,600	2,700	1,800	900	0
Tax Rollback	31,500	31,500	31,500	31,500	31,500
Developer's Overhead:	13,600	13,600	13,600	13,600	13,600
Interest Expense:	0	0	0	0	0
Total Expenses:	(155,288)	(153,573)	(153,453)	(153,339)	(153,230)
Assumed Loan Draw:	155,288	153,573	153,453	153,339	153,230
Net Revenue Before Release:	1,511,250	1,500,000	1,511,250	1,522,584	1,534,004
Cash Flow Before Release:	1,511,250	1,500,000	1,511,250	1,522,584	1,534,004
Release Payment:	155,288	153,573	153,453	153,339	153,230
Cash Flow After Release:	1,355,962	1,346,427	1,357,797	1,369,246	1,380,773
Developer's Profit:	19,859	0	0	0	0
CF After Devel Profit:	\$1,336,023	\$1,346,427	\$1,357,797	\$1,369,246	\$1,380,773
Mortgage Schedule:					
Beginning Mortgage Balance:	\$0	\$0	\$0	\$0	\$0
Interest Expense Per Period:	0	0	0	0	0
Lot Sales Per Period:	3	3	3	3	3

Value Summary:
Redhawk- Nielsen Lots

	<u>Total</u>	<u>Total</u> <u>Per Lot</u>	<u>Percent</u> <u>of Sales</u>
Total Lots Sold:	39		
Total Gross Revenue	\$17,741,588	454,913	100.00%
Sales Commissions:	1,241,911	31,844	7.00%
Closing Costs:	9,750	250	0.05%
Property Taxes:	275	7	0.00%
Site Road & Utility Costs:	2,008,750	51,506	11.32%
HOA Dues	32,100	823	0.18%
Tax Rollback	409,500	10,500	2.31%
Developer's Overhead:	176,800	4,533	1.00%
Interest Expense:	296,246	7,596	1.67%
Developer's Profit :	<u>2,128,991</u>	<u>54,590</u>	<u>12.00%</u>
Total Deductions	6,304,322	161,649	35.53%
Present Value of Cash Flow Discounted at 12.00%	\$5,828,593		
Present Value of Mortgage	<u>\$3,600,000</u>		
Value to Single Purchaser:	\$9,428,593		
Value Per Lot:	\$241,759		
TOTAL INDICATED VALUE	\$9,430,000		
INTERNAL RATE OF RETURN	21.77%		

Discounted Cash Flow Analysis

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8
	Plat A&B				Plat E			Plat F
Appreciation Rate:	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.750%
Lots Completed	12	0	0	10	0	9	0	0
Cumulative Lots Completed	12	12	12	22	22	31	31	31
Average Lot Price:	\$340,500	340,500	340,500	340,500	500,000	500,000	500,000	500,000
Sales per Period:	3	3	3	3	3	3	3	3
Cumulative Lots Sold:	3	6	9	12	15	18	21	24
Acid Inventory:	9	6	3	10	7	13	10	7

Sales Income:	\$1,021,500	\$1,021,500	1,021,500	1,021,500	1,500,000	1,500,000	1,500,000	1,500,000
Average Sales (13 lots)	0	4,860,000	0	0	0	0	0	0
Cumulative Income:	\$1,021,500	6,903,000	7,924,500	8,946,000	10,446,000	11,946,000	13,446,000	14,946,000

Expenses:								
Sales Commissions:	\$71,505	\$411,705	\$71,505	\$71,505	\$105,000	\$105,000	\$105,000	\$105,000
Closing Costs:	750	750	750	750	750	750	750	750
Property Taxes:	23	15	8	28	18	33	26	18
Onsite Road & Utility Costs:	428,165	0	0	428,240	431,461	0	528,848	0
HQA Dues	2,700	1,800	900	3,000	2,100	3,900	3,000	2,100
Tax Rollback	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500
Developer's Overhead:	16,800	16,800	16,800	16,800	16,800	16,800	16,800	16,800
Interest Expense:	91,375	85,499	77,609	82,303	55,817	49,964	34,837	30,574
Total Expenses:	(642,818)	(548,069)	(199,072)	(314,133)	(643,446)	(207,938)	(718,761)	(188,742)
Assumed Loan Draw:	642,818	548,069	199,072	614,133	643,446	207,938	718,761	188,742
Revenue Before Release:	1,021,500	5,881,500	1,021,500	1,021,500	1,500,000	1,500,000	1,500,000	1,500,000

Cash Flow Before Release:	1,021,500	5,881,500	1,021,500	1,021,500	1,500,000	1,500,000	1,500,000	1,500,000
Release Payment:	919,350	919,350	919,350	919,350	919,350	919,350	919,350	919,350
Cash Flow After Release:	102,150	4,962,150	102,150	102,150	580,650	580,650	580,650	580,650
Developer's Profit:	0	0	0	0	0	0	0	0
CF After Devel Profit:	\$102,150	\$4,962,150	\$102,150	\$102,150	\$580,650	\$580,650	\$580,650	\$580,650

Mortgage Schedule:								
Beginning Mortgage Balance:	\$4,300,000	\$4,023,468	\$3,652,107	\$2,931,908	\$2,626,691	\$2,350,788	\$1,639,375	\$1,438,786
Interest Expense Per Period:	91,375	85,489	77,608	62,303	55,817	49,964	34,837	30,574
Lot Sales Per Period:	3	3	3	3	3	3	3	3
Additional Loan Draw:	642,818	648,069	199,072	614,133	643,446	207,938	718,761	188,742
Unpaid Loan Balance:	4,942,818	4,571,537	3,851,258	3,548,041	3,270,138	2,558,725	2,358,136	1,625,528
Total Release Payment:	919,350	919,350	919,350	919,350	919,350	919,350	919,350	919,350

	Quarter 9	Quarter 10	Quarter 11
Appreciation Rate:	0.750%	0.750%	0.750%
Lots Completed	0	0	0
Cumulative Lots Completed	31	31	31
Average Lot Price:	503,750	507,528	511,335
Sales per Period:	3	3	1
Cumulative Lots Sold:	27	30	31
Build Inventory:	4	1	0

Sales Income:	1,511,250	1,522,584	511,335
Average Sales(13 lots)	0	0	0
Cumulative Income:	16,457,250	17,978,834	18,491,169

Expenses:

Sales Commissions:	\$105,788	\$106,581	\$35,793
Closing Costs:	750	750	250
Property Taxes:	10	3	0
Onsite Road & Utility Costs:	0	0	0
HOA Dues	1,200	300	0
Tax Rollback	31,500	31,500	10,500
Developer's Overhead	16,800	16,800	16,800
Interest Expense:	15,096	0	0
Total Expenses:	(171,054)	(155,933)	(63,343)
Net Revenue Before Release:	1,511,250	1,522,584	511,335
Net Revenue After Release:	1,511,250	1,522,584	511,335

Cash Flow Before Release:	1,511,250	1,522,584	511,335
Release Payment:	877,232	155,833	63,343
Cash Flow After Release:	634,018	1,366,651	447,991
Developer's Profit:	634,018	1,366,651	218,271
CF After Devel Profit:	\$0	\$0	\$229,720

Mortgage Schedule:

Beginning Mortgage Balance:	\$706,178	\$0	\$0
Interest Expense Per Period:	15,006	0	0
Lot Sales Per Period:	3	3	1
Additional Loan Draw:	171,054	155,833	63,343
Immediate Loan Balance:	877,232	155,833	63,343
Total Release Payment:			

Value Summary:**Redhawk-MacDonald Lots**

	<u>Total</u>	<u>Total</u> <u>Per Lot</u>	<u>Percent</u> <u>of Sales</u>
Total Lots Sold (Inc Greyhawk)	44		
Total Gross Revenue	\$18,491,169	420,254	100.00%
Sales Commissions:	1,294,382	29,418	7.00%
Closing Costs:	7,750	176	0.04%
Property Taxes:	180	4	0.00%
Onalle Road & Utility Costs:	1,814,723	41,244	9.81%
JA Dues	21,000	477	0.11%
Tax Rollback	325,500	7,398	1.76%
Developer's Overhead:	184,800	4,200	1.00%
Interest Expense:	502,874	11,431	2.72%
Developer's Profit :	<u>2,218,840</u>	<u>50,430</u>	<u>12.00%</u>
Total Deductions	6,370,249	144,778	34.45%
Present Value of Cash Flow Discounted at 12.00%	\$7,044,323		
Present Value of Mortgage	<u>\$4,300,000</u>		
Value to Single Purchaser:	\$11,344,323		
Value Per Lot:	\$257,828		
 TOTAL INDICATED VALUE	 \$11,340,000		
INTERNAL RATE OF RETURN	24.04%		

Summary of Assumptions

Redhawk-MacDonald Lots

No. of Lots	44
No. Periods/Year	4
Average base price/lot	\$340,500
Sale Commission & Promotion %	7.00%
Closing cost per lot	\$250
Periods until Sellout	11
Property Tax/lot/year	\$10
Common charges/lot/year	\$1,200
Tax Rollback per Lot	\$10,500
Developer's Overhead %	1.00%
Original Loan	\$4,300,000
Annual interest rate	8.500%
Release %	90.00%
Developer's Profit	12.00%
Discount Rate	12.00%
Annual Appreciation rate	3.00%
Periods delay	
Prior to appreciation	2
Expense Inflation Rate (Ann)	3.00%
Tax Inflation Rate	3.00%
Original Mortgage Balance:	\$4,300,000
Mortgage Balance Per Lot:	\$97,727
Release Percent:	90%
Release Price Per Lot:	\$306,450
Interest Rate Per Period:	2.13%

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FILED
DISTRICT COURT
COUNTY 24 FEB 22
SALT LAKE CITY, UTAH

Attorneys for Nielsen Redhawk, LLC

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

MACDONALD REDHAWK INVESTORS,)	
a Utah limited partnership,)	
)	
Plaintiff,)	STIPULATION TO CONFIRM
)	ARBITRATION AWARD
v.)	
)	
NIELSEN REDHAWK, LLC, a Utah)	Civil No. 990908761
limited liability company, and REDHAWK)	
DEVELOPMENT, LLC, a Utah limited)	
company,)	Judge Wilkinson
)	
Defendants.)	

Pursuant to Utah Code Ann. §78-31a-12, MacDonald Redhawk Investors, Redhawk Development LLC, and Nielsen Redhawk LLC hereby stipulate and agree to confirm the Arbitration Award (the "Award") entered and issued by the Arbitration Panel consisting of James F. Holbrook, Alan V. Funk, and J. Philip Cook (the "Arbitration") on the 15th day of December, 1999, a copy of which is attached hereto as Exhibit "A" and hereby incorporated hereto.

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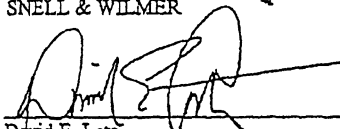


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foregoing shall not prevent any party to the Arbitration from initiating appropriate action to enforce or compel performance of the Award or to seek resolution of disputes in connection with the implementation of the Award, including, without limitation, disputes concerning water rights, access rights, and payment of obligations.

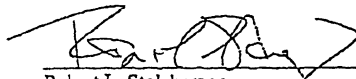
DATED this 24th day of March, 2000.

SNELL & WILMER



David E. Leta
Attorney for MacDonald Redhawk Investors and
Redhawk Development, LLC

HOLME ROBERTS & OWEN, LLP



Robert L. Stolebarger
Attorney for Nielsen Redhawk, LLC

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I CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL DOCUMENT ON FILE IN THE
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.
DATE: 15/23/01

