

SETTLEMENT AGREEMENT FOR THE STUPAK COMMUNITY CENTER CONSTRUCTION PROJECT

This Settlement Agreement ("Agreement") is made and entered into this 6th day of January, 2009, by and between the City of Las Vegas, a municipal corporation in the State of Nevada ("City") and Home Comming, LLC, Series I, a Nevada limited liability company ("Home Comming"). The City and Home Comming are individually or collectively referred to herein as the "Party" or "Parties."

RECITALS

WHEREAS, the City is constructing the Stupak Community Center ("Project") located at 351 West Boston Avenue, including improvements to the City owned alley between the Center and Assessor's Parcel Number 162-04-813-011 owned by Home Comming and addressed as 232 West Baltimore Avenue, Las Vegas, Clark County, Nevada ("Property");

WHEREAS, the Parties had a dispute regarding the location of the Property line on the west side of the Property relative to the City's alley;

WHEREAS, without any admission of liability, the Parties now desire to settle the dispute and claims as they related to the impacts to the Property cause by the Project (collectively "Damage Claims") and to release each other from any and all future claims arising from damage caused prior to the date of the execution of this Agreement and subject to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the foregoing facts and terms, conditions and covenants set forth below, the Parties hereto agree as follows:

ARTICLE I ITEMS OF WORK

1. Fencing

During the course of construction the chain link fence that is shared by a common property line with the public alley way and the Property has sustained damage to the chain link fabric. Chain link fabric damage is substantiated with pre-construction and during construction photos.

The City shall install new alley fencing along the shared property line to match the Stupak Community Center fence to include:

- A. Removal of existing fencing footings, posts, and fabric
- B. Removal of portion of south tree stump to allow new installation
- C. Removal of existing oleander grown into existing chain link fabric
- D. Install new fencing footing foundations and posts to match the Project
- E. Install new wrought iron style picket fence and paint to match the Project
- F. The existing gates are to remain and will be repaired/reconstructed as necessary

2. West Entry Walkway to Property Gate

The West Entry Walkway was removed to allow for the adjustment of new grade of the water meter box and the sewer cleanout cover and installation of handicap ramp within the public right of way. The West Entry Walkway was in serviceable condition in pre-construction photos; however, the West Entry Walkway conflicted with the Stupak Improvements.

The City shall replace the existing West Entry Walkway where it was removed for installation of the new alley drive and handicap ramp. The West Entry Walkway will be replaced in size and slope as original.

3. East Entry Walkway to Property Gate

The East Entry Walkway to the property gate has existing edge cracking due to age deterioration. Existing cracks are visible in pre-construction photos.

The City shall replace the East Entry Walkway in size and slope as original to the nearest construction joint that is not deteriorating.

4. North Concrete Parking Area

The North Concrete Parking Area has numerous cracking issues due to age deterioration. The concrete condition is visible in pre-construction photos.

The City shall remove excessively loose concrete pieces at the edge between the parking slab and the asphalt alley and infill the edge spalls with asphalt pavement at time of alley pave. These patches will be hand vibra-plate compacted due to the potential additional damage that would be caused by machine rolling.

Home Comming shall notify the City within five (5) business days if the above Items of Work are unacceptable. In the event Home Comming fails to do so within said five (5) business day period, Home Comming shall be deemed to have approved the City's Items of Work. If Home Comming reasonably objects to any portion of the Items of Work within said five (5) business day period, then the City shall have fifteen (15) business days to cure such defects after receipt of Home Comming's written objection. If it is not possible to cure such defects within said fifteen (15) business day period, the City shall nevertheless commence such cure work within said fifteen (15) business day period and diligently prosecute same to completion.

ARTICLE II SETTLEMENT AMOUNT

In addition to the completion of the Items of Work above, the City, through its consultant, shall promptly pay Two Thousand Nine Hundred Dollars and No Cents (\$2,900.00) (the "Settlement Payment") to Home Comming for survey and legal work associated with the Damage Claims. The invoices for survey and legal services are attached hereto as Exhibit A and are incorporated herein by this reference.

\\
\\

ARTICLE III RELEASE

In consideration for the City constructing the Items of Work and Settlement Payment, Home Comming and its successors, assigns, heirs, executors and administrators, hereby releases the City, its officers, employees, agents, representatives and consultants from any and all known claims related to the Damage Claims and any and all damages incurred in connection therewith for any reason in past or present.

Home Comming and its successors, assigns, heirs, executors and administrators also hereby release and forever discharge, the City, its officers, employees, agents, representatives and consultants from any and all demands, claims or causes of action against the City, including without limitation all Claims, demands or causes of action arising out of or pertaining to any occurrence, event, circumstance or matter of any kind or nature arising out of, directly or indirectly, the Damage Claims contained in this Agreement, including, but not limited, to any claims arising from the Damage Claims contained in this Agreement and relating to compensation for real estate value, leasehold value, fixtures and equipment, value of buildings, loss of Home Comming's business goodwill, loss of profits, interest, litigation expenses, attorneys' fees and costs, loss or damages for inverse condemnation, unreasonable pre-condemnation delay and unreasonable pre-condemnation activities. Home Comming expressly acknowledges that this release extends to any claims which Home Comming does not know or suspect to exist in his favor arising from the Damage Claims contained in this Agreement and at the time of executing the release, which if known by Home Comming may have materially affected this Agreement with the City.

Home Comming hereby represents that its counsel of record has explained the effect of the execution of this Agreement and the release of all claims, known and unknown, as provided for herein and, based upon that explanation, Home Comming understands and acknowledges the legal significance and the consequences of the claims being released by this Agreement. Home Comming further represents that it understands and acknowledges the legal significance and consequence of the release of unknown current or future claims arising from the Damage Claims contained in this Agreement and/or for any claims or issues against the City arising the Damage Claims contained in this Agreement.

ARTICLE IV REPRESENTATION AND WARRANTY

The Parties hereby represent and warrant they have not heretofore assigned or transferred, or purported to assign or transfer, to any person not a party hereto, claims or rights as to any of the matters released and referenced herein, or any part or portion thereof. The Parties further agree to indemnify and hold each other, their officers, employers, agents, representatives, and consultants harmless from and against any claim, demand, damage, liability, accounting, reckoning, obligations, costs, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred, whether or not litigation has been commenced), arising out of any such assignment or transfer in violation of this representation and warranty.

ARTICLE V NO ADMISSION OF LIABILITY

It is further understood that this Agreement is a compromise of disputed claims existing between the Parties and the execution of this Agreement is not to be construed as an admission of liability on the

part of Parties and the Parties deny liability therefore and that this Agreement intends merely to avoid the cost of further litigation and buy its peace.

ARTICLE VI COVENANT NOT TO SUE

The Parties covenant and agree they will forever refrain from instituting, prosecuting, maintaining, proceeding on or advising a lawsuit or arbitration action be commenced against the other which arises out of, or is or may be, in whole or in part, based upon, related to, or connected with claims related to the Damage Claims contained in this Agreement.

ARTICLE VII MISCELLANEOUS REPRESENTATIONS AND WARRANTIES

1. Each Party has received independent legal advice from its attorney with respect to the advisability of making the settlement provided for herein and the execution of this Agreement.
2. Neither Party, nor any officer, agent, council member, partner, employee, representative, trustee or attorney of or for any Party, has made any statement or representation to the other Party regarding any fact relied upon entering into this Agreement and each Party is not relying upon any statement, representation or promise of the other Party, and officer, agent, council member, partner, employee, representative, trustee or attorney of the Party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.
3. Each Party to this Agreement has made such investigations of the facts pertaining to this Agreement and the settlement set forth herein, and all of the matters pertaining thereto, as it deems necessary.
4. Each Party, or responsible representative thereof, has read this Agreement and understands the contents thereof. The person(s) executing this Agreement on behalf of the Party(s) are empowered to do so and thereby bind the Party.
5. In entering into this Agreement and the settlement provided for herein, each Party assumes the risk of any misrepresentation or mistake. This Agreement is intended to be, and hereby is, final and binding upon the Parties, regardless of any claims of misrepresentations, promise made without intent to perform, concealment of act, mistake of fact or law, or of any other circumstance whatsoever.
6. Each Party warrants and represents that (i) this Agreement in its reduction to final written form is a result of extensive good faith arms length negotiations between the Parties through their respective representatives; (ii) said representatives have carefully reviewed and examined this Agreement for execution by the Parties, or any of them; and (iii) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.
7. The Parties acknowledge that this Agreement represents a good faith settlement between Home Comming and the City, and is intended to bar all future claims by the Parties that are related to the Damage Claims contained in this Agreement.

8. The prevailing party in any action brought to enforce the terms of this Agreement shall be entitled to its reasonable attorneys' fees and costs incurred in enforcing this Agreement.
9. This Agreement shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada. Claims to enforce this Agreement are subject to arbitration in accordance with the rules of the American Arbitration Association.
10. This Agreement is the entire agreement between the Parties with respect to the Damage Claims contained in this Agreement, and supersedes all prior and contemporaneous oral and written agreements and discussions.
11. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and each of their present and former respective heirs, successors in interest, agents, employees, servants, principals, council members, assigns, assignors, executors, guarantors, attorney's associates, affiliates and/or any other person or entity otherwise related or connected to the parties to this Agreement.
12. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.
13. This Agreement may be executed in several counterparts, in one or more separate documents, all of which together shall constitute one and the same instrument, with the same force and effect as though all the Parties had executed the same document at the same time and also may be executed by facsimile.

///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///

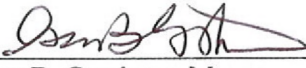
Left Blank Intentionally

///
///
///
///
///
///
///
///
///
///
///

14. The Parties hereby certify that each has read all of the Agreement and fully understand the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

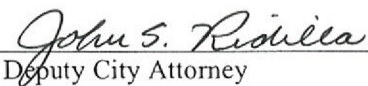
CITY OF LAS VEGAS

By: 
Oscar B. Goodman, Mayor

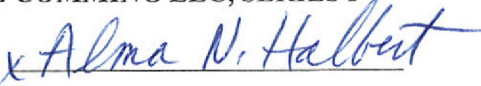
ATTEST:

By:  1/8/2010
Beverly K. Bridges, CMC, City Clerk Date

APPROVED AS TO FORM:

By:  9/18/09
Deputy City Attorney Date

HOME COMMING LLC, SERIES I

By: x 

Name: Alma N. Halbert

Title: Manager

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 14th day of January, 2009¹², before me, the undersigned Notary Public in and for said County and State, appeared Oscar B. Goodman as Mayor of the City of Las Vegas, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the purposes mentioned therein.



Stacey L Campbell
Notary Public

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 14th day of September, 2009, before me, the undersigned Notary Public in and for said County and State, appeared Alma Halbert, Manager of Home Comming, LLC, Series I, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes mentioned therein.

Nikki Doyle
Notary Public



Exhibit A

Survey and Legal Service Invoices

3041 E. Flamingo Rd #A
Las Vegas, NV 89121
Phone- 702-436-0323
Fax- 702-436-0288

**EXIT UNITED
REALTY**

FAX #
464-2670

Fax

cell # 376-1931 cell # 630-1212
To: Rusty From: ALMA HALBERT
Fax: ~~555-6005~~ Pages: 3
office Phone: 229-5375 Date: July 21, 2009
Re: Home Conning, LLC 232 Wilshire Ave.
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

- Rusty, Here is the documentation for fees paid
- to Attyx total of \$1,400-
- to surveyor total of 1,500-
\$2,900-

TAX DEDUCTIBLE ITEM ☐

2961

✓ Track Your Expenses ..

☐ Auto/Travel ☐ Education ☐ Medical/Dental
☒ Business ☐ Entertainment ☐ Savings
☐ Charities ☐ Food ☐ Taxes
☐ Clothing ☐ Home ☐ Utilities
☐ Dependents Care ☐ Insurance ☐ Other

John M. Net 2009

Three Hundred, fifty

For enhanced security your account
number has been blocked out on this copy

DATE	7/21/2009
ITEM	350.00
AMOUNT	
BALANCE	
DEPOSIT	
FOR'D	

NOT NEGOTIABLE

①

LAW OFFICES OF JOHN M. NETZORG
2810 West Charleston Boulevard
Suite 81
Las Vegas, NV 89102

Invoice submitted to:
Home Comming, LLC
Attn: Alma Halbert
P.O. Box 7197
Las Vegas NV 89170

June 16, 2009

In Reference To 232 W. Baltimore Avenue - City of Las Vegas

Invoice #15098

Professional Services

	Hrs/Rate	Amount
6/4/2009 JMN Meeting with Alma re problem with City - property	1.00 350.00/hr	350.00
6/8/2009 JMN Meeting with Alma and surveyor re encroachment	1.00 350.00/hr	350.00
6/9/2009 JMN Telephone conference with Alma re survey results and fact that fence is on her property. Mc with Babe re survey results	0.50 350.00/hr	175.00
6/16/2009 JMN Meeting with Babe Brenner, surveyor, and client. draft letter to City of Las Vegas re trespass and damages	1.50 350.00/hr	525.00

For professional services rendered:

4.00 \$1,400.00 - Total
for Att'y

6/4/2009 Payment - thank you

(\$350.00)

Total payments and adjustments

(\$350.00)

Balance due

\$1,050.00

BELL ROCK, INC.
PH. 702-630-1212
P.O. BOX 7197
LAS VEGAS, NV 89170

90-7122/081

3222

200917862

DATE

June 24, 2008

3004

PAY TO THE

ORDER OF

John Netzorg

\$ 1,050.00

One Thousand, Fifty & 00/100

DOLLARS

citibank

CITIBANK, N.A. BR. #881
2820 E DESERT INN ROAD
LAS VEGAS, NV 89121

MEMO - Fence/property, Bell Rock Inc
by Alma Halbert

63222717241 200917862 3004

(2)

Invoice

Brenner & Associates, Inc.

3014 V Charleston Blvd, Suite 100

Las Vegas, Nevada 89102

Phone: (702) 877-0317

Fax: (702) 877-0358

Exit United Realty
3041 E. Flamingo Rd., Suite A
Las Vegas, NV 89121

Date of Invoice: June 15, 2009

Contract Number: 01-1020

Attention: Accts Payable

Invoice Number: 4414

FOR PROFESSIONAL SERVICES: Surveying services rendered for ALTA Survey of Lots 23 & 24, Meadows Addition.

Lump Sum Fee Amount \$1,500.00

Less Amount Previously Billed \$0.00

TOTAL AMOUNT DUE \$1,500.00

BELL ROCK, INC. PH 702-630-1212 P.O. BOX 71917 LAS VEGAS, NV 89170		90-7172/881 3222 2009-1062 DATE <u>June 16, 2009</u>	3001
PAY TO THE ORDER OF <u>Brenner & Associate, Inc.</u>		\$ <u>1,500.00</u>	
<u>One Thousand, Five Hundred & 00/100</u>		DOLLARS	
citibank CITIBANK N.A. BR. #801 3025 E. DESERT INN ROAD LAS VEGAS, NV 89121		ALTA Survey 232 W. Baltimore Ave. Bell Rock Inc. by Alma Hallbert	
MEMO			
⑆322271724⑆ 200917862⑆ 3001			

Please make check payable to Brenner & Associates

③