

1 Stephen C. Balkenbush, Esq.
 State Bar No. 1814
 2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
 6590 South McCarran Blvd., Suite B
 3 Reno, Nevada 89509
 (775) 786-2882
 4 Attorneys for Defendants
 Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein,
 5 Chuck Weinberger and Robert C. Wolf

6
 7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF NEVADA

10 STEVEN E. KROLL, Case No. 3:08-CV-0166-ECR-RAM
 11 Plaintiff

12 vs.

13 INCLINE VILLAGE GENERAL
 14 IMPROVEMENT DISTRICT, aka IVGID, a
 governmental subdivision of the State of
 15 Nevada; JOHN A. BOHN; GENE
 BROCKMAN; BEA EPSTEIN, CHUCK
 16 WEINBERGER and ROBERT C. WOLF,
 individually and as Trustees of IVGID; DOES
 17 1 through 25, inclusive, each in their
 individual and official capacities,
 18 Defendants.

**DEFENDANT INCLINE VILLAGE
 GENERAL IMPROVEMENT
 DISTRICT'S RESPONSES TO
 PLAINTIFF'S REQUESTS FOR
 ADMISSIONS TO DEFENDANT
 JOHN A. BOHN (FIRST SET)**

19
 20 COMES NOW, Defendant, INCLINE VILLAGE GENERAL IMPROVEMENT
 21 DISTRICT, (hereinafter "IVGID") by and through its attorneys of record, THORNDAL,
 22 ARMSTRONG, DELK, BALKENBUSH & EISINGER, and in accordance with Rule 36 of the
 23 Federal Rules of Civil Procedure, hereby responds to Plaintiff's Requests for Admissions to
 24 Defendant John A. Bohn as follows:

25 **REQUEST NO. 1**

26 Each of the following documents exhibited with this Request is genuine:

27 (a) The 1968 Deed conveying the Beach Properties to the Incline Village General
 28 Improvement District [hereinafter sometimes referred to as "the 1968 Deed" and "IVGID"]
 attached hereto to Plaintiff's Exhibit 2 for identification, and which is attached to Plaintiff's First

1 Amended Complaint herein marked Exhibit A;

2 (b) The extracts for the IVGID Minutes of its Regular Meeting of August 30, 2006, pages
3 32 through 38, marked Plaintiff's Exhibit 94 for identification, attached hereto;

4 (c) The front-page article in the September 1, 2006 issue of the North Lake Tahoe
5 Bonanza newspaper entitled "Residents Debate Rec Passes", attached hereto as Exhibit 88 for
6 identification;

7 (d) The partial transcript extracts of the Board of Trustees' public hearing on Beach
8 Access which took place on June 18, 2007 attached hereto marked Exhibit 74 for identification,
9 and that it is an accurate transcription of the audio recording of said public hearing.

10 **RESPONSE NO. 1**

11 (a) Objection. John A. Bohn has no legal ability to authenticate the deed which is
12 attached as Exhibit 2 to Plaintiff's Requests for Admissions. Without waiving this objection,
13 Request for Admission 1(a) is denied.

14 (b) Objection. John A. Bohn has not compared the minutes attached as Exhibit 49 to
15 Plaintiff's Requests for Admissions to the minutes approved by the IVGID Board. The minutes
16 attached as Exhibit 49 to Plaintiff's Requests for Admissions appear genuine. Without waiving
17 these objections, Request for Admission 1(b) is denied.

18 (c) John A. Bohn has no legal ability to authenticate Exhibit 88 attached to Plaintiff's
19 Requests for Admissions. Without waiving this objection, Request for Admission 1(c) is denied.

20 (d) Objection. Exhibit 74 does not appear to be a transcript prepared by or for the IVGID
21 Board of Trustees concerning a meeting which took place on June 18, 2007. It is not a function
22 of my position as a member of the IVGID Board of Trustees to prepare verbatim transcripts of
23 IVGID Board of Trustees meeting. Without waiving this objection, Request for Admission 1(d)
24 is denied.

25 **REQUEST NO. 2**

26 The 1968 Deed granted exclusive access to the Beach Properties to the Seller of that
27 property and to property owners and their tenants within the geographical boundaries of the
28 District as it existed in 1968 and their successors, and to such of the guests as IVGID's Board of

1 Trustees should determine. [These provisions of the 1968 Deed are sometimes referred to herein
2 as the “Restrictive Covenant”].

3 **RESPONSE NO. 2**

4 Objection. Plaintiff’s Request for Admission No. 2 requests that John A. Bohn interpret
5 Exhibit 2 which is a legal document. Exhibit 2 attached to Plaintiff’s Request for Admission
6 speaks for itself. John A. Bohn is not an attorney. Further, Plaintiff’s Request for Admission No.
7 2 calls for a legal conclusion. See Morgan v. Demille, 106 Nev. 671,676, 799 P.2d 561 (1990).
8 Without waiving these objections, Request for Admission No. 2 is denied.

9 **REQUEST NO. 3**

10 The geographical boundary of the District as it existed in 1968 encompasses the
11 community known as “Incline Village.”

12 **RESPONSE NO. 3**

13 Objection. Request for Admission No. 3 assumes facts not in evidence. I do not know
14 the precise geographical boundaries of IVGID as of 1968. Further, Request for Admission No. 3
15 assumes that whatever the geographical boundaries were of IVGID in 1968, these boundaries
16 were identical with what is now known as “Incline Village.” I do not know this to be true.
17 Further, Request for Admission No. 3 calls for a legal conclusion in what is meant by the term
18 “Incline Village.” See Morgan v. Demille supra. Without waiving this objection, Request for
19 Admission No. 3 is denied.

20 **REQUEST NO. 4**

21 The Restrictive Covenant in the 1968 Deed requires exclusion from the beach Properties
22 of all persons who are not Incline Village property owners or their guests, or successors of the
23 original Grantor of the Beach Properties.

24 **RESPONSE NO. 4**

25 Objection. The deed attached as Exhibit 2 to Plaintiff’s Requests for Admissions speaks
26 for itself. Further, Request for Admission No. 4 requires John A. Bohn to interpret the
27 provisions of this deed which in turn calls for legal conclusion. See Morgan v. Demille, supra.
28 Without waiving these objections, Request for Admission No. 4 is denied.

1 **REQUEST NO. 5**

2 The Incline Village General Improvement District today has expanded beyond its 1968
3 boundaries, and prior to May 1, 2008 IVGID has always denied access to the Beach Properties to
4 members of the District who are not property owners from Incline Village unless they were
5 guests of an Incline Village property owner.

6 **RESPONSE NO. 5**

7 Objection. Request for Admission No. 5 is compound. Further, Request for Admission
8 No. 5 is vague and ambiguous in what is meant by the term “property owners from Incline
9 Village.” Without waiving these objections John A. Bohn admits that the boundaries for IVGID
10 are greater today than they were in 1968. Without waiving these objections, Request for
11 Admission No. 5 is denied.

12 **REQUEST NO. 6**

13 In your opinion, the exclusive right of Incline Village property owners to enter the IVGID
14 Beach Properties has a monetary or economic value

15 **RESPONSE NO. 6**

16 Objection. Request for Admission No. 6 is vague and ambiguous in what is meant by the
17 phrase “Incline Village property owners.” Further, John A. Bohn is not an expert concerning the
18 values of property located within the jurisdictional boundaries of IVGID. Without waiving this
19 objection, Request for Admission No. 6 is denied.

20 **REQUEST NO. 7**

21 You, John A. Bohn, are a 1968 Deed holder in Incline Village.

22 **RESPONSE NO. 7**

23 Objection. Request for Admission No. 7 is vague and ambiguous in what is meant by the
24 phrase “1968 Deed Holder in Incline Village.” Without waiving this objection John A. Bohn
25 admits that he owns a parcel of real property which was located within the boundaries of IVGID
26 prior to 1968. Without waiving these objections, Request for Admission No. 7 is denied.

27 **REQUEST NO. 8**

28 In your personal opinion the economic value of your exclusive right as a 1968 Deed

1 Holder to enter the IVGID Beach Properties and to sponsor as many guests thereto as you may
2 wish exceeds the sum of \$10,000.

3 **RESPONSE NO. 8**

4 Objection. The phrase “1968 Deed Holder” used in Request for Admission No. 8 is
5 vague and ambiguous. Further, Request for Admission No. 8 is compound. Finally, Request for
6 Admission No. 8 seeks opinion testimony on an issue wherein John A. Bohn is not an expert.
7 Without waiving these objections, Request for Admission No. 8 is denied.

8 **REQUEST NO. 9**

9 At the IVGID Regular Meeting on or about August 30, 2006 (a portion of whose Minutes
10 are attached hereto marked Plaintiff’s Exhibit 94 for identification), you said in words or
11 substance: “this Board can no more give away the pink slip to your car then they can give away
12 access to the beaches; only a court of law can vacate those restrictive covenants.”

13 **RESPONSE NO. 9**

14 Admit.

15 **REQUEST NO. 10**

16 At the same IVGID meeting on or about August 30, 2006, you said in words or substance
17 that with respect to granting beach access specifically to residents of IVGID who did not live in
18 Incline Village but lived in Crystal Bay “that it wasn’t this Board’s decision to make, rather it
19 was for a court of law to decide”.

20 **RESPONSE NO. 10**

21 At the IVGID meeting on or about August 30, 2006 I made a statement to the effect that
22 the validity and scope of the restrictive covenants set forth in the 1968 Deed conveying the Beach
23 Properties to IVGID were the proper subject of a court’s interpretation and not the IVGID Board
24 of Trustees. Without waiving these objections, Request for Admission No. 10 is denied.

25 **REQUEST NO. 11**

26 The following report in the September 1, 2006 edition of the Tahoe Bonanza (Exhibit 88
27 attached) is essentially accurate: “On the latter topic, chairman John Bohn said deed restrictions
28 on the beaches explicitly state that Crystal Bay residents are not eligible for beach privileges, and

1 that changing the rules would require a court order.”

2 **RESPONSE NO. 11**

3 Objection. Request for Admission No. 11 refers to a newspaper article allegedly
4 published by the Tahoe Bonanza. John A. Bohn had nothing whatsoever to do with writing
5 and/or publishing this article. Further, John A. Bohn does not recall making a statement on
6 September 1, 2006 which is referenced in said article. Without waiving this objection, John A.
7 Bohn believes that the validity and scope of the restrictive covenant contained in the 1968 Deed
8 conveying the Beach Properties to IVGID present legal issues which should be resolved by a
9 court of law. Further, without waiving these objections, Request for Admission No. 11 is denied.

10 **REQUEST NO. 12**

11 At an IVGID public hearing on Beach Access at the Chateau on or about June 18, 2007,
12 you told a constituent from Crystal Bay named Joy Dahlgren in words or substance that with
13 respect to the 1968 deed restriction, “this Board and other Boards have decided that it’s not an
14 administrative thing that we can waive, it has to be done by a court of law.”

15 **RESPONSE NO. 12**

16 Objection. Request for Admission No. 12 purports to relate to Exhibit 74 attached to
17 Plaintiff’s Requests for Admissions. John A. Bohn is not familiar with this document and is
18 informed and believes that this document was not prepared by a representative of IVGID.
19 Without waiving these objections, it has always been the understanding of John A. Bohn that as a
20 member of the Board of Trustees he had no authority to waive any of the covenants in the 1968
21 Deed conveying the Beach Properties to IVGID. Further, without waiving these objections,
22 Request for Admission No. 12 is denied.

23 **REQUEST NO. 13**

24 On or about April 23, 2008 you met with other IVGID Trustees without notice to the
25 public outside the public eye and discussed what was later to become Policy 136

26 **RESPONSE NO. 13**

27 Deny.

28 **REQUEST NO. 14**

1 At the Board meeting of April 30, 2008 at which the adoption of Policy 136 was on
2 Agenda, you moved the formal adoption of Policy 136 without disclosing that you had previously
3 met in secret with other Trustees to discuss this matter.

4 **RESPONSE NO. 14**

5 Deny.

6 **REQUEST NO. 15**

7 You had decided upon the way you intended to vote on Policy 136 before the public
8 meeting of the Board on April 30, 2008 and notwithstanding whatever public input was made at
9 the meeting.

10 **RESPONSE NO. 15**

11 Deny.

12 **REQUEST NO. 16**

13 Policy 136 was adopted by a unanimous vote of the Board on April 30, 2008, and went
14 into effect the next day.

15 **RESPONSE NO. 16**

16 Admit.

17 **REQUEST NO. 17**

18 Policy 136 allows persons who are not 1968 deed holders or guests of 1968 deed holders
19 to enter the Beach Properties for purposes of expressing their First Amendment rights

20 **RESPONSE NO. 17**

21 Objection. Policy 136 speaks for itself. Further, Policy 136 allows all persons to enter
22 Beach Properties for purposes of expressing their First Amendment rights. Finally, without
23 waiving these objections, Request for Admission No. 17 is denied.

24 **REQUEST NO. 18**

25 Policy 136 violates the 1968 Deed and Restrictive Covenant, in your opinion.

26 **RESPONSE NO. 18**

27 Objection. Request for Admission No. 18 calls for a legal conclusion. See Morgan v.
28 Demille, supra. Without waiving this objection, Request for Admission No. 18 is denied.

1 **REQUEST NO. 19**

2 In adopting Policy 136, the IVGID Board of Trustees administratively changed the scope
3 of the Restrictive Covenant without a court order.

4 **RESPONSE NO. 19**

5 Objection. Request for Admission No. 19 calls for a legal conclusion. See Morgan v.
6 Demille, supra. Without waiving this objection, Request for Admission No. 19 is denied.

7

8 DATED this 28th day of August, 2008.

9

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

10

11

By Stephen C. Balkenbush

12

STEPHEN C. BALKENBUSH, ESQ.
6590 South McCarran Blvd., Suite B
Reno, NV 89509
(775) 786-2882

13

14

Attorneys for Defendants
INCLINE VILLAGE GENERAL IMPROVEMENT
DISTRICT, JOHN A. BOHN, GENE BROCKMAN,
BEA EPSTEIN, CHUCK WEINBERGER and
ROBERT C. WOLF

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada the original of **Plaintiff's requests for admissions to Defendant John A. Bohn (First Set)**, addressed as follows:

**Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402**

DATED this 28th day of August, 2008.

Susan Balkenbush