Sample Exam Question #3

Leon James is the developer of a subdivision near Henderson. On February 15, 2001, he entered into a written contract to sell a lot in the subdivision to Pablo Thomas for $50,000. During negotiations, James assured Thomas that the property was zoned outside of the 50-year flood plain, but the written contract, which contained a conspicuous merger clause, made no mention of this. When, after signing the contract and paying James for the lot, Thomas applied for a building permit, he was notified that the lot was within the 50-year flood plain (meaning both that it is substantially more prone to flooding and that it will be much more expensive to insure the house that Thomas intends to build on the lot).

If Thomas sues James for breach of contract, would evidence of James’s oral representation be admissible at trial, notwithstanding the parol evidence rule? Please explain.