

RJ	Check#	Chk Date	P/M	Payee	Payee Name	Amount	Memo
R	341828	1/16/2009	01/2009	POWER	Nevada Power Co.	\$36.07	Acct#3000100024721335533 1
R	341829	1/23/2009	01/2009	APL	AMERICAN PREMIERE LAS VEGAS	\$37,297.00	Customer Service Salaries
R	341830	1/23/2009	01/2009	API	American Premiere Inc	\$22,274.20	Sales Salaries
R	341831	1/23/2009	01/2009	COX	Cox Communications, Inc.	\$49.99	Acct#001 8610 106657501 Of
R	341832	1/23/2009	01/2009	CONTROLL	Controlled Entry Distributors, Inc	\$185.00	order Liftmaster transmitters -
R	341833	1/23/2009	01/2009	BRADLEY	Dan Bradley Glass Shop, Inc	\$957.00	replace broken slider 16-7
R	341834	1/23/2009	01/2009	HMCARPETHM	Carpet Nevada, Inc	\$235.00	replace bedroom carpet Lot 19
R	341835	1/23/2009	01/2009	APPLIANCE	Appliance Repair Experts, Inc	\$197.49	repair refrigerator 9-8 (parts an
R	341836	1/23/2009	01/2009	EFFICIENT	EFFICIENT ELECTRIC	\$75.00	no power in 2 bedrooms - loos
R	341837	1/23/2009	01/2009	UNITED	UNITED PLUMBING	\$310.00	R&R recirc pump and fittings 1
R	341838	1/23/2009	01/2009	POWER	Nevada Power Co.	\$10.98	Acct#3000100024720592118 I
R	341839	1/23/2009	01/2009	OFFICE-DE	Office Depot	\$99.11	Office - Paper and toner suppli
R	341840	1/23/2009	01/2009	FOR-RENT	For Rent Magazine	\$510.00	Full color ad 12/17/08
R	341841	1/23/2009	01/2009	FIRST	First Advantage SafeRent, Inc.	\$233.76	Credit Reports for December 2
R	341842	1/23/2009	01/2009	SOUTHERN	Southern Nevada Eviction Services	\$312.00	5 day pay or quit notice Lot 19
R	341844	1/23/2009	01/2009	LABORSYS	Labor Systems Job Center	\$798.12	Temporary labor 01/02/09
R	341845	1/30/2009	01/2009	HAAS	Consumer Source Inc.	\$1,085.00	Full page ad - January 2009
R	341846	1/30/2009	01/2009	FOR-RENT	For Rent Magazine	\$510.00	Full color ad 12/31/08
R	341847	1/30/2009	01/2009	KLEEN	Esteban C Vasquez dba Kleen Masters	\$2,489.00	remove stains (does not exceed
R	341849	2/6/2009	02/2009	CITYOFNL	City of North Las Vegas	\$240.00	Emergency Abatement 5825 P
R	341850	2/6/2009	02/2009	POWER	Nevada Power Co.	\$1,052.16	Acct#3000100024721335558 1
R	341852	2/6/2009	02/2009	SOUTHWESS	Southwest Gas Corporation	\$328.89	Acct#211-6940411-004 Lot 1
R	341853	2/6/2009	02/2009	IKONOFFIC	Ikon Office Solutions	\$76.50	Contract# 1879670 Copier sc
R	341854	2/6/2009	02/2009	HAAS	Consumer Source Inc.	\$1,085.00	Full page ad - February 2009
R	341855	2/6/2009	02/2009	KLEEN	Esteban C Vasquez dba Kleen Masters	\$3,416.50	clean carpets 14-11 (apt turn)
Non voided Totals						\$132,312.86	

5. Repossessions, foreclosures and returns

None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None ☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None ☒ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Levene, Neale, Bender, et. al 10250 Constellation Boulevard Suite 1700 Los Angeles, CA 90067	2/11/2009	\$75,000.00

10. Other transfers

- None ☐ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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- None ☐ b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

- None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

- None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

- None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

- None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

- None ☐ If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

- None ☐ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☐ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☐ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☐ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

- None ☒ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN		ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
NAME				

- None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

- None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS
Daniel Carrozza
235 W. Brooks
North Las Vegas, NV 89030

DATES SERVICES RENDERED
9/5/2005 - Present

Jerome Canlas
236 W. Brooks
North Las Vegas, NV 89030

2002 - Present

- None ☐ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS
Allan Rosenthal & Associates	4766 Park Granada Suite 202 Calabasas, CA 91302

DATES SERVICES RENDERED
2000 - Present

- None ☐ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME
American Premiere Corp.

ADDRESS
236 W. Brooks
North Las Vegas, NV 89030

- None ☐ d. List all financial institutions, creditors and other parties, including mereantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS
U.S. Bank
15910 Ventura Blvd.
Suite 1712
Encino, CA 91436

DATE ISSUED
Annually since 2000

Wachovia Securities
9th Floor, M/C NC 1075
201 S. College St.
Charlotte, NC 28244

Quarterly since 2007

20. Inventories

- None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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- None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
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21. Current Partners, Officers, Directors and Shareholders

- None ☐ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
Hagai Rapaport 2857 Paradise Road Unit 2001 Las Vegas, NV 89109	President	100%

- None ☒ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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22. Former partners, officers, directors and shareholders

- None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS TITLE DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

- None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

- None ☐ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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25. Pension Funds.

- None ☐ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
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DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date	<u>3/16/09</u>	Signature	<u>/s/ Hagai Rapaport</u>
			Hagai Rapaport
			President

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

Exhibit 11

Exhibit 11

Case 1:09-bk-11504-MT Doc 90 Filed 11/17/09 Entered 11/17/09 13:48:16 Desc
Notice of Dismissal (Generic) Page 1 of 1

**United States Bankruptcy Court
Central District Of California**

21041 Burbank Blvd, Woodland Hills, CA 91367-6603

NOTICE OF DISMISSAL

DEBTOR INFORMATION:
Palmilla Development Company, Inc.
dba Executive Living

BANKRUPTCY NO. 1:09-bk-11504-MT

CHAPTER 11

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s), (if any): N/A
Employer Tax-Identification (EIN) No(s), (if any): 20-0520319
Debtor Dismissal Date: 11/17/09

Address:
7116 Valjean Avenue
Van Nuys, CA 91406

You are notified that an order was entered **DISMISSING** the above-captioned case and vacating the discharge if previously entered.

Dated: November 17, 2009

For The Court,
Jon D. Ceretto
Clerk of Court

(Form ntedam Rev. 03/09) VAN-24

90 / JM1

000879

000879

Exhibit 12

000880

000880

Exhibit 12

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Sixth Session
March 23, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, March 23, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 595

CM595

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Assembly Committee on Commerce and Labor
 March 23, 2011
 Page 2

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Clark County Assembly District No. 8

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
 Sara Partida, Committee Counsel
 Andrew Diss, Committee Manager
 Earlene Miller, Committee Secretary
 Sally Stoner, Committee Assistant

OTHERS PRESENT:

Joanne Levy, Broker, Levy Realty Company, Las Vegas, Nevada;
 Member, Nevada Association of Realtors
 Jack Woodcock, Broker, Prudential America Group Realtors,
 Las Vegas, Nevada; Member, Nevada Association of Realtors
 Bill Uffelman, President and CEO, Nevada Bankers Association
 Barbara Buckley, Executive Director, Legal Aid Center of
 Southern Nevada
 Charles McGee, Senior Judge, Washoe County District Court
 Michael Joe, Attorney, Legal Aid Center of Southern Nevada
 Laila Orellana, Private Citizen, North Las Vegas, Nevada
 Mary Scott, Private Citizen, Las Vegas, Nevada
 James M. Baker, Attorney, Castro and Baker LLP, and Foreclosure
 Mediator, Las Vegas, Nevada
 Malcolm Doctors, Mediator, Henderson, Nevada
 David M. Crosby, Attorney, Las Vegas, Nevada
 Barry Gold, Director of Government Affairs, AARP Nevada
 Sheila Walther, Supervisory Examiner, Mortgage Lending Division,
 Department of Business and Industry
 Jon Sasser, representing Legal Aid Center of Southern Nevada, Washoe
 Legal Services, and Washoe County Senior Law Project
 Lou Filippo, Owner, Accelerated Training Systems, Las Vegas, Nevada

Chair Atkinson:

[The roll was taken, and a quorum was present.] We have three bills to hear today. We are going to start with Assemblyman Conklin's bill, Assembly Bill 273.

Assembly Committee on Commerce and Labor
 March 23, 2011
 Page 3

Assembly Bill 273: Revises provisions governing deficiencies existing after foreclosure sales. (BDR 3-561)

Assemblyman Marcus Conklin, Clark County District No. 37:

Have you ever known someone who did all of the right things but could never catch a break? That is what is happening to a lot of people in our state now. It does not matter if they are new homeowners or senior citizens. People have come to Nevada, purchased a home, and taken up residence here. In many cases, through no fault of their own, they have been caught in a tidal wave of negative homeowner activity. I have two bills today about different issues, but related to the same thing. Assembly Bill 273 deals with homeowners who purchase and live in their home and never treat it as an investment and then are forced out and lose their good credit. At the end of the day, they are slapped with a deficiency judgment. This bill deals with those judgments. Under current statute, a court can award deficiency judgments under Chapter 40 of the *Nevada Revised Statutes* (NRS) after a foreclosure sale provided the sale is less than the amount that the borrower owes the lender.

In Assembly Bill No. 471 of the 75th Legislative Session, we tightened the law regarding deficiency judgments to protect homeowners who borrowed from financial institutions to purchase a home on or after October 1, 2009, and who continuously occupied the home as their principal residence and did not refinance. The term we used at that time was "purchased money mortgage." In this bill we are again tightening the rules on deficiency judgments by doing the following things. We are preventing a lender from receiving double payments by obtaining a judgment for a loss that is covered by insurance or some other financial instrument. We are preventing a creditor from profiting from a judgment in excess of the amount the creditor paid for the right to pursue such a judgment. The protections in Assembly Bill No. 471 of the 75th Legislative Session are being extended to borrowers who take out piggyback loans for the purchase of their home, and we are making our laws on deficiencies apply to both senior and junior lenders.

In section 2, subsection 1, and also in section 5, the bill eliminates the ability of a lender to go to court to get a judgment against the borrower for a loss that is covered by insurance. The court must reduce the amount of the judgment by the amount of any insurance proceeds received by or payable to the lender. Section 2 covers the junior lenders, and section 5 covers the senior lenders. Because of the complex nature of what we have been through starting around 2007, many banks have failed and were purchased by larger banks. The Federal Deposit Insurance Corporation (FDIC) has insured the new banks. They said that for any loan that the previous bank secured for the purchase of a house, they would insure against loss for the new bank so they would not be

Assembly Committee on Commerce and Labor
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assuming all the risk of the purchase. That insurance is upwards of 80 percent of any loss. A lot of homes were purchased with private mortgage insurance (PMI), which covers the borrower in the case where he cannot make his mortgage payments; if the home is repossessed by the bank, the deficiency between the value of the home and the balance of the loan is covered by the PMI.

We are trying to establish in statute that those insurance instruments must be exercised first, before the amount of the deficiency is determined in a court action, thereby minimizing the potential deficiency for which a borrower can be sued. The insurance instruments have to be collected first. The insurance companies have been shored up for this purpose, sometimes through American Recovery and Reinvestment Act of 2009 (ARRA) funds. I do not want to suggest there is factual evidence that it is not being done. The problem is that the law is not perfectly clear that it cannot be done. There are ways that a court can file against the loan without going to foreclosure, thereby skipping the deficiency part. This makes it clear to the court that all instruments must be exercised before determining the final deficiency between the borrowed amount and the asset amount collected back by the bank. We are attempting to prevent a lender from profiting from a judgment.

In section 2, subsection 2, and also in section 5, the bill prevents a person who has purchased the rights to a loan from receiving a judgment for more than what he paid plus interest. This applies to both junior and senior lenders. A junior lender is one who holds a second or third lien. The junior lender is not first in line to collect on a home. The primary lienholder has first right to the house. These provisions say if a bank chooses to pursue someone for a deficiency judgment in a situation where a house was purchased for \$200,000 and the value dropped to \$100,000—and the bank decided to pursue the homeowner for the \$100,000 and then sold it to a collection agency for \$20,000—all the collection agency could collect is the \$20,000 plus interest and fees. If the bank was willing to accept \$20,000, then why did the bank not negotiate with the homeowner for the \$20,000? The homeowner's credit is being destroyed for \$20,000, but it appears on his credit report as \$100,000. Why not have the discussion take place between the original lender and the homeowner for the true amount the bank is willing to accept in the first place?

The third provision extends protections from Assembly Bill No. 471 of the 75th Legislation Session to the piggyback loans, which are basically the junior lenders. When we drafted that bill, we attempted to deal with purchase money mortgages, which are the original loan that secured the house. You buy and live in the house and do not take out additional loans secured by the house. The loan is strictly to purchase a house in which you reside. You are now

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 March 23, 2011
 Page 5

protected against deficiency judgments. What was not in that bill was that some loans are complicated and have junior lienholders. We are attempting to go back to include in that legislation that all of the loans that are originally used to secure the house are now covered under deficiency. If it is part of the original purchase money mortgage deal, it will now be covered under deficiency protection.

There are two proposed amendments. The first amendment (Exhibit C) deals with the statute of limitations on the junior lienholder and was part of the original intent, but was never part of the bill. There are a lot of homes going through the foreclosure process because they cannot find a suitable short sale. In a short sale, particularly for a home that has two lienholders, is the junior lienholder has a statute of limitations after foreclosure of six years to get a deficiency judgment. The first lienholder has a statute of limitation of six months. The first lienholder sees that if he approves the short sale, he will never have to own or maintain the property, and he will take a loss no matter what he does. It is a simple transaction to a new homeowner. The lienholder can write off the asset, write off the loan, and walk away because he knows in six months the situation will not improve and the transaction does not make sense anymore. The second lienholder does not want to approve the short sale because he knows if he goes to foreclosure, he will have six years to wait for the economic circumstances to improve for the borrower before he chooses to sue them for any deficiency he did not get paid. Why should the second lienholder be in a better position than the first? The result is the first lienholder is not able to get a short sale done because the junior lienholder is holding up the short sale process. This amendment seeks to put the second lienholder in the same statute of limitations position of six months as the primary lienholder. It seems fair for the property owner because there will be more short sales and fewer properties waiting in foreclosure and more transactions taking place. I believe it will help the homeowner and the economy get back on track.

The second proposed amendment (Exhibit D) deals with commercial lending. This amendment revises *Nevada Revised Statutes* 40.495. If you are a guarantor of a loan, there is a loophole in the law that allows the bank to file a suit but not take the property when the loan is secured by the property, which may bankrupt the guarantor. The bank has as much risk as the borrower, and that is why they use property as collateral. I am trying to close that loophole with this amendment. If a bank wants to take action against a borrower to purchase land, and the loan is secured by the land, then before they can sue for money, they have to at least get a judicial appraisal of the property and subtract its value from the amount of the loan. Otherwise, what was the reason for the secured loan in the first place? The amendment provides that, in order to

Assembly Committee on Commerce and Labor
March 23, 2011
Page 6

secure a judgment against a creditor who has a loan that is secured by property, you must get a judicial appraisal and subtract the value from any loan amount.

Chair Atkinson:

Thank you for this bill, because it will help our constituents. My district was the number-one district in growth and is the number-one district in foreclosures. People are looking for relief but feel their hands are tied. They are concerned about the banks coming after them in six years. If a bank and the second lender sign off on the short sale, does that take the borrower out of the six years or six months for the deficiency collection?

Assemblyman Conklin:

There is no statute of limitations on a transaction of sale prior to foreclosure. It is the standard practice of a trained real estate agent that if we are going to conduct a short sale, there is a release for deficiency. What homeowner would "short sale" their house without a document? It is a standard course of practice. The law does not prevent a deficiency judgment for a transaction of sale that takes place prior to foreclosure. That is a standard practice and is what the homeowners expect. The bank is losing less, in that they never have to own or maintain the property or transfer a deed, and can sell it and write it off the books as opposed to a lengthy court process and ownership. It is a win-win situation, but when there are two banks dealing with this and one has a much longer period to collect for a deficiency, why would they ever sign away that right?

Chair Atkinson:

Do you feel that second lenders will be less likely to sign?

Assemblyman Conklin:

We have real estate salespeople who are negotiating these deals daily in Las Vegas, but the reality is there is currently no incentive for the junior lienholder to sign a transaction of sale prior to foreclosure. They have six years to wait for the economy to improve and collect their deficiency. By shortening the time and putting the junior lender on equal footing with the primary lender, it would be more likely that they would be willing to deal at the front end, because they know things are not going to get better before the statute of limitations runs out.

Chair Atkinson:

So the real estate people will say that the homeowners are insisting that the bank sign?

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Assemblyman Conklin:

I wonder if a primary bank would say it could do more if the junior lender would agree. There is no incentive for them to do it.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Segerblom:

Is this bill retroactive?

Assemblyman Conklin:

No, it is not. You would be reaching back into contracts that were made under certain circumstances. If that were done, who would ever want to sign a contract or do business in a state that would nullify contracts? Our laws should have been better, but we have also never been in the situation we are in today. We never envisioned a bubble so massive that literally 20 percent of the homes in the state would be delinquent at one time, that 5 out of every 100 people would be foreclosed, and 80 percent of the homeowners in Las Vegas would owe more than their homes are worth. We did not craft our laws in anticipation of this scenario, and we should not. To retroactively pass laws would set a remarkably dangerous precedent for individuals and businesses that enter into contracts because you will wonder how it can be enforced or how it can change. The statute of limitations amendments will go forward from passage and approval, so any action from that date forward will be subject to a statute of limitations amendment of six months.

[The Chair turned the gavel over to Assemblywoman Kirkpatrick.]

Acting Chair Kirkpatrick:

Go ahead, Assemblyman Segerblom.

Assemblyman Segerblom:

After this bill is passed, will a second mortgage made ten years ago be the same as the first mortgage?

Assemblyman Conklin:

That is correct, because it is triggered off a legal action. They will still have the right to the deficiency which they will not have on a new loan going forward providing it is a purchase money mortgage.

[Chair Atkinson reassumed the Chair.]

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March 23, 2011
Page 8

Chair Atkinson:

Are there any other questions from the Committee?

Assemblywoman Carlton:

Could you go over the part about the collection agency again?

Assemblyman Conklin:

On page 2 of the bill, section 2, subsection 2 reads: "If a person: (a) Acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right." In other words, if a company buys the right to file a deficiency judgment, which can be done or files "a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale . . . then the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date of the default." If I am the bank, and you are the borrower, and your house is only worth half of what you borrowed, I take you to foreclosure; I take your house and sue you for the deficiency. In this case we are talking about the second lienholder; there are provisions in section 5 that provide to the primary lienholder, but the action is the same. I win the judgment, but I am not a collection agency and I do not think you will pay the balance, so I sell the court judgment to a collection agency for less. The collection agency can collect from you the original amount of the deficiency. If the bank is willing to sell the deficiency for less, the borrower should have the right to pay the lower amount to the bank.

Assemblywoman Kirkpatrick:

I have a constituent with a \$92,000 garnishment because that was done in a short sale. This will not help him, but it may help others. Now he is homeless, and his employer has to have extra paperwork when it could have been resolved.

Assemblyman Conklin:

I wish we could do something in retrospect, but the consequences would be dire. That does not mean we cannot learn from our situation and make our process better so our future prospects are better.

Assemblywoman Kirkpatrick:

If they already have a garnishment, there is nothing we can do, but if it goes to a short sale, will they be able to benefit?

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Assemblyman Conklin:

Once the action is finished, they will have to appeal the court action. Should we pass this bill, people in this situation will find their chances of having a fairer deficiency, or no deficiency, are significantly improved.

Assemblyman Grady:

Would filing bankruptcy have an effect on the deficiency judgment?

Assemblyman Conklin:

My limited understanding is that this does not affect bankruptcy and deals only with a bank and a borrower to negotiate a deficiency judgment on a mortgage secured by a home.

Chair Atkinson:

We will clarify that with Legal. Are there any other questions?

Assemblyman Conklin:

I would like to have the Realtors in support of this bill in Las Vegas speak first.

Chair Atkinson:

Is there anyone to testify in favor?

Joanne Levy, Broker, Levy Realty Company, Las Vegas, Nevada; Member, Nevada Association of Realtors:

I have been a real estate licensee for 34 years and a broker for 32 years. We are here in support of A.B. 273. I would like to thank Assemblyman Conklin for introducing this legislation. The Nevada Association of Realtors embarked on a multiyear research project called "The Face of Foreclosure," which has been given to the Assemblymen. This is a comprehensive analysis of the foreclosure crisis in Nevada. Foreclosures have impacted nearly every family, business, and government entity in some way. You should all have a copy of this report along with a breakdown of notices of default, notices of foreclosures, real estate owned (REO) and foreclosures in each of your districts. It is the Realtors' belief that the information contained in this report is a vital contribution to the conversation on how we can move Nevada forward together. It is our hope that elected leaders, lenders, foreclosure counselors, Realtors and, most importantly, those facing the challenges of foreclosure will learn from this report. Together we can make a way forward to a long-term future for Nevada that is as strong and resilient as our people have been throughout these trying times. This bill is a start to achieving those goals. It will help homeowners in our state and offers great consumer protection provisions.

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Chair Atkinson:

Are there any questions from the Committee? I see none.

**Jack Woodcock, Broker, Prudential America Group Realtors, Las Vegas, Nevada;
Member, Nevada Association of Realtors**

I have been a real estate licensee for 38 years and a broker for 36 years. I am in support of A.B. 273. I have served on three bank boards and have reviewed this bill from a consumer's perspective and from the perspective of an institution where one has the duty to insure the profitability and success of that institution. There is an undeniable tie between business survival and consumer health. Consumer recovery from this economic downturn is vital to the survival of businesses and banks. This bill offers an initial step towards consumer recovery where it counts. Homeowners who occupied homes used loans to purchase their homes. It also requires lenders to look at the real property for the recovery of debt first and not gain a windfall through unconscionable collection practices that do not account for insurance proceeds.

To answer an earlier question, if a bank forecloses, it has six months to enter into a deficiency judgment. On a short sale, it has six years. Every real estate licensee attempts to ensure that he gets a signed statement from the institution upon approval of a short sale that it will not pursue the borrower for the deficiency; however, every institution will not do that. Many short sales do not give the borrower that relief.

Chair Atkinson:

Would a sale go through anyway?

Jack Woodcock:

Yes. Even though the borrower asks for the statement, they usually go through with the short sale even though they have the six-year time frame.

Chair Atkinson:

Are they aware of that?

Jack Woodcock:

They have to be made aware of that. Anyone who puts a transaction together is obligated to tell the seller.

Chair Atkinson:

They are aware that even if the first signs off and the second refuses that the second lender has six years to collect deficiencies.

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Page 11

Jack Woodcock:

Typically, the second is much less than the first mortgage. It is a judgment call that the seller makes.

Chair Atkinson:

How often does it happen that the second does not agree to the short sale?

Jack Woodcock:

Most of the time; the second holder is the one who holds up the short sale the most. The first is better prepared to go through with the transaction.

Chair Atkinson:

I assumed that the first mortgage holder would get something and, in some of the cases, the second would not.

Jack Woodcock:

In most cases, the first will allow a certain amount to go to the second.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Bill Uffelman, President and CEO, Nevada Bankers Association:

This bill amends a law passed last session. Because it applies the same principles and is not retroactive, the Nevada Bankers Association supports the initial piece of the bill. I have talked to Assemblyman Conklin about his amendment on the commercial side and will reserve judgment on it.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of A.B. 273? Is there anyone wishing to testify in opposition? Is there anyone to testify in a neutral position?

Assemblyman Conklin:

I will follow up with Mr. Uffelman after the banks have a chance to look at the second amendment. I want to clarify one thing. There are two potential sales that take place. There is a potential transaction of sale before a foreclosure. The actual foreclosure itself is called a foreclosure sale. It is the foreclosure sale where the second lienholder has a superior position because it has six years. It is in the short sale where both banks are relatively equal, except that the junior lienholder knows that he has a backup plan and the first lienholder does not. It is in the first lienholder's best interest, if a deal can be struck, to let the house go, and it is not in the best interest of the second lienholder.

Exhibit 13

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Exhibit 13

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Sixth Session
March 28, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:38 p.m. on Monday, March 28, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 662

CM62

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 March 28, 2011
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GUEST LEGISLATORS PRESENT:

Assemblywoman April Mastroluca, Clark County Assembly District
 No. 29

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
 Sara Partida, Committee Counsel
 Andrew Diss, Committee Manager
 Jordan Grow, Committee Secretary
 Sally Stoner, Committee Assistant

OTHERS PRESENT:

Sam McMullen, representing Astellas Pharma US, Inc.
 Cheryl Blomstrom, representing the Nevada Dietetic Association
 B Bottenberg, Doctor of Osteopathy, Carson City, Nevada
 Mary Anne Homma, Private Citizen, Fallon, Nevada
 Michele Cowee, Dietitian, Carson City, Nevada
 Karon Sande Felten, Dietitian, Carson City, Nevada
 Pamela Wagner, Dietitian, Henderson, Nevada
 Maria Gnote, Private Citizen, Las Vegas, Nevada
 Jim Jenks, Private Citizen, Washoe Valley, Nevada
 Hans Frischeisen, Private Citizen, Reno, Nevada
 Bonnie Green, Private Citizen, Reno, Nevada
 Glenn Hausenfluke, Naturopathic Doctor, Reno, Nevada
 Dene Chabot-Fence, Owner, Vitamin Villa Health Food Store, Carson City,
 Nevada
 Rene Johnson, Private Citizen, Reno, Nevada
 Hannah McIntosh, Private Citizen, Reno, Nevada
 Keith Harper, representing Las Vegas Chapter, the Appraisal Institute
 Laura FitzSimmons, Attorney, Las Vegas, Nevada
 Tami Campa, Appraiser, Las Vegas, Nevada
 James J. Leavitt, Attorney, Law Office of Kermitt L. Waters, Las Vegas,
 Nevada
 Brenda Kindred-Kipling, Appraisal Officer, Real Estate Division,
 Department of Business and Industry
 Carol Sala, Board Member, Board of Examiners for Long-Term Care
 Administrators

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Chair Atkinson:

[Roll was called, and a quorum was present.] I would like to welcome our audience here and in Las Vegas and anyone listening over the Internet. We have several items to take care of today in our Committee. We have two bills to hear, two bills to consider in work session, and seven bills to introduce. We will start with the introductions.

The first bill draft request (BDR) is BDR 54-1115.

BDR 54-1115—Revises provisions governing prohibited acts for certain health care practitioners. (Later introduced as Assembly Bill 537.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 54-1115.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

The second BDR is BDR 54-1130.

BDR 54-1130—Revises provisions governing the regulation of pawnbrokers. (Later introduced as Assembly Bill 538.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 54-1130.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

The third BDR is BDR 57-773.

BDR 57-773—Revises provisions governing insurance. (Later introduced as Assembly Bill 539.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 57-773.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

Assembly Committee on Commerce and Labor
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The next BDR is BDR 57-1089.

BDR 57-1089—Revises provisions governing the Nevada Life and Health Insurance Guaranty Association. (Later introduced as Assembly Bill 540.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 57-1089.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

The next BDR is BDR 52-902.

BDR 52-902—Revises provisions governing certain loans. (Later introduced as Assembly Bill 541.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 52-902.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

The next BDR is BDR 52-649.

BDR 52-649—Provides for the licensing and operation of distilleries in Nevada. (Later introduced as Assembly Bill 542.)

ASSEMBLYMAN CONKLIN MOVED TO INTRODUCE BDR 52-649.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

The next BDR is BDR 35-824.

BDR 35-824—Provides for the regulation of mobile billboards. (Later introduced as Assembly Bill 543.)

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Assembly Bill 273: Revises provisions governing deficiencies existing after foreclosure sales. (I 3-561)

Marji Paslov Thomas, Committee Policy Analyst:

The next bill is Assembly Bill 273, which was sponsored by the Committee and heard on March 23, 2011. [Read work session document (Exhibit D).]

Assemblyman Conklin proposed two amendments, and the mock-ups are on Nevada Electronic Legislative Information System (NELIS). The first one says "Conceptual Amendment to A.B. 273," and I would like to point out the highlights. It is just conceptual, so the sections and language may not look exactly like this after it is drafted.

The first change is section 1.5 in the mock-up, which would change existing law so that a junior mortgage or lien holder must commence a civil action after a foreclosure or short sale within six months. Currently, it is six years. It also discusses single action for recovery of the debt by a mortgage or other lien holder under section 2. Mr. Conklin explained that "default" should not have been in there, so a court must not render a judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs, rather than the date of the default. Under section 3, it would remove short sale provisions.

On page 3 of this first conceptual amendment, it states, "The amendatory provisions of section 1.5 of this act apply only to actions commenced after a foreclosure sale or sale in lieu of a foreclosure sale which occurred on or after July 1, 2011."

The next amendment further changes A.B. 273. You can see that this deals with the rights of a guarantor, surety, or other obligor in real property. A new section would be added, which would amend *Nevada Revised Statutes* (NRS) 40.495. Subsection 3 would include the following:

If an obligee commences an action against a guarantor, surety or other obligor to collect or satisfy the amount of the indebtedness or obligation, prior to a foreclosure sale, the court in that action shall determine the fair market value of the property securing the indebtedness, or obligation, prior to entry of judgment and shall not render judgment for more than the amount by which the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action, or the date of the foreclosure sale if concluded prior to the entry of judgment.

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Assemblyman Conklin:

If I may, I have just a couple of quick comments on this particular bill. The first comment is on the second amendment. I have had some conversations with Bill Uffelman of the Nevada Bankers Association, who has notified me that they have some concerns over the second amendment. I do not know if there is consensus among the banking industry as a whole, but I agreed to continue to work on it. I do not know if they are necessarily opposed to the amendment as much as opposed to the language. We could not come up with compromise language that made sense. It is a fundamental issue that is being addressed. In order to have capital investment in the state, you need two actors: an investor and a bank. The bank is how you leverage the investor's money. If a person has \$5 million and wants to borrow, he can borrow significantly more than his \$5 million, but he puts up his \$5 million as guarantee. Right now, without this amendment, the bank holds all the chips in that arrangement. What the bill does is prohibit, or inhibit, investors from reengaging in the market without closing a loophole that was not intended to exist in the first place. I am sure not all banks will agree with that, and we certainly want banks since that is how investors leverage their money. What we are trying to do is create balance. So far, this is the language that I have found that creates that balance. I gave my word to Mr. Uffelman that I would continue to work with him on this.

The other issue affects both amendments, particularly all of the second amendment and the part of the first amendment that allows a six-month statute of limitations on the second lien holder after the date of a foreclosure sale. Both of those provisions need to start on passage and approval. I cannot tell if that is the case from the language because the only date I see is July 1. That may work, but "passage and approval" is important. Hypothetically, if you pass this and the Governor signs it on April 20, you open a two-month window for a flood of commencement actions from people wanting to protect their right to the longer provision. If we are going to take intelligent action, amendment 2 and the six-month statute of limitations in amendment 1 need to have language that makes them effective upon passage and approval. When the Governor signs it, it is the law.

Chair Atkinson:

So there is no retroactivity?

Assemblyman Conklin:

There is no retroactivity in this bill. It is simply all future action. We could debate this, but the retroactivity issue is a matter of contract. If Ms. Bustamante Adams and I enter into a contract, we do so under the environment of laws that we have at that time. Those laws are part of

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 March 28, 2011
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the contract because they dictate how we draft the contract. Business does not want to operate in an environment in which laws are changed to favor one or the other party after they enter into a contract. While on one hand it may be nice to retroactivate a law, the precedent it sets is enormous and probably highly detrimental to the business environment of Nevada.

Chair Atkinson:

I agree with that assessment. I wanted to ensure we had that on the record because I know it came up. I think it would be a nightmare to go backwards. I appreciate that and your work.

Are there any other questions or comments from the Committee? I see none. What is the pleasure?

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 273.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Conklin will take that on the floor.

We will move to our bills now. Assemblywoman Mastroluca will present Assembly Bill 289.

Assembly Bill 289: Enacts provisions relating to the practice of dietetics.
 (BDR 54-871)

Assemblywoman April Mastroluca, Clark County Assembly District No. 29:

I bring you Assembly Bill 289, a bill to license dietitians in Nevada. As our primary care system has grown more complex and become busier, every facet of health care needs to be examined for efficiency and effectiveness. As all of you know, preventive care is the least expensive care we can deliver in Nevada and nationally, and yet some of the most beneficial. Nevada has an interest in ensuring that citizens have access to reliable care throughout our health care system. Dietitians are a key part of that delivery. It is essential that we know who is delivering information to our citizens. Dietitians practice a learned profession using scientifically sound principles to provide nutrition information in a variety of settings. These include clinics, both rural and urban; our hospitals and schools; and private practice across the state. You will hear from dietitians about their areas of practice, from a doctor who refers patients to dietitians for their important work, and from those who instruct our future dietitians.

Exhibit 14

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Exhibit 14

ORDER

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DISTRICT COURT**CLARK COUNTY, NEVADA**

CML-NV SANDPOINTE, LLC, a Florida
limited liability company,

Plaintiff,

v.

SANDPOINTE APARTMENTS, LLC, a Nevada
limited liability company; STACEY
YAHRAUS-LEWIS, an individual,

Defendants.

STACEY YAHRAUS-LEWIS, an individual,

Counterclaimant,

v.

CML-NV SANDPOINTE, LLC, a Florida
limited liability company,

Counterdefendant.

Case No.: A-11-644055-B
Dept. No.: XI

**ORDER DENYING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
PLAINTIFF'S COUNTERMOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing Date: October 11, 2011
Hearing Time: 9:00 a.m.

This matter came on for hearing on October 11, 2011 upon Defendant's Motion for Partial Summary Judgment (the "Motion") filed by Defendant/Counterclaimant Stacey Yahraus-Lewis ("Defendant") and Plaintiff's Countermotion for Partial Summary Judgment (the

1 "Counter-motion") filed by Plaintiff/Counterdefendant CML-NV Sandpointe, LLC ("Plaintiff").
 2 Plaintiff was represented by and through its counsel, Victoria L. Nelson, Esq. of Santoro, Driggs,
 3 Walch, Kearney, Holley & Thompson, and Defendant was represented by and through its
 4 counsel, Frank M. Flansburg III, Esq. of Marquis Aurbach Coffing. The Court, having fully
 5 considered the Motion and Counter-motion, the opposition and reply thereto, the pleadings and
 6 papers on file, the arguments of counsel, and for other good cause appearing, enters the
 7 following findings of fact and conclusions of law as follows:

8 FINDINGS OF FACT

9 A. The Loan Transactions.

10 1. On or about December 27, 2007, Silver State Bank ("Silver State") and
 11 Sandpointe Apartments, LLC ("Sandpointe") executed a construction loan agreement (the "Loan
 12 Agreement") whereby, among other things, Silver State agreed to advance up to the principal
 13 amount of not more than \$5,135,000.00 to Sandpointe (the "Loan").

14 2. The Loan was evidenced by, among other things, the Loan Agreement, a
 15 Promissory Note Secured by Deed of Trust, a Deed of Trust and Security Agreement and Fixture
 16 Filing with Assignment of Rents, an Assignment of Leases and Rents, and an Assignment of
 17 Construction Contract Consent and Certificate (collectively, the "Loan Documents").

18 3. The Loan was obtained for purposes of refinancing and constructing an apartment
 19 complex and related site improvements on the apartment complex.

20 4. On that same day, December 27, 2007, Defendant executed and delivered to
 21 Silver State a guarantee in connection with the Loan (the "Guarantee"), unconditionally
 22 guaranteeing the payment, when due, of the indebtedness of Sandpointe to Silver State.

23 5. Thereafter, on or about September 9, 2008, the Federal Deposit Insurance
 24 Corporation (the "FDIC") was appointed as the receiver for Silver State.

25 ...

26 ...

27 ...

28 ...



1 6. In 2009, the FDIC established a structured loan program through which some of
2 the loans of Silver State, as well as loans from other closed financial institutions, were
3 contributed into a Delaware limited liability company, Multibank 2009-1 CML-ADC Venture,
4 LLC ("Multibank"), which, at the time of the contribution, was wholly owned by the FDIC. The
5 FDIC currently holds a sixty percent (60%) interest in Multibank.

6 7. A total of approximately 345 loans were contributed by the FDIC to Multibank.

7 8. The Loan was one of the loans contributed by the FDIC to Multibank.

8 9. As part of the contribution of the loans to Multibank, the FDIC and Multibank
9 executed a Loan Contribution and Sale Agreement that provided that Multibank would acquire
10 all of Silver State's interests in the loans.

11 10. Multibank, however, only assumed obligations under the loans that accrued after
12 the date of the contribution, February 9, 2009.

13 11. In connection with the contribution, Multibank delivered to the FDIC Purchase
14 Money Notes in the aggregate amount of \$185,207,975.

15 12. These notes are limited in right to payment to collections and recoveries from the
16 loans contributed to Multibank as set forth in a Custodial and Paying Agency Agreement
17 between the FDIC and Multibank.

18 13. Essentially, the Purchase Money Notes are just a right to receive back a portion of
19 the collections from the notes contributed to Multibank.

20 14. Thus, the assignment of the loans to Multibank was merely a contribution of the
21 loans to its subsidiary and no consideration was actually paid by Multibank when it acquired
22 Silver State's interest in the loans.

23 15. On or about February 9, 2010, the FDIC, as receiver for Silver State, assigned all
24 of its rights and interest in the Loan (and the Loan Documents, including, but not limited to the
25 Guarantee) to Multibank.

26 16. Thereafter, on or about June 18, 2010, Multibank assigned all of its rights and
27 interest in the Loan (and the Loan Documents, including, but not limited to the Guarantee) to
28 Plaintiff, a wholly owned subsidiary of Multibank.

1 17. This assignment of the Loan was not accompanied by any consideration.

2 18. Plaintiff is the current owner, holder, and beneficiary of the Loan (and the Loan
3 Documents, including, but not limited to the Guarantee).

4 **B. The Default and Subsequent Sale.**

5 19. On or about July 3, 2009, the maturity date of the Loan, Sandpointe defaulted on
6 the Loan by, among other things, failing to repay the Loan in full.

7 20. Pursuant to the Loan, and the accompanying Loan Documents, upon default,
8 Plaintiff had the right to declare all unpaid principal, interest, and other sums owed under the
9 Loan immediately due and payable and also to foreclose on the collateral securing the Loan.

10 21. As a result of the Sandpointe's default, Plaintiff elected to foreclose on the
11 collateral securing the Loan. Thus, on January 26, 2011, a public sale of the collateral securing
12 the Loan occurred wherein Plaintiff purchased the collateral securing the Loan for a credit bid of
13 \$1,440,000.00.

14 22. Since the aforementioned purchase of the collateral securing the Loan is less than
15 the amount owed on the Loan, there is a deficiency due and owing to Plaintiff.

16 **C. The Enactment of AB 273.**

17 23. The 2011 Nevada Legislature passed Assembly Bill 273 ("AB 273"), which made
18 certain revisions to Chapter 40 of the Nevada Revised Statutes.

19 24. On June 10, 2011, AB 273 was signed by Governor Brian Sandoval and enacted
20 into law.

21 25. Assemblyman Marcus Conklin introduced and sponsored AB 273 and provided
22 testimony explaining the purpose and intent of the additional provisions.

23 26. Any of the foregoing findings of fact that are more properly conclusions of law
24 shall be so considered.

25 ...

26 ...

27 ...

28 ...

CONCLUSIONS OF LAW

1. Pursuant to NRCp 56(c), a party is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* at 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.2d 1026, 1031 (2005). "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (citations omitted). In deciding whether to grant a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party. *See Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). Additionally, the non-moving party is required, "by affidavit or otherwise, [to] set forth specific facts demonstrating the existence of a genuine issue [of fact] for trial or have summary judgment entered against him." *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.3d 588, 591 (1992).

2. Before AB 273 was enacted, a deficiency award on a loan secured by real property under NRS 40.459 was determined as follows:

After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

1. The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; or

2. The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale,
→ whichever is the lesser amount.

3. AB 273 added a third factor in the calculation of the deficiency judgment under NRS 40.459, which reads as follows:

1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

1 (a) The amount by which the amount of the indebtedness which was
2 secured exceeds the fair market value of the property sold at the time of the
3 sale, with interest from the date of the sale;

4 (b) The amount which is the difference between the amount for which the
5 property was actually sold and the amount of the indebtedness which was
6 secured, with interest from the date of sale; or

7 (c) If the person seeking the judgment acquired the right to obtain the
8 judgment from a person who previously held that right, the amount by
9 which the amount of the consideration paid for that right exceeds the fair
10 market value of the property sold at the time of sale or the amount for which
11 the property was actually sold, whichever is greater, with interest from the
12 date of sale and reasonable costs,

13 whichever is the lesser amount.

14 4. Defendant argues that AB 273 is controlling in this matter. Plaintiff argues,
15 among other things, that the amendments to NRS 40.459 in AB 273 are not, and were not
16 intended to be, retroactive.

17 5. "In Nevada, as in other jurisdictions, statutes operate prospectively, unless the
18 Legislature clearly manifests an intent to apply the statute retroactively, or 'it clearly, strongly,
19 and imperatively appears from the act itself' that the Legislature's intent cannot be implemented
20 in any other fashion. . . .[Further, w]hen the Legislature intends retroactive application, it is
21 capable of stating so clearly." *Pub. Employees' Benefits Program v. Las Vegas Metro. Police*
22 *Dep't*, 124 Nev. 138, 154-55, 179 P.3d 542, 553 (2008) (citing to *In re Estate of Thomas*, 116
23 Nev. 492, 495, 998 P.2d 560, 562 (2000)). "In the absence of clear legislative intent to make a
24 statute retroactive, it will be interpreted to have only a prospective effect." *See Nev. Power Co.*
25 *v. Metro. Dev. Co.*, 104 Nev. 684, 686, 765 P.2d 1162, 1163 (1988). "Generally, as recognized
26 by the U.S. Supreme Court, courts must take a 'commonsense, functional' approach in
27 determining if a new statute operates retroactively because it imposes new legal consequences on
28 events completed before its enactment . . . In deciding whether a statute has retroactive
application, courts are guided by fundamental notions of fair notice, reasonable reliance, and
settled expectations.'" *Pub. Employees'*, 124 Nev. at 155, 179 P.3d at 553-54 (citations omitted).

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POINTS AND AUTHORITIES

1. **Initial Observations of Three Reasons Why the Plaintiff's Motion for Summary Judgment Must Be Denied.**

Plaintiff seeks to have this Court issue a partial summary judgment in favor of the Plaintiff on the issue of liability, and in doing so its entire argument is devoted to asking this Court to reject the recent legislative amendments to the anti-deficiency statutes codified in NRS 40.451 through 40.495. Yet, the Defendants can advance three separate and solid arguments for denying the Motion for Summary Judgment.

First, it is the Defendants' position that the Plaintiff's Complaint must be dismissed under the applicable 6-month statute of limitations contained in NRS 40.455. In this case, the Plaintiff is attempting to rely upon a sale that was approved by the Court on March 18, 2010, with the Order confirming the sale entered on March 26, 2010. Yet, Plaintiff made no effort to file a deficiency action in this case until it filed its First Amended Complaint on November 24, 2010, which was over nine months after the Court held a hearing to confirm the sale. Therefore, Plaintiff's Complaint is clearly outside the 6-month statute of limitations period provided in NRS 40.455. *See also First Interstate Bank v. Shields*, 102 Nev. 616, 730 P.2d 429 (1986), where the Court dismissed a suit for a deficiency action because the suit was not filed within the 3-month period that was then codified in NRS 40.455.

The statute of limitations issue will also be the subject of the Defendants' forthcoming Motion for Summary Judgment to dismiss this case in its entirety because of the Plaintiff's failure to timely bring this action. Moreover, the Plaintiff cannot rely upon the "relation back" doctrine since the Plaintiff's Amended Complaint clearly seeks an entirely new claim for relief based upon a different set of facts, and the Plaintiff even brought in an additional party to the case (i.e., Hagai Rapaport) long after the statute of limitations is expired. *See Nelson v. City of Las Vegas*, 99 Nev. 548, 556, 665 P.2d 1141 (1983).

Second, the Plaintiff's Complaint should also be dismissed because it failed to conduct a foreclosure sale as specifically required by NRS 40.455; NRS 40.457; and NRS 107.081. Instead, the Plaintiff chose to bypass a public foreclosure sale, thereby avoiding a

1 public auction where the property would go to the "highest bidder" at a public auction. *See*
 2 NRS 107.081 which states that a sale must "be made at auction to the highest bidder . . .".
 3 Yet in this case, the Plaintiff chose to negotiate a private sale of the secured property behind
 4 closed doors which resulted in other interested bidders being denied the opportunity to bid at
 5 a public auction as the Nevada statutes specifically require if, after the sale, the lender
 6 intends to seek a deficiency judgment. *See* NRS 107.081. Thus, the Plaintiff cannot possibly
 7 claim a deficiency action in the absence of a foreclosure sale. For that reason alone the
 8 Complaint should also be dismissed and the Plaintiff's Motion for Summary Judgment
 9 denied. Once again, however, that issue will be the subject of Defendants' forthcoming
 10 Motion for Summary Judgment.

11 Moreover, NRS 40.457 makes it clear that Defendants are entitled to a hearing to
 12 determine "... the fair market value of the property sold as of the date of the foreclosure sale
 13 or trustee sale." [Emphasis added.] Again, such a sale is a sale that is defined in NRS
 14 107.081 which requires a public auction. In any event, the fair market value of the property
 15 would be a complete defense to the Plaintiff's any claim of indebtedness. *See Crowell v.*
 16 *John Hancock Mut. Life Ins. Co.*, 102 Nev. 640, 731 P.2d 346 (1986).

17 In addition, the Defendants' rights to have a hearing to determine the fair market value
 18 on the date of the foreclosure sale, and the right to have a deficiency application filed within
 19 six months of the date of the foreclosure sale, are rights that cannot be waived under any
 20 circumstances because such a waiver would be in violation of Nevada public policy. That
 21 public policy is clearly expressed in NRS 40.453 which states as follows:

22 Except as otherwise provided in NRS 40.495:

23 (1) It is hereby declared by the legislature to be against public
 24 policy for any document relating to the sale of real property to
 25 contain any provision whereby a mortgagor or the grantor of a
 deed of trust or a guarantor or surety of the indebtedness secured
 thereby waives any right secured to the person by the laws of this
 State.

26 (2) A court shall not enforce any such provision.

27 *See also Lowe Enterprises v. Eighth Judicial District Court*, 118 Nev. 921, 40 P.3d 305
 28 (2002).

1 Thus, Plaintiff's current Motion for Summary Judgment should be heard in the
2 context of Defendants' forthcoming Motion because there are many more pertinent facts to
3 this case in addition to the facts upon which Plaintiff chooses to rely. The Plaintiff's
4 recitation of facts in support of its Motion for Partial Summary Judgment is not being
5 conceded by the Defendants, and at a trial the Defendants would contest many of those
6 factual allegations. It is unnecessary, however, to address those facts at this time.
7 Nonetheless, the Defendants would specifically point out to the Court a serious flaw in the
8 Plaintiff's factual argument No. 10 on page 4 of its Motion. That argument cannot have any
9 force or effect on the Defendant Hagai Rapaport because he was not a party to this case at the
10 time the Court approved the receiver sale. The Plaintiff specifically chose to avoid having
11 Mr. Rapaport as a named party to this case at the time of the receiver sale. In this regard, the
12 Defendants refer this Court to Defendants' prior Motion to Dismiss this case because this is
13 the third occasion that the Plaintiff has chosen to sue Mr. Rapaport, and the Plaintiff has
14 manipulated the prior cases and the timing of their pleadings in this case to specifically avoid
15 Mr. Rapaport being a party to this case at the time that a receiver was appointed in this case
16 and at the time that the receiver's sale was approved. Indeed, Plaintiff made no effort to
17 bring Mr. Rapaport into this case as a party Defendant until November 24, 2010, which is
18 more than nine months after the Court approved a receiver sale without Mr. Hagai Rapaport
19 being invited to participate in that sale.

20 *Third*, AB 273, which significantly amends the aforementioned "anti-deficiency"
21 statutes, does apply to the facts of this case. Before discussing AB 273, it is important to
22 emphasize that neither the aforementioned statute of limitations argument or the failure to
23 conduct a foreclosure sale argument is in any way affected by AB 273. That is, even if AB
24 273 had never come into existence, nothing would have changed regarding the Defendants'
25 two aforementioned arguments concerning the statute of limitations defense and the lack of a
26 foreclosure sale defense.

27 In applying AB 273 to this case, the Court would not be giving retroactive application
28 to the definition of indebtedness because the amendment to NRS 40.459, which further

1 clarifies the definition of indebtedness, was previously contained in NRS 40.451. Thus, the
2 definition of indebtedness has not changed as a result of AB 273.

3 Plaintiff tries to support their argument by arguing that Judge Gonzalez previously
4 ruled that AB 273 did not apply to a pending deficiency action similar to this case. What
5 Plaintiff has failed to point out, however, is that Judge Cadish has ruled to the contrary by
6 ruling that AB 273's amendments to the Anti-Deficiency Legislation do indeed apply to
7 pending deficiency cases. *See* Minute Order attached hereto as **Exhibit A**. Moreover, both
8 Judge Cadish's ruling and Judge Gonzalez's ruling are currently on appeal before the Nevada
9 Supreme Court. The trial date in this case is not scheduled until February 4, 2013. Thus,
10 there is no urgency for this Court to decide the applicability of the AB 273 issue until the
11 Nevada Supreme Court rules on the conflicting decisions that have been decided by Judge
12 Gonzalez and Judge Cadish.

13 In any event, Defendant will still brief the issue as to the applicability that AB 273
14 specifically has to the instant case and why that issue should be resolved in the Defendants'
15 favor.

16 **2. The Plaintiff's Motion for Summary Judgment Is Premature.**

17 The Plaintiff is asking this Court to issue a "Partial Summary Judgment" with a
18 finding of liability in favor of the Plaintiff, notwithstanding the fact that at this point, neither
19 the Court nor the parties can identify a specific fair market value of the property at the time
20 of a nonexistent "foreclosure sale" which is a necessary prerequisite to this action. *See*
21 *Cromwell v. John Hancock, supra*, where the Court specifically held that a court must
22 conduct a fair market value hearing to determine the value of the property on "the date of the
23 foreclosure sale" before entering any judgment for a deficiency. What date is the Plaintiff
24 suggesting for a date of value? How can the Court determine issues of liability when it is
25 impossible to determine an appropriate date of value in the absence of a foreclosure sale?

26 ///

27 ///

28 ///

1 **3. How Can the Court Determine the Defendants' Indebtedness, if Any,**
 2 **When the Plaintiff Has Not Disclosed in Any 16.1 Proceeding or**
 3 **Otherwise, the Amount of Consideration That It Paid to Obtain the Note**
 4 **Obligation That Is the Subject of This Case?**

5 The Defendants have served discovery requests on the Plaintiff in the form of
 6 Interrogatories and Requests for Production of Documents to ascertain that information. *See*
 7 **Exhibit B** attached. Yet, this Court is not in a position under NRCP 56(f) to go forward with
 8 any such hearing on liability until all the information has been disclosed concerning "the
 9 amount of consideration" that the Plaintiff paid for alleging acquiring the note obligation that
 10 is the subject of this case. Thus, Defendants submit that the Plaintiff's Motion for Summary
 11 Judgment is clearly premature and should be denied for that reason. The Defendants'
 12 forthcoming Motion for Summary Judgment, however, will be ripe for consideration because
 13 the success of that Motion does not depend on the outcome of the resolution of whether AB
 14 273 applies to this case.

15 **4. In Order to Establish the Amount of the Indebtedness, Plaintiff Must**
 16 **Show the Amount of Consideration Paid for the Loan.**

17 The Nevada Legislature recently passed AB 273, which was signed into law on June
 18 10, 2011.¹ AB 273 expanded the protection afforded to borrowers and guarantors against
 19 deficiency judgments. However, to understand the ramifications of these changes, it is
 20 worthwhile to look at the state of the law prior to its passage, and then determine the areas
 21 where the law has or has not changed.

22 "Indebtedness" under NRS 40.451 is limited to "the amount of the consideration paid
 23 by the lienholder." This was so prior to AB 273, and it remains so now. The full definition
 24 of "indebtedness" is as follows:

25 NRS 40.451 "Indebtedness" defined. **As used in NRS 40.451 TO**
 26 **40.463, inclusive,** "indebtedness" means the principal balance of
 27 the obligation secured by a mortgage or other lien on real property,
 28 together with all interest accrued and unpaid prior to the time of
 foreclosure sale, all costs and fees of such a sale, all advances made
 with respect to the property by the beneficiary, and all other
 amounts secured by the mortgage or other lien on the real property

¹ A copy of AB 273, including the Legislative Counsel's Digest, is attached as **Exhibit C** for ease of reference.

1 in favor of the person seeking the deficiency judgment. **Such**
 2 **amount constituting a lien is limited to the amount of the**
consideration paid by the lienholder. [Emphasis added.]

3 It must be emphasized that the last emphasized sentence in NRS 40.451 was not changed by
 4 AB 273 because it was previously "on the books" before the passage of AB 273. As shown
 5 by the definition quoted above, the NRS 40.451 definition of "indebtedness" applies to "NRS
 6 40.451 to 40.463, inclusive." This is the same definition to be used in applying the law
 7 governing deficiencies, which is also contained NRS 40.459.

8 NRS 40.459 is the statute that defines the amount of a deficiency judgment, and that
 9 statute applies to all such actions "against the debtor, guarantor or surety who is personally
 10 liable for the debt."

11 Specifically, prior to the passage of AB 273, the full text of NRS 40.459 was as
 12 follows:

13 **NRS 40.459 Limitations on amount of money judgment.** After
 14 the hearing, the court shall award a money judgment against the
 15 debtor, guarantor or surety who is personally liable for the debt.
 The court shall not render judgment for more than:

16 1. The amount by which the amount of the indebtedness
 17 which was secured exceeds the fair market value of the property
 18 sold at the time of the sale, with interest from the date of the sale;
 or

19 2. The amount which is the difference between the amount
 20 for which the property was actually sold and the amount of the
 21 indebtedness which was secured, with interest from the date of sale,
 --- whichever is the lesser amount.

(Added to NRS by 1969, 573; A 1985, 371; 1987m 1644I
 1989, 1770; 1993, 152).

22 Thus, the NRS 40.451 definition of "indebtedness," which limits it to the amount of
 23 consideration paid by the lienholder, is to be used in determining the amount of a deficiency
 24 under NRS 40.459(1) and (2).

25 Prior to AB 273, the deficiency was the difference between (i) the "indebtedness" and
 26 the fair market value of the property under NRS 40.459(1), or (ii) the "indebtedness" and the
 27 amount for which the property was actually sold under NRS 40.459(2), whichever is less.

28 These provisions remain in place and are applicable to this case. Those provisions have
 merely been renumbered by AB 273.

1 AB 273 added two new provisions which act as further limits on the amount of a
 2 deficiency. These new provisions are as follows, with the recent additions to NRS 40.459
 3 shown in italics, the deletions shown in brackets, and boldface is emphasis added:²

4 Sec. 5. NRS 40.459 is hereby amended to read as follows:

5 40.459 1. After the hearing, the court shall award a money
 6 judgment against the debtor, guarantor or surety who is personally
 7 liable for the debt. The court shall not render judgment for more
 8 than:

9 [1.] (a) The amount by which the amount of the
 10 **indebtedness** which was secured exceeds the fair market value of
 11 the property sold at the time of the sale, with interest from the date
 12 of the sale;

13 [or

14 2.] (b) The amount which is the difference between the
 15 amount for which the property was actually sold and the amount of
 16 the **indebtedness** which was secured, with interest from the date of
 17 sale

18 [.] ; or

19 (c) *If the person seeking the judgment acquired the right to*
 20 *obtain the judgment from a person who previously held that right,*
 21 *the amount by which the amount of the consideration paid for that*
 22 *right exceeds the fair market value of the property sold at the time*
 23 *of sale or the amount for which the property was actually sold,*
 24 *whichever is greater, with interest from the date of sale and*
 25 *reasonable costs,*

26 *whichever is the lesser amount.*

27 2. *For the purposes of this section, the "amount of the*
 28 *indebtedness" does not include any amount received by, or payable*
to, the judgment creditor or beneficiary of the deed of trust pursuant
to an insurance policy to compensate the judgment creditor or
beneficiary for any losses incurred with respect to the property or
the default on the debt.

19 To summarize, under AB 273, NRS 40.459(1) and (2) were merely renumbered as
 20 40.459(1)(a) and (b), and the legislature added 40.459(1)(c) and 40.459(2). These new
 21 provisions were added to provide additional protections for borrowers and guarantors.

22 Subsection 1(c) reinforced the idea that a creditor who obtained the right to seek
 23 recovery of the alleged deficiency was limited to "the amount by which the amount of the
 24 consideration paid for that right exceeds the fair market value of the property sold at the time
 25

26 ² The amendments to NRS 40.459 were set forth in Section 5 of AB 273. As explained in the
 27 Legislative Counsel's Digest, "Under Section 7 of this bill, the amendatory provisions of Section 5 become
 28 effective upon passage and approval and thus apply to a deficiency judgment awarded on or after the
 effective date." According to the Nevada legislature's website, the effective date is June 10, 2011. See
<http://www.leg.state.nv.us/76th2011/Reports/history.cfm?ID=586>.

1 of sale or the amount for which the property was actually sold, whichever is greater.”

2 Subsection (2) then further limited the definition of “indebtedness,” by excluding “any
3 amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust
4 pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any
5 losses incurred with respect to the property or the default on the debt.”

6 The Plaintiff’s failure to provide evidence of these matters in its Motion for Summary
7 Judgment would mean that Plaintiff has failed to establish the amount of its indebtedness
8 under Nevada law, making summary judgment improper. Furthermore, any deficiency would
9 be limited by the statutory definitions set forth above.

10 **5. Plaintiff Has the Burden of Proof to Show Its Indebtedness and the Fair
11 Market Value of the Property.**

12 The Nevada Supreme Court has stated that a lender seeking a deficiency must “prove
13 the actual existence of a deficiency in accordance with the statutory scheme.” Specifically,
14 in *First Interstate Bank v. Shields*, 102 Nev. 616, 730 P.2d 429 (1986), the Court stated:

15 [it] is apparent to us that the Legislature fully anticipated that its
16 work product would require lenders seeking deficiency judgments
17 against any potentially liable defendants, NRS 40.459, **to prove the
actual existence of a deficiency in accordance with the statutory
scheme.**” [Emphasis added.] See 102 Nev. at 619.

18 Nevada’s statutory scheme requires a comparison between the amount of the
19 indebtedness as defined by Nevada statutes, and the fair market value of the property on “the
20 date of the foreclosure sale.” See NRS 40.455, 40.457, and 40.459. A failure to establish
21 either of these requirements would constitute a failure to establish a deficiency. Thus, even if
22 Plaintiff did not have the burden of proof on this issue in the first place, the burden has now
23 shifted such that Plaintiff must demonstrate the amount of consideration paid for the loan
24 obligation that it is suing on.

25 When the Nevada Legislature adopted AB 273, it expressly provided in Section 7.1 of
26 A.B. 273 that the amendments to NRS 40.459 became effective upon passage and approval
27
28

1 of the bill.³ The phrase “effective upon passage and approval” without other qualification as
 2 to time is significant because it is distinctive from the effective dates given to other Sections
 3 of the bill, which refer to other sections’ effectiveness only for sales that occur, obligations
 4 that are secured, or actions that are commenced, on or after a certain date.⁴ *See also Wilson*
 5 *v. Pac. Maxon, Inc.*, 102 Nev. 52, 55, 714 P.2d 1001, 1003 (1986) (amendment to interest
 6 statute applied retroactively where legislature did not expressly provide that it was
 7 prospective, particularly when other sections in same amendment were expressly stated to
 8 apply prospectively).

9 The Legislature further noted in its digest accompanying the bill text that the new

11 ³ The 2011 Nevada Legislature amended NRS 40.459 as follows, with strikeouts indicating deletions
 12 and [bracketed text] indicating insertions:

13 NRS 40.459 Limitations on amount of money judgment.

14 [1.] After the hearing, the court shall award a money judgment against the
 15 debtor, guarantor or surety who is personally liable for the debt. The court shall
 16 not render judgment for more than:

17 1- [(a)] The amount by which the amount of the indebtedness which
 18 was secured exceeds the fair market value of the property sold at the time of the
 19 sale, with interest from the date of the sale; or

20 2- [(b)] The amount which is the difference between the amount for
 21 which the property was actually sold and the amount of the indebtedness which
 22 was secured, with interest from the date of sale; [; or]

23 [(c) If the person seeking the judgment acquired the right to obtain the
 24 judgment from a person who previously held that right, the amount by which
 25 the amount of the consideration paid for that right exceeds the fair market value
 26 of the property sold at the time of sale or the amount for which the property was
 27 actually sold, whichever is greater, with interest from the date of sale and
 28 reasonable costs,]

whichever is the lesser amount.

[2. For the purposes of this section, the “amount of the indebtedness” does not
 include any amount received by, or payable to, the judgment creditor or
 beneficiary of the deed of trust pursuant to an insurance policy to compensate
 the judgment creditor or beneficiary for any losses incurred with respect to the
 property or the default on the debt.]

⁴ *See* A.B. 273, Sec. 6, which states:

The amendatory provisions of:

1. Sections 1 to 3, inclusive, of this act apply only to an obligation secured by
 a mortgage, deed of trust or other encumbrance upon real property on or after
 the effective date of this act.

2. Sections 3.3 and 5.7 of this act apply only to an action commenced after a
 foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July
 1, 2011.

3. Section 5.5 of this act apply only to an action against a guarantor, surety or
 other obligor commenced on or after the effective date of this act.

1 NRS 40.459 would therefore “apply to a deficiency judgment *awarded on or after* that
 2 effective date.” 2011 Nevada Laws Ch. 311 (AB 273) [emphasis added].⁵ Assembly Bill 273
 3 was approved by the Governor on June 10, 2011, which means that the instant action clearly
 4 falls under the jurisdiction of the new provisions in NRS 40.459(1)(c) because any putative
 5 deficiency award would not be entered until after the date the bill was enacted.

6 Based upon the Legislature’s clear note that the addition of subsection (c) to NRS
 7 40.459 “appl[ies] to a deficiency judgment awarded on or after” June 10, 2011, it should be
 8 deemed indisputable that the provisions of NRS 40.459, as amended, apply to the instant
 9 case. Even further, though, it is clear that the subject statute is not one subject to the general
 10 rule of prospective application because “statutes that do not change substantive rights and
 11 instead relate solely to remedies and procedure. . . will be applied to any cases *pending* when
 12 it is enacted.” *Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179-80, 162 P.3d 148,
 13 154 (2007) [emphasis added]. In the instant case, the addition of subsection (c) to NRS
 14 40.459 does not change the deficiency claimholder’s substantive right to seek a deficiency
 15 under the appropriate statutes; rather, the addition merely clarified pre-existing law which
 16 limited the claimholder’s maximum remedy upon exercising its right to claim a deficiency.

17 The Plaintiff in this case is not the original holder of the promissory note which
 18 allegedly provides a right to a deficiency judgment. Instead the Plaintiff alleges that it
 19 acquired its right to seek this alleged deficiency judgment from Wells Fargo Bank, N.A.,
 20 which had received its rights from La Salle Bank National Association, while La Salle had
 21 itself obtained its rights as the assignee of Artesia Mortgage Capital Corporation, the original
 22 lender. *See* Plaintiff’s Motion for Summary Judgment. Therefore, under the clarifying
 23 amendment to NRS 40.459, any alleged deficiency Plaintiff may seek to recover against
 24 Defendants herein is strictly limited to

25 the amount by which the amount of the consideration paid for that
 26 right exceeds the fair market value of the property sold at the time

27 ⁵ *See also Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 88, 807 P.2d 208, 214 (1991)
 28 (litigation costs recovery governed by statute in effect at the time the judgment was entered, regardless of
 statutory provisions effective when costs incurred or action commenced).

of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs. . . .

NRS 40.459(1)(c).⁶

However, even assuming, *arguendo*, that Plaintiff's claim for deficiency was not clearly barred by the statute of limitations pursuant to NRS 40.455, and that it can overcome that absence of a public auction at a foreclosure sale, Plaintiff's recovery is still unascertainable because Plaintiff has never disclosed, such as in a 16.1 Disclosure Statement, what consideration the Plaintiff or any of its successors paid to obtain the note secured by the deed of trust on the subject property.

6. The Plaintiff's Legislative History Arguments Are Inaccurate.

In Plaintiff's Motion for Partial Summary Judgment, the Plaintiff quotes statements from various Nevada legislators relating to A.B. 273 in an attempt to argue that NRS 40.459(1)(c) does not apply to the instant action. What Plaintiff fails to acknowledge, however, is that the quotations upon which it relies were all made *prior* to the finalization, adoption, and passage of the bill in its final form. The finalized A.B. 273, especially the portions of the legislative digest and Section 7 cited above, are extremely clear that the amendments to NRS 40.459 became "effective upon passage and approval" of the bill and "apply to a deficiency judgment awarded on or after that effective date." This language was unambiguously inserted subsection (c) into NRS 40.459 as of June 10, 2011 and that insertion made subsection (c) effective on June 10, 2011. In any event, the "addition" is, as stated above, merely a reiteration of the last sentence of NRS 40.451, which has long codified the principle that deficiency awards are limited to the amount of consideration paid to obtain the right to enforce the debt.

⁶ In other words, as the 2011 Nevada Legislature explained, this limits the Plaintiff's potential recovery to

the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs.
2011 Nevada Laws Ch. 311 (A.B. 273).

1 As such, NRS 40.459 is unambiguous as enacted because it merely reinforces existing
 2 law, and therefore does not require a lengthy inquiry into what individual legislators said
 3 months before the bill was finalized in a clear format. *Hardy Companies, Inc. v. SNMARK,*
 4 *LLC*, 245 P.3d 1149, 1153 (Nev. 2010) (in absence of ambiguity in statute, courts limit
 5 themselves to interpreting and applying the plain language of the statute); *see also Edwards*
 6 *v. Aguillard*, 482 U.S. 578, 636-37, 107 S.Ct. 2573, 2605 (1987) (Scalia, J., dissenting)
 7 (whereas a legislator may vote for any variety of reasons, “[t]o look for the sole purpose of
 8 even a single legislator is probably to look for something that does not exist.”). However, if
 9 the Plaintiff insists on delving into legislative notes and statements, there is no statement
 10 more instructive than that which comes from the primary sponsor of A.B. 273, particularly
 11 when such statement is rendered for the express purpose of clarifying the matter of NRS
 12 40.459(1)(c)’s applicability to pending lawsuits.

13 Specifically, Assemblyman Marcus Conklin recently issued a “Statement of Intent
 14 Concerning AB 273” (“Statement of Intent”) that explains that precise issue. *See*
 15 Assemblyman Marcus Conklin, *Statement of Intent Concerning AB 273*, January 5, 2012,
 16 *available at* [http://marcusconklin.com/wp-content/uploads/2012/02/Statement-](http://marcusconklin.com/wp-content/uploads/2012/02/Statement-of-Intent-Concerning-AB-273_M.-Conklin.pdf)
 17 [of-Intent-Concerning-AB-273_M.-Conklin.pdf](http://marcusconklin.com/wp-content/uploads/2012/02/Statement-of-Intent-Concerning-AB-273_M.-Conklin.pdf) (last visited May 16, 2012), and attached
 18 hereto as **Exhibit D**. Concerning the effective date of revised NRS 40.429, the Statement of
 19 Intent explains that:

20 As AB 273 evolved through committee discussion, the effective
 21 dates were an area of revision.

22 [...] I introduced an amendment in committee to . . . [make] it clear that
 23 Section 5 was immediately effective on passage and approval.

24 [...] By making Section 5 of AB 273 immediately effective upon
 25 passage and approval, it was the Legislature’s intent that the law
 26 apply upon its adoption. When AB 273 was passed and approved
 27 into law on June 10, 2011, *it was our understanding that the law*
 28 *would apply prospectively to all pending cases in which a*
deficiency judgment had not yet been obtained. . . . those cases that
were pending or not yet filed in which a deficiency judgment was
sought and not yet awarded. . . .

Statement of Intent, *supra* (emphasis added). Assemblyman Conklin’s post-passage

1 clarification of AB 273 is entitled to careful consideration by this Court because it is a
2 reiteration of the legislative discussion and events leading to the adoption of proposed
3 amendments made by the primary sponsor of the bill, as opposed to a mere expression of his
4 personal opinion. *A-NLV Cab Co. v. State, Taxicab Authority*, 108 Nev. 92, 95 (1992).
5 Based upon the foregoing, it is clear that the Legislature knowingly and purposely enacted
6 NRS 40.459(1)(c) with the intent that it would apply to pending actions in which a deficiency
7 judgment had not yet been rendered, such as the instant case.

8 Additionally, with respect to the Plaintiff's claim that the application of NRS
9 40.459(1) to the instant action implicates the Contracts Clauses of the United States and
10 Nevada Constitutions, Defendants first point out that such claim is incorrect because it has
11 long been the law in Nevada that "indebtedness" as such term relates to the anti-deficiency
12 statutes is limited by the amount of consideration the debtholder paid to obtain the right to
13 enforce that debt. *See* NRS 40.451. The promissory note and related contract documents
14 underlying the subject transaction and concerning the subject property were entered into in
15 contemplation of existing governing law and statutes, such as NRS 40.451. *See Grand Hotel*
16 *Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599 (1992). As such, it is
17 disingenuous for the Plaintiff to try to claim that the application of NRS 40.459(1)(c)
18 interferes with any existing contract.

19 Further, even assuming, *arguendo*, that Plaintiff could make out a case that NRS
20 40.459 as amended interferes with prior contracts, Plaintiff ignores the rule that "the police
21 power concerns of public health, safety and welfare may be invoked where reasonably
22 necessary to control even contractually vested rights antecedent to regulating legislation
23 without running afoul of the impairment of contracts clause of the state and federal
24 constitutions." *State v. Glusman*, 98 Nev. 412, 426, 651 P.2d 639, 648 (1982).
25 Assemblyman Conklin, in his Statement of Intent, emphasized that

26 AB 273 reinforced the intent of existing Nevada law and public
27 policy and aides Nevada's recovery in the current recession. If AB
28 273 is not enforced as we intended, our small business and
entrepreneurial class may disappear. We cannot permit the
destruction of our entrepreneurial class, they are the engine of our

economy.

Statement of Intent, *supra*. The dire economic situation in which Nevadans find themselves, coupled with the abuses previously available through statutory loopholes to lenders and their successor-debtholders in seeking deficiency judgment surely justifies any alleged impairment in contracts under the police power. Likewise, the Hon. Elissa Cadish addressed the issue of AB 273's enforceability in light of the Contracts Clause and found that

the Contracts Clauses of the United States and Nevada Constitutions do not prevent the application of AB 273's provisions to this case. . . . [T]he State has a significant, legitimate public purpose justifying its exercise of its police power rather than a benefit to special interests, and . . . the law is a reasonable response to conditions and appropriate to the public purpose. Thus, the application of AB 273 is not unconstitutional.

Cadish, E., Minute Order, Branch Banking and Trust Company v. Frank Nielsen, A-09-602382-C (E.J.D.C. Nev. October 12, 2011), attached hereto as **Exhibit A**. Therefore, Plaintiff's attempts to nullify NRS 40.459(1)(c)'s applicability to the instant action under the Contracts Clause is similarly unavailing to Plaintiff.

CONCLUSION

For the foregoing reasons the Plaintiff's Motion for Summary Judgment should be denied.

DATED this 16 day of May, 2012.

Respectfully submitted,

DEANER, MALAN, LARSEN & CIULLA



BRENT LARSEN, ESQ.
Nevada Bar No. 001184
720 South Fourth St., #300
Las Vegas, Nevada 89101
Attorney for Defendants

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Suparna Saverdra
An Employee of Deaner, Malan, Larsen
& Ciulla

Exhibit A

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Exhibit A

A-09-602382-C

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

Breach of Contract

COURT MINUTES

October 12, 2011

A-09-602382-C Branch Banking and Trust Company, Plaintiff(s)
vs.
Frank Nielsen, Defendant(s)

October 12, 2011 3:00 AM Minute Order

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Before the Court are Defendants' Motion for Summary Judgment, Plaintiff's Opposition thereto, and Defendants' Reply in Support thereof. The Court heard argument by the parties on October 11, 2011, and took the matter under advisement. The Court has reviewed the briefs and exhibits thereto, including pertinent documents and legislative history, as well as statutes and cases cited by the parties with respect to the issues raised herein. After this review, the Court finds that the definition of "indebtedness" in NRS 40.451 applies to this action for a deficiency judgment against loan guarantors pursuant to NRS 40.459. This definition limits the amount of indebtedness constituting a lien against real property to "the amount of the consideration paid by the lien holder." In this case, this would limit the indebtedness used in calculating the amount of the deficiency under NRS 40.459 to the amount of consideration paid by Plaintiff as the lien holder. Because no evidence has been presented by Plaintiff regarding the amount of consideration it paid, the amount by which the indebtedness exceeds either the fair market value or the price paid at the trustee's sale cannot be determined, and Plaintiff cannot meet its burden of establishing a deficiency. Accordingly, summary judgment is appropriate.

In the alternative, if NRS 40.451 did not require evidence of the consideration paid by Plaintiff, then NRS 40.459(1)(c), enacted as part of AB 273 by the 2011 Nevada legislature, would apply and require evidence of the amount of consideration paid by Plaintiff. The Court finds that this section, which is effective June 10, 2011, applies to this case and is not limited solely to the circumstance where a right

PRINT DATE: 10/12/2011

Page 1 of 2

Minutes Date: October 12, 2011

A-09-602382-C

to pursue a deficiency judgment is acquired after a prior lien holder has foreclosed. Plaintiff "acquired the right to obtain the judgment" when it purchased the loan in 2009. "acquired the right to obtain the judgment" when it purchased the loan in 2009.

Moreover, the Court finds that these statutory provisions are not preempted by FIRREA. All parties acknowledge that there is no express preemption here. Furthermore, the mere fact that the limitations on deficiency judgments may have the effect of making it more difficult to sell loans held by failed banks and may therefore impair the policy objectives of FIRREA are not sufficient justification for a finding of implied preemption. The Fidelity Federal and Connelly cases cited by Plaintiff are not to the contrary, and involved state laws that were directly contrary to express federal statutes or regulations. No federal law regarding collection of deficiency judgments by purchasers of loans from FDIC has been cited to this Court, and this preemption argument must be rejected.

Additionally, the Court finds that the Contracts Clauses of the United States and Nevada Constitutions do not prevent the application of AB 273's provisions to this case. While it appears there is a substantial impairment of the contractual relationships here, the Court finds that the State has a significant, legitimate public purpose justifying its exercise of its police power rather than a benefit to special interests, and that the law is a reasonable response to conditions and appropriate to the public purpose. Thus, the application of AB 273 is not unconstitutional.

Finally, the Court finds that, in order to meet its burden to establish a deficiency under NRS 40.459, evidence of the fair market value of the property at the time of the trustee's sale must be presented. Plaintiff cannot show the lesser of the difference between indebtedness and fair market value or indebtedness and the sale price if no evidence of fair market value is presented. Plaintiff has failed to present any such evidence, and this too would warrant entry of summary judgment.

For all of the reasons, the Court hereby grants summary judgment in favor of Defendants and against Plaintiff. In light of the above, the Court need not address whether the loss sharing agreement constitutes an insurance policy under NRS 40.459(2), and declines to do so. Counsel for Defendants should prepare a proposed order, and provide a copy to counsel for Plaintiff for review and approval prior to submitting to the Court.

CLERK'S NOTE: The above minute order has been distributed to: Allyson R. Noto (Sylvester & P LTD.) & John M. Oakes (Foley & O, PC)

Exhibit B

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Exhibit B

1 BRENT LARSEN, ESQ.
Nevada Bar No. 001184
2 DEANER, MALAN, LARSEN & CIULLA
720 S. Fourth Street, #300
3 Las Vegas, Nevada 89101
(702) 382-6911
4 Attorney for Defendant

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA
7

8 U.S. Bank National Association as Trustee)
for The Registered Holders of ML-CFC)
9 Commercial Mortgage Trust 2007-7)
Commercial Mortgage Pass-Through)
10 Certificates Series 2007-7, by and through)
Midland Loan Services, Inc., as its Special)
11 Servicer,

Case No.: 09-A-595321-C

Dept. No.: XX

12 Plaintiff,

13 v.

14 Palmilla Development Co., Inc., a Nevada)
corporation; Hagai Rapaport, an)
15 individual; Does I to X; and Roe)
Corporations X to XX,
16

17 Defendants.

18 **DEFENDANTS' SECOND SET OF INTERROGATORIES TO PLAINTIFF**

19 TO: U.S. BANK NA, Plaintiff; and

20 TO: MICHAEL F. LYNCH, ESQ., its attorney:

21 The Defendants, by and through their attorney, BRENT LARSEN, ESQ., of the law
22 firm of DEANER, MALAN, LARSEN & CIULLA, and hereby request that the Plaintiff
23 answer the following written Interrogatories separately and fully, in writing, under oath,
24 within thirty (30) days from the date of service hereof, pursuant to Rule 33 of the Federal
25 Rules of Civil Procedure.

26 These Interrogatories call for all information (including information contained in or
27 on writings, recordings, or any other tangible thing or material) that is known or available to
28 the Plaintiff, including all information in possession of any other persons, acting on behalf of

1 or under the direction or control of the Plaintiff.

2 All references in these Interrogatories to "Plaintiff" include Plaintiff and any other
3 persons under Plaintiff's direction, control or in the Plaintiff's employ.

4 If Plaintiff cannot answer any Interrogatory fully and completely after exercising due
5 diligence to make inquiry and secure the information to do so, please so state and answer
6 such Interrogatory to the extent deemed possible, specifying that portion of such
7 Interrogatory which Plaintiff is unable to answer fully and completely, and further specifying
8 those facts upon which Plaintiff relies to support its contention that it is unable to answer
9 fully and completely. In addition, specify what knowledge, information or belief Plaintiff
10 has concerning the unanswered portion of any such Interrogatory and describe fully and in
11 detail, the acts done and inquiries made by Plaintiff to show that it has exercised due
12 diligence to make inquiry and secure the information necessary to that Interrogatory.

13 Interrogatories calling for a detailed description of the contents of a written document
14 may be answered by submitting a copy of the written document.

15 DEFINITIONS

16 The following definitions shall apply to each of the Interrogatories and shall be
17 deemed to be incorporated therein:

18 A. "Writing" means and includes any printed, typewritten, or handwritten matter,
19 or reproduction thereof, of whatever character, including but not limited to, contracts,
20 agreements, letters, memoranda, telegrams and handwritten notes, whether copy or original.

21 B. "Identify" a writing means to state with respect thereto:

- 22 1. The name of the person who prepared it;
- 23 2. The name of the person who signed it or over whose name it was issued;
- 24 3. The name of each person to whom it was addressed or distributed;
- 25 4. The nature and substance of the writing with sufficient particularity to
26 enable it to be identified adequately in a motion by Defendants for its production and
27 copying;
- 28 5. Its date, and if it bears no date, the date when it was prepared;

1 6. The physical location of it and the name of its custodian or custodians;
2 and

3 7. Whether it will be voluntarily made available to Defendants for
4 inspection and copying.

5 C. "Identify" an oral communication means to state:

6 1. The name and address of each person who participated in the
7 communication and the name and address of each person who was present at the time
8 it was made;

9 2. By whom each such person was employed and whom such person
10 represented or purported to represent in making the oral communication;

11 3. What each such person said;

12 4. The date and the place where such oral communication was made; and

13 5. The nature and substance of each writing or record pertaining to such
14 oral communication with sufficient particularity to enable it to be identified in the
15 manner described in the foregoing Paragraph B.

16 D. "Identify" a person or "identity" of a person means to state his, her or its name
17 and last known business address, and if a natural person, his or her last known residence
18 address, the name of his or her employer, and his or her last known telephone number.

19 E. "In your possession" means under your control or under the control of your
20 employees, officers, agents, representatives, accountants, or attorneys.

21 F. The masculine, feminine, or neuter gender and the singular or plural number,
22 shall each be deemed to include the others.

23 These Interrogatories shall be deemed continuing so as to require supplemental
24 answers if you or your attorneys, agents or other representatives obtain further information
25 between the time answers are served and the time of trial.

26 **INTERROGATORY NO. 3:**

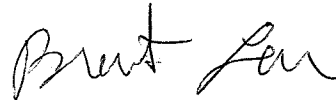
27 In your Motion for Summary Judgment filed on April 25, 2012, you are asking the
28 Court to set a Fair Market Value hearing. In this regard, state the date that you believe

1 should be used for determining the fair market value of the property that is the subject of this
2 case.

3 DATED this 12th day of May, 2012.

4 Respectfully submitted,

5 DEANER, MALAN, LARSEN & CIULLA


6 

7 BRENT LARSEN, ESQ.
8 Nevada Bar No. 001184
9 720 South Fourth St., #300
10 Las Vegas, Nevada 89101
11 Attorney for Defendants

12 **CERTIFICATE OF MAILING**

13 I HEREBY CERTIFY that I am an employee of DEANER, MALAN, LARSEN &
14 CIULLA; that on the 15th day of May, 2012, I served a copy of the above and foregoing
15 DEFENDANTS' SECOND SET OF INTERROGATORIES TO PLAINTIFF in a sealed
16 envelope, postage prepaid, by depositing same in the United States mail, addressed to the
17 following:

18 Michael F. Lynch, Esq.
19 Lewis and Roca LLP
20 3993 Howard Hughes Pkwy., Ste. 600
21 Las Vegas, Nevada 89169-5996
22 Attorneys for Plaintiff

23 
24 An Employee of Deaner, Malan, Larsen
25 & Ciulla
26
27
28

1 BRENT LARSEN, ESQ.
Nevada Bar No. 001184
2 DEANER, MALAN, LARSEN & CIULLA
720 S. Fourth Street, #300
3 Las Vegas, Nevada 89101
(702) 382-6911
4 Attorney for Defendant

5
6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 U.S. Bank National Association as Trustee)
for The Registered Holders of ML-CFC)
9 Commercial Mortgage Trust 2007-7)
Commercial Mortgage Pass-Through)
10 Certificates Series 2007-7, by and through)
Midland Loan Services, Inc., as its Special)
11 Servicer,

Case No.: 09-A-595321-C

Dept. No.: XX

12 Plaintiff,

13 v.

14 Palmilla Development Co., Inc., a Nevada)
corporation; Hagai Rapaport, an)
15 individual; Does I to X; and Roe)
Corporations X to XX,

16 Defendants.
17

18 **DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

19 TO: U.S. BANK NA, Plaintiff; and

20 TO: MICHAEL F. LYNCH, its attorney:

21 REQUEST IS HEREBY MADE UPON YOU pursuant to Rule 34 of the Nevada
22 Rules of Civil Procedure for the production of the following documents at the law offices of
23 DEANER, MALAN, LARSEN & CIULLA, 720 South Fourth Street, Suite 300, Las Vegas,
24 Nevada 89101, within thirty (30) days from the service of these Requests.

25 Please specify which documents are produced in response to each of the numbered
26 paragraphs. These Requests shall be deemed continuing so as to require further and
27 supplemental production should the requested party obtain additional documents which are
28 responsive to these Requests subsequent to the time of initial production and inspection.

INSTRUCTIONS AND DEFINITIONS

1
2 1. As used herein, "document" shall mean any and all written, printed, typed, or
3 recorded materials, and graphic matter, however produced or reproduced, formal or informal,
4 whether for internal or external use, including (but not limited to) records, reports,
5 correspondence, letters and memoranda, computer data files, or drafts of any of the above, in
6 the possession, custody, or control of you or your offices, directors, employees, your
7 attorneys, your agents, your insurance carriers, or anyone else acting on your behalf or
8 otherwise subject to your control.

9 2. If any documents otherwise required to be produced by these Requests are
10 withheld, Plaintiff shall identify each document so withheld by stating its date, author,
11 recipients, and the reason for its withholding. If you claim any form of privilege, whether
12 based on statute or otherwise, as a grounds for refusing to comply, in whole or in part, with
13 this Request for Production of Documents, please set forth in complete detail each and every
14 fact and ground upon which the privilege is based, including sufficient facts for the court to
15 make a full determination whether the claim of privilege is valid with respect to each and
16 every document and item for which the privilege is claimed.

17 3. If any of the documents herein requested for were formerly in your possession,
18 custody or control, and has been lost or destroyed, you are requested to submit in lieu of each
19 such document a written statement which:

- 20 (a) describes in detail the nature of the document and its contents;
21 (b) identifies the person who prepared or authored the document and, if
22 applicable, the person to whom the document was sent;
23 (c) specifies the date on which the document was prepared or transmitted or
24 both; and
25 (d) specifies, if possible, the date on which the document was lost or
26 destroyed, and, if destroyed, the conditions or reasons for such destruction and the person
27 requesting and performing the destruction.

28 ///

1 **REQUEST NO. 1:**

2 Produce for inspection and copying the original promissory note that is attached as
3 Exhibit 1 to Plaintiff's Motion for Summary Judgment.

4 **REQUEST NO. 2:**

5 Produce any original assignment of that note, that was allegedly made to a "Trustee
6 for the Registered Holders of ML-CFC Commercial Mortgage Trust 2007-7 Commercial
7 Mortgage Pass-Through Certificates Series 2007-7, by and through Midland Loan Services,
8 Inc., as its Special Servicer."

9 **REQUEST NO. 3:**

10 Produce any and all trust agreements concerning the "Trustee for the Registered
11 Holders of ML-CFC Commercial Mortgage Trust 2007-7 Commercial Mortgage Pass-
12 Through Certificates Series 2007-7," including any proof that the promissory note that is the
13 subject of this action was ever transferred to such a trust.

14 **REQUEST NO. 4:**

15 Produce any and all documents showing the amount of consideration that the assignee
16 of such note would have paid to Artesia Mortgage for the acquisition of such note, whether it
17 be by LaSalle Bank, U.S. Bank, or Wells Fargo Bank.

18 **REQUEST NO. 5:**

19 Produce any and all documents showing the amount of consideration paid by Wells
20 Fargo Bank as the Trustee, to receive any assignment of the note that is the subject of this
21 action attached as Exhibit 1 to the Plaintiff's Motion for Summary Judgment.

22 **REQUEST NO. 6:**

23 Produce any and all documents showing the amount of consideration paid by U.S.
24 Bank for Wells Fargo Bank to receive any assignment of the note that is the subject of this
25 action attached as Exhibit 1 to the Plaintiff's Motion for Summary Judgment

26 ///

27 ///

28 ///

1 **REQUEST NO. 7:**

2 Produce the "pooling" agreement dated June 1, 2007 and is referred to in the notice of
3 resignation of trustee dated June 30, 2008 and signed by LaSalle National Bank, which is
4 Exhibit 5 to the Plaintiff's Motion for Summary Judgment.

5
6 DATED this 20th day of April, 2012.

7 Respectfully submitted,

8 DEANER, MALAN, LARSEN & CIULLA

9
10 


11 for BRENT LARSEN, ESQ.
12 Nevada Bar No. 001184
13 720 South Fourth St., #300
14 Las Vegas, Nevada 89101
15 Attorney for Defendants
16
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136000
DEANER, MALAN, LARSEN & CIULLA
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone (702) 382-6911 • Facsimile (702) 366-0854

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of DEANER, MALAN, LARSEN & CIULLA; that on the 26th day of April, 2012, I served a copy of the above and foregoing DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF in a sealed envelope, postage prepaid, by depositing same in the United States mail, addressed to the following:

Michael F. Lynch, Esq.
Lewis and Roca LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169-5996
Attorneys for Plaintiff


An Employee of Deaner, Malan, Larsen
& Ciulla

886000
DEANER, MALAN, LARSEN & CIULLA
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone (702) 382-6911 • Facsimile (702) 366-0854

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DEANER, MALAN, LARSEN & CIULLA
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
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1 BRENT LARSEN, ESQ.
Nevada Bar No. 001184
2 DEANER, MALAN, LARSEN & CIULLA
720 S. Fourth Street, #300
3 Las Vegas, Nevada 89101
(702) 382-6911
4 Attorney for Defendant

5
6 DISTRICT COURT
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8 U.S. Bank National Association as Trustee)
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9 Commercial Mortgage Trust 2007-7)
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Midland Loan Services, Inc., as its Special)
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corporation; Hagai Rapaport, an)
15 individual; Does I to X; and Roe)
Corporations X to XX,)
16 Defendants.)
17

Case No.: 09-A-595321-C
Dept. No.: XX

18 **DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF**

19 TO: U.S. BANK NA, Plaintiff; and
20 TO: MICHAEL F. LYNCH, ESQ., its attorney:

21 The Defendants, by and through their attorney, BRENT LARSEN, ESQ., of the law
22 firm of DEANER, MALAN, LARSEN & CIULLA, and hereby request that the Plaintiff
23 answer the following written Interrogatories separately and fully, in writing, under oath,
24 within thirty (30) days from the date of service hereof, pursuant to Rule 33 of the Federal
25 Rules of Civil Procedure.

26 These Interrogatories call for all information (including information contained in or
27 on writings, recordings, or any other tangible thing or material) that is known or available to
28 the Plaintiff, including all information in possession of any other persons, acting on behalf of

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1 or under the direction or control of the Plaintiff.

2 All references in these Interrogatories to "Plaintiff" include Plaintiff and any other
3 persons under Plaintiff's direction, control or in the Plaintiff's employ.

4 If Plaintiff cannot answer any Interrogatory fully and completely after exercising due
5 diligence to make inquiry and secure the information to do so, please so state and answer
6 such Interrogatory to the extent deemed possible, specifying that portion of such
7 Interrogatory which Plaintiff is unable to answer fully and completely, and further specifying
8 those facts upon which Plaintiff relies to support its contention that it is unable to answer
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12 diligence to make inquiry and secure the information necessary to that Interrogatory.

13 Interrogatories calling for a detailed description of the contents of a written document
14 may be answered by submitting a copy of the written document.

15 DEFINITIONS

16 The following definitions shall apply to each of the Interrogatories and shall be
17 deemed to be incorporated therein:

18 A. "Writing" means and includes any printed, typewritten, or handwritten matter,
19 or reproduction thereof, of whatever character, including but not limited to, contracts,
20 agreements, letters, memoranda, telegrams and handwritten notes, whether copy or original.

21 B. "Identify" a writing means to state with respect thereto:

- 22 1. The name of the person who prepared it;
- 23 2. The name of the person who signed it or over whose name it was issued;
- 24 3. The name of each person to whom it was addressed or distributed;
- 25 4. The nature and substance of the writing with sufficient particularity to
26 enable it to be identified adequately in a motion by Defendants for its production and
27 copying;
- 28 5. Its date, and if it bears no date, the date when it was prepared;

1 6. The physical location of it and the name of its custodian or custodians;
2 and

3 7. Whether it will be voluntarily made available to Defendants for
4 inspection and copying.

5 C. "Identify" an oral communication means to state:

6 1. The name and address of each person who participated in the
7 communication and the name and address of each person who was present at the time
8 it was made;

9 2. By whom each such person was employed and whom such person
10 represented or purported to represent in making the oral communication;

11 3. What each such person said;

12 4. The date and the place where such oral communication was made; and

13 5. The nature and substance of each writing or record pertaining to such
14 oral communication with sufficient particularity to enable it to be identified in the
15 manner described in the foregoing Paragraph B.

16 D. "Identify" a person or "identity" of a person means to state his, her or its name
17 and last known business address, and if a natural person, his or her last known residence
18 address, the name of his or her employer, and his or her last known telephone number.

19 E. "In your possession" means under your control or under the control of your
20 employees, officers, agents, representatives, accountants, or attorneys.

21 F. The masculine, feminine, or neuter gender and the singular or plural number,
22 shall each be deemed to include the others.

23 These Interrogatories shall be deemed continuing so as to require supplemental
24 answers if you or your attorneys, agents or other representatives obtain further information
25 between the time answers are served and the time of trial.

26 **INTERROGATORY NO. 1:**

27 State the amount of consideration that was paid by the Plaintiff for the acquisition of
28 the note or claims arising from that note which that is the subject of this action and which is

1 attached as Exhibit 1 to the Plaintiff's Motion for Summary Judgment.


2 **INTERROGATORY NO. 2:**

3 State the amount of consideration that was paid by LaSalle Bank as an alleged Trustee
4 for the Plaintiff, for an assignment of the note that is the subject of this action and is attached
5 as Exhibit 1 to Plaintiff's Motion for Summary Judgment.

6 DATED this 26th day of April, 2012.

7 Respectfully submitted,

8 DEANER, MALAN, LARSEN & CIULLA

9
10 
11 per BRENT LARSEN, ESQ.
12 Nevada Bar No. 001184
13 720 South Fourth St., #300
14 Las Vegas, Nevada 89101
15 Attorney for Defendants
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Suzanne Savard
An Employee of Deane, Malan, Larsen
& Ciulla

000943

Exhibit C

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000944

Exhibit C

2011 Nevada Laws Ch. 311 (A.B. 273)

NEVADA 2011 SESSION LAWS

REGULAR SESSION OF THE 76TH LEGISLATURE (2011)

Additions are indicated by Text; deletions by

Text .

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

Ch. 311

A.B. No. 273

PROPERTY--LIENS AND INCUMBRANCES--ACTIONS AND PROCEEDINGS

AN ACT relating to real property; revising provisions governing the amount which a person holding a junior lien on real property may recover in a civil action under certain circumstances; prohibiting certain persons holding a junior lien on certain residential property from bringing a civil action under certain circumstances; revising provisions governing the amount of a deficiency judgment after the foreclosure of a mortgage or a deed of trust; limiting the amount of certain judgments against guarantors, sureties or other obligors of obligations secured by real property under certain circumstances; revising provisions governing mortgages and deeds of trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a judgment creditor or a beneficiary of a deed of trust may obtain, after a hearing, a deficiency judgment after a foreclosure sale or trustee's sale if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust. Existing law requires a judgment creditor or beneficiary of a deed of trust to bring an action for such a deficiency judgment within 6 months after the foreclosure sale or trustee's sale.

For an obligation secured by a mortgage or deed of trust on or after October 1, 2009, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if: (1) the creditor or beneficiary is a financial institution; (2) the real property is a single-family dwelling and the debtor or grantor was the owner of the property; (3) the debtor or grantor used the loan to purchase the property; (4) the debtor or grantor occupied the property continuously after obtaining the loan; and (5) the debtor or grantor did not refinance the loan. (NRS 40.455)

Sections 3, 3.3 and 5.7 of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale or any sale or deed in lieu of a foreclosure sale or trustee's sale. **Section 3** provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under **sections 3.3 and 5.7** of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

Under existing law, the amount of a deficiency judgment after a foreclosure sale or a trustee's sale may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the foreclosed property at the time

of the sale; or (2) the amount of the indebtedness minus the amount for which the foreclosed property actually sold. (NRS 40.459) **Section 5** of this bill provides that, for a deficiency judgment sought by a secured creditor after a foreclosure sale, trustee's sale or sale in lieu of a foreclosure sale or trustee's sale, the amount of the deficiency judgment must be reduced by the amount of any insurance proceeds received by, or payable to, the creditor.

Section 2 of this bill enacts a corresponding provision for money judgments sought against a debtor by a junior lienholder after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.

Sections 2 and 5 also limit the recovery of a creditor who acquired the right to obtain payment for an obligation secured by the real property from another person who owned that obligation. If the creditor is seeking a deficiency judgment after a foreclosure sale, a trustee's sale or a sale in lieu of a foreclosure sale or trustee's sale, **section 5** provides that the creditor may not receive an amount which exceeds the lesser of: (1) the consideration paid for the obligation minus the fair market value of the property at the time of the foreclosure sale, with interest from the date of sale and reasonable costs; or (2) the consideration paid for the obligation minus the amount for which the property actually sold, with interest from the date of sale and reasonable costs. If the creditor is a junior lienholder who filed a civil action to obtain a money judgment against the debtor, **section 2** provides that the creditor may not receive an amount greater than the consideration paid for the obligation, with interest from the date on which the person acquired the right to obtain payment and reasonable costs.

Section 5.5 of this bill limits the amount of a judgment against a guarantor, surety or other obligor, other than a mortgagor or grantor of a deed of trust, in an action commenced before a foreclosure sale or trustee's sale to enforce the obligation to pay, satisfy or purchase all or part of an obligation secured by a mortgage or other lien on real property. Under **section 5.5**, the amount of the judgment may not exceed the lesser of: (1) the amount of the indebtedness minus the fair market value of the real property at the time of the commencement of the action; or (2) if a foreclosure sale or a trustee's sale is completed before the date on which judgment is entered, the amount of the indebtedness minus the amount for which the foreclosed property actually sold.

Section 6 of this bill provides that the amendatory provisions of: (1) **sections 1–3** apply only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this bill; (2) **sections 3.3 and 5.7** apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011; and (3) **section 5.5** apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this bill. Under **section 7** of this bill, the amendatory provisions of **section 5** become effective upon passage and approval and thus apply to a deficiency judgment awarded on or after that effective date.

Section 6 of Assembly Bill No. 284 of this session requires the trustee under a deed of trust to be: (1) an attorney licensed in this State; (2) a title insurer or title agent authorized to do business in this State; or (3) a person licensed as a trust company or exempt from the requirement to be licensed as a trust company. **Section 5.8** of this bill amends section 6 of Assembly Bill No. 284 of this session: (1) to authorize any foreign or domestic entity which holds a current state business license to be the trustee under a deed of trust; and (2) to specifically describe certain persons who are exempt from the requirement to obtain a license as a trust company and who are authorized to be the trustee under a deed of trust. **Sections 5.9 and 5.95** of this bill change the effective date of Assembly Bill No. 284 of this session from July 1, 2011, to October 1, 2011.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED
IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 3.3, inclusive, of this act.

Sec. 1.2.

As used in sections 1.2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 1.4, 1.6 and 1.8 of this act have the meanings ascribed to them in those sections.

Sec. 1.4.

"Foreclosure sale" has the meaning ascribed to it in NRS 40.462.

Sec. 1.6.

"Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.

Sec. 1.8.

"Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.

Sec. 2.

1. If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:

(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(b) Such action is not barred by NRS 40.430,

in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.

2. If:

(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;

(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(c) Such action is not barred by NRS 40.430,

the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.

3. As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:

(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and

(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.

Sec. 3.

1. A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:

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- (a) The person is a financial institution;
- (b) The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;
- (c) The debtor or grantor used the amount of the obligation to purchase the real property;
- (d) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and
- (e) The debtor or grantor did not refinance the obligation after securing it.

2. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

Sec. 3.3.

A civil action not barred by NRS 40.430 or section 3 of this act by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 40.459 is hereby amended to read as follows:

<< NV ST 40.459 >>

1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

~~1-~~ (a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; ~~or~~

~~2-~~ (b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale; ; or

(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs,

whichever is the lesser amount.

2. For the purposes of this section, the "amount of the indebtedness" does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.

Sec. 5.5. NRS 40.495 is hereby amended to read as follows:

<< NV ST 40.495 >>

1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 4, 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

- (a) An action on the debt;
- (b) The exercise of any power of sale;
- (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and
- (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.463, inclusive.

4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:

(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court awards a money judgment against the debtor, guarantor or surety who is personally liable for the debt, the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,

whichever is the lesser amount.

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

- (a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;
- (b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;
- (c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or
- (d) Is secured by real property upon which:
 - (1) The owner maintains the owner's principal residence;
 - (2) There is not more than one residential structure; and
 - (3) Not more than four families reside.

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6. As used in this section, "foreclosure sale" has the meaning ascribed to it in NRS 40.462.

Sec. 5.7. NRS 11.190 is hereby amended to read as follows:

<< NV ST 11.190 >>

Except as otherwise provided in NRS 125B.050 and 217.007, and section 3.3 of this act, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

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- (a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.
- (b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.
- (c) An action for libel, slander, assault, battery, false imprisonment or seduction.
- (d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.
- (e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.
- (f) An action to recover damages under NRS 41.740.

5. Within 1 year:

- (a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.
- (b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 5.8. Section 6 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 6. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The trustee under a deed of trust must be:

- (a) An attorney licensed to practice law in this State;
- (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS;
- (c) A person licensed pursuant to chapter 669 of NRS;
- (d) A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;
- (e) A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;
- (f) A person who is appointed as a fiduciary pursuant to NRS 662.245;
- (g) A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;
- (h) A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;
- (i) A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or

(j) A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS.

2. A trustee under a deed of trust must not be the beneficiary of the deed of trust for the purposes of exercising the power of sale pursuant to NRS 107.080.

3. A trustee under a deed of trust must not:

(a) Lend its name or its corporate capacity to any person who is not qualified to be the trustee under a deed of trust pursuant to subsection 1.

(b) Act individually or in concert with any other person to circumvent the requirements of subsection 1.

4. A beneficiary of record may replace its trustee with another trustee. The appointment of a new trustee is not effective until the substitution of trustee is recorded in the office of the recorder of the county in which the real property is located.

5. The trustee does not have a fiduciary obligation to the grantor or any other person having an interest in the property which is subject to the deed of trust. The trustee shall act impartially and in good faith with respect to the deed of trust and shall act in accordance with the laws of this State. A rebuttable presumption that a trustee has acted impartially and in good faith exists if the trustee acts in compliance with the provisions of NRS 107.080. In performing acts required by NRS 107.080, the trustee incurs no liability for any good faith error resulting from reliance on information provided by the beneficiary regarding the nature and the amount of the default under the obligation secured by the deed of trust if the trustee corrects the good faith error not later than 20 days after discovering the error.

6. If, in an action brought by a grantor, a person who holds title of record or a beneficiary in the district court in and for the county in which the real property is located, the court finds that the trustee did not comply with this section, any other provision of this chapter or any applicable provision of chapter 106 or 205 of NRS, the court must award to the grantor, the person who holds title of record or the beneficiary:

(a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;

(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and

(c) Reasonable attorney's fees and costs,

unless the court finds good cause for a different award.

<< Note: NV ST 107.080 >>

Sec. 5.9. Section 14.5 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 14.5. The amendatory provisions of:

1. Section 1 of this act apply only to an assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded before March 27, 1935, and any assignment of the beneficial interest under a deed of trust, which is made on or after ~~July~~ October 1, 2011.

2. Section 2 of this act apply only to an instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority which is made on or after ~~July~~ October 1, 2011.

PROPERTY--LIENS AND INCUMBRANCES--ACTIONS AND..., 2011 Nevada Laws...

3. Section 5 of this act apply only to an instrument encumbering a borrower's real property to secure future advances from a lender within a mutually agreed maximum amount of principal, or an amendment to such an instrument, which is made on or after ~~July~~ October 1, 2011.

4. Section 9 of this act apply only to a notice of default and election to sell which is recorded pursuant to NRS 107.080, as amended by section 9 of this act, on or after ~~July~~ October 1, 2011.

Sec. 5.95. Section 15 of Assembly Bill No. 284 of this session is hereby amended to read as follows:

Sec. 15. This act becomes effective on ~~July~~ October 1, 2011.

Sec. 6. The amendatory provisions of:

1. Sections 1 to 3, inclusive, of this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.

2. Sections 3.3 and 5.7 of this act apply only to an action commenced after a foreclosure sale or sale in lieu of a foreclosure sale that occurs on or after July 1, 2011.

3. Section 5.5 of this act apply only to an action against a guarantor, surety or other obligor commenced on or after the effective date of this act.

Sec. 7. 1. This section and sections 1 to 3, inclusive, 5, 5.5 and 5.8 to 6, inclusive, of this act become effective upon passage and approval.

2. Sections 3.3 and 5.7 of this act become effective on July 1, 2011.

Approved by the Governor June 10, 2011.

End of Document

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Exhibit D

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Exhibit D

MARCUS CONKLIN
ASSEMBLYMAN
District No. 37

MAJORITY FLOOR LEADER

COMMITTEES:
Vice Chair
Commerce and Labor
Vice Chair
Ways and Means
Member
Legislative Operations and Elections



State of Nevada Assembly

Seventy-Sixth Session

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STATEMENT OF INTENT CONCERNING AB 273

By: Assembly Majority Leader Marcus Conklin

January 5, 2012

Purpose of Statement

It has come to my attention that there is some disagreement on the Legislature's intent with respect to AB 273. AB 273 was one of a number of bills that the Legislature passed in 2011 to address and alleviate the economic hardships that continue to impact Nevada citizens and businesses. I have issued this statement because it is critical that AB 273 be interpreted and applied as we intended.

Background

AB 273 was introduced and enacted in response to uncertainties and practices that have been discovered as a result of today's recession. AB 273 was not intended to avoid future economic difficulties. The purpose of AB 273 was to introduce legislation that would level the playing field between banks (and other creditors) and the related borrowers and guarantors. In the current environment, banks and creditors have multiple curative options where the loan is secured by real property. The lender may foreclose, short sale the property, elect a deed in lieu, modify, and collect from insurance policies. On the other hand, the borrower only has the hope that the lender, will entertain settlement dialogue. AB 273 was meant to encourage those conversations. Since the adoption of AB 273, I have learned that our legislative intent concerning the amendatory provisions of certain sections of AB 273 has been called into question. Namely, Section 5 of AB 273 (which was effective upon passage and approval and clarifies the remedy of deficiency calculations in NRS 40.459) has been a central point of discussion. It is my hope and intention that through this statement, I can help clarify the Legislature's intentions related to Section 5 of AB 273.

I am uniquely qualified to do so. I was the primary sponsor of AB 273. I was the only legislator to testify and answer questions during the proceedings, and I coordinated meetings with interested parties to develop each of the proposed amendments.

Section 5 of AB 273 is Intended to be Prospective.

As AB 273 evolved through committee discussion, the effective dates were an area of revision. After many variations, the final revision to the effective date was made on May 19, 2011, in the committee of the Senate Judiciary. In conversations with the Senate Judiciary committee members and Legislative Counsel, we determined that to make Section 5 of AB 273 effective immediately (which was consistent with existing Nevada law embodied in NRS 40.451), Section 6 of the bill would need to be changed from the version passed by the Assembly, which read:

“The amendatory provisions of this act apply only to an obligation secured by a mortgage, deed of trust or other encumbrance upon real property on or after the effective date of this act.”

I therefore introduced an amendment in committee to replace the above language with language that made it clear that Section 5 was immediately effective on passage and approval. Thus, it became clear from that amendment, from every other version of the bill, and from the Legislative Counsel’s digest explaining the bill, that Section 5 of AB 273 would be immediately effective upon passage and approval.

By making Section 5 of AB 273 immediately effective upon passage and approval, it was the Legislature’s intent that the law apply upon its adoption. When AB 273 was passed and approved into law on June 10, 2011, it was our understanding that the law would apply prospectively to all pending cases in which a deficiency judgment had not yet been obtained. Put differently, the law was not intended to reverse any existing deficiency judgments awarded before June 10, 2011; it is only intended to apply to those cases that were pending or not yet filed in which a deficiency judgment was sought and not yet awarded.

It is not now nor has it ever been the intent of AB 273 to reach back into contracts and unwind previously negotiated rights. To the contrary, by adopting AB 273, it was our intent to clarify the manner in which the remedy of a deficiency judgment may be calculated. Section 5 of AB 273 simply confirms the formula by which the Courts determine the amount of the deficiency. Taken together, Section 5 of AB 273 should be prospectively applied to all pending cases in which a deficiency judgment had not yet been obtained at the time of its effective date.

Section 5 of AB 273 is Consistent With Existing Nevada Law.

It has always been Nevada law that when a creditor is seeking a deficiency judgment, the creditor’s total maximum recovery is limited to the amount of consideration paid for the right to seek that deficiency. NRS 40.459 confirms the existing statutory limitation on the amount of monetary judgment by fixing the method and formulas for calculation of a deficiency from an existing indebtedness.

The indebtedness for which there could be a deficiency is specifically defined in NRS 40.451. Pursuant to NRS 40.451, the maximum amount of indebtedness is limited to the amount of consideration paid by the lien holder. The definition of indebtedness for NRS 40.451 is specifically identified as a deficiency defense to be used when determining the maximum potential recovery available to a creditor. By limiting the maximum amount of indebtedness to

the amount of consideration paid by the lien holder, it has always been the law that deficiency judgments are not meant to be profit centers. Because of what was transpiring in our economy with the enforcement of deficiency judgments, it was best to clarify our existing statutes, confirming the limits of a deficiency remedy.

In fact there was a competing bill moving through the State legislature that would have reversed the existing deficiency law. SB 402 was introduced addressing statutes unrelated to deficiency defenses. Tucked within SB 402, however, was a proposed revision to NRS 40.451 to expand the amount of indebtedness to include the amount of consideration paid by the current lien holder or the "predecessor of the lien holder." Because SB 402 directly conflicted with AB 273 and also conflicted with the existing law in the limitation of deficiencies, the proposed revision to NRS 40.451 was removed by way of amendment; and, the bill was never enrolled and passed into law.

The Scope and Application of AB 273.

When discussing a proposed bill in committee, it is impossible to discuss every single potential variant or application of the bill. To that end, there are certainly topics that are emphasized more than others, just as there are other sections within the bill that are emphasized more than others. Nevertheless, there should be no doubt (and it is clear from the legislative history and my talking points which I used to discuss AB 273) that the application of Section 5 of AB 273 was never limited to only collection agencies attempting to enforce a judgment. Instead, the language in Section 5 of AB 273 was always designed to apply to any creditor who obtained the right to seek a deficiency from someone else who previously held that right. Put differently, Section 5 of AB 273 was intended to confirm the existing limitation of creditors' maximum recovery to what they paid.

Moreover, while homeowners have been most affected by our current economic recession, homeowners were not our sole focus. By making the revision to the limitation of the amount of monetary judgment in NRS 40.459, it was intended to apply to any borrower and any guarantor who had the right to assert those defenses. Neither the existing deficiency legislation nor AB 273 distinguishes between residential and commercial deficiency remedies.

Similarly, we were fully aware of the fact that many banks had failed resulting in loans being acquired by the FDIC receivership and sold to third parties. We further understood that in those transactions, the loan would be insured by the FDIC and would be sold at a discount to third parties for enforcement. In making the amendatory provisions to NRS 40.459, it was fully our intent to limit creditors to the amount of consideration they paid for the right to seek a deficiency as well as to compel them to exhaust instruments of insurance when seeking deficiency. The instruments of insurance were intended to address whatever indemnity or coverage that a note purchaser may have whether through purchase mortgage insurance, loss share agreement with the FDIC, or other agreement with the FDIC through a loan pool or structured sale.

The Purpose of AB 273.

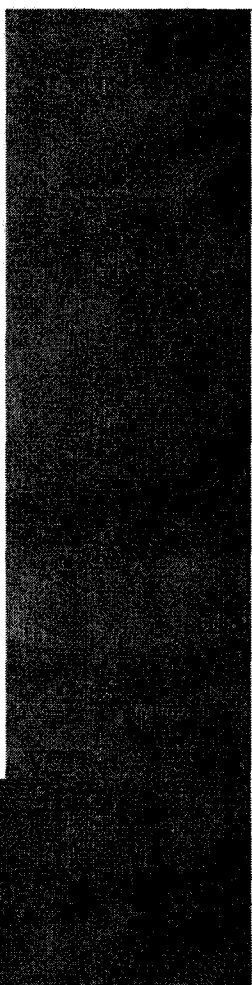
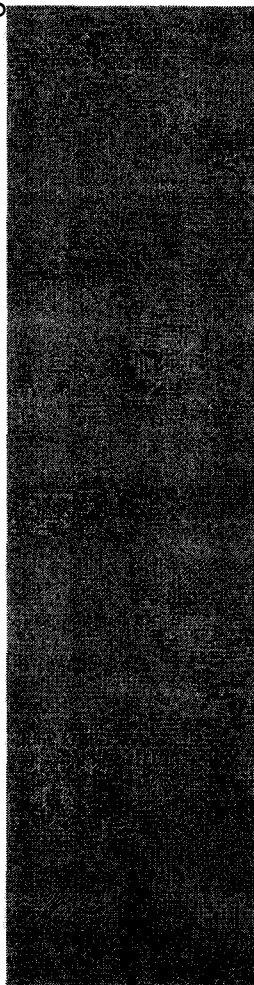
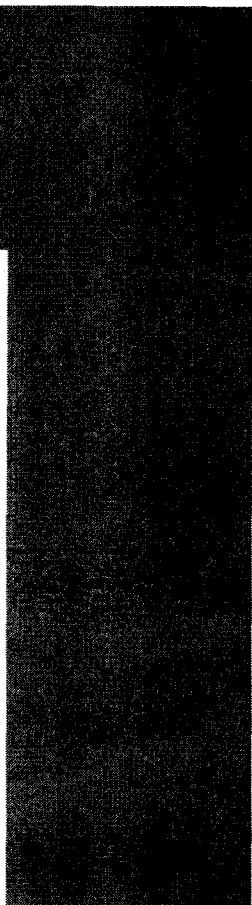
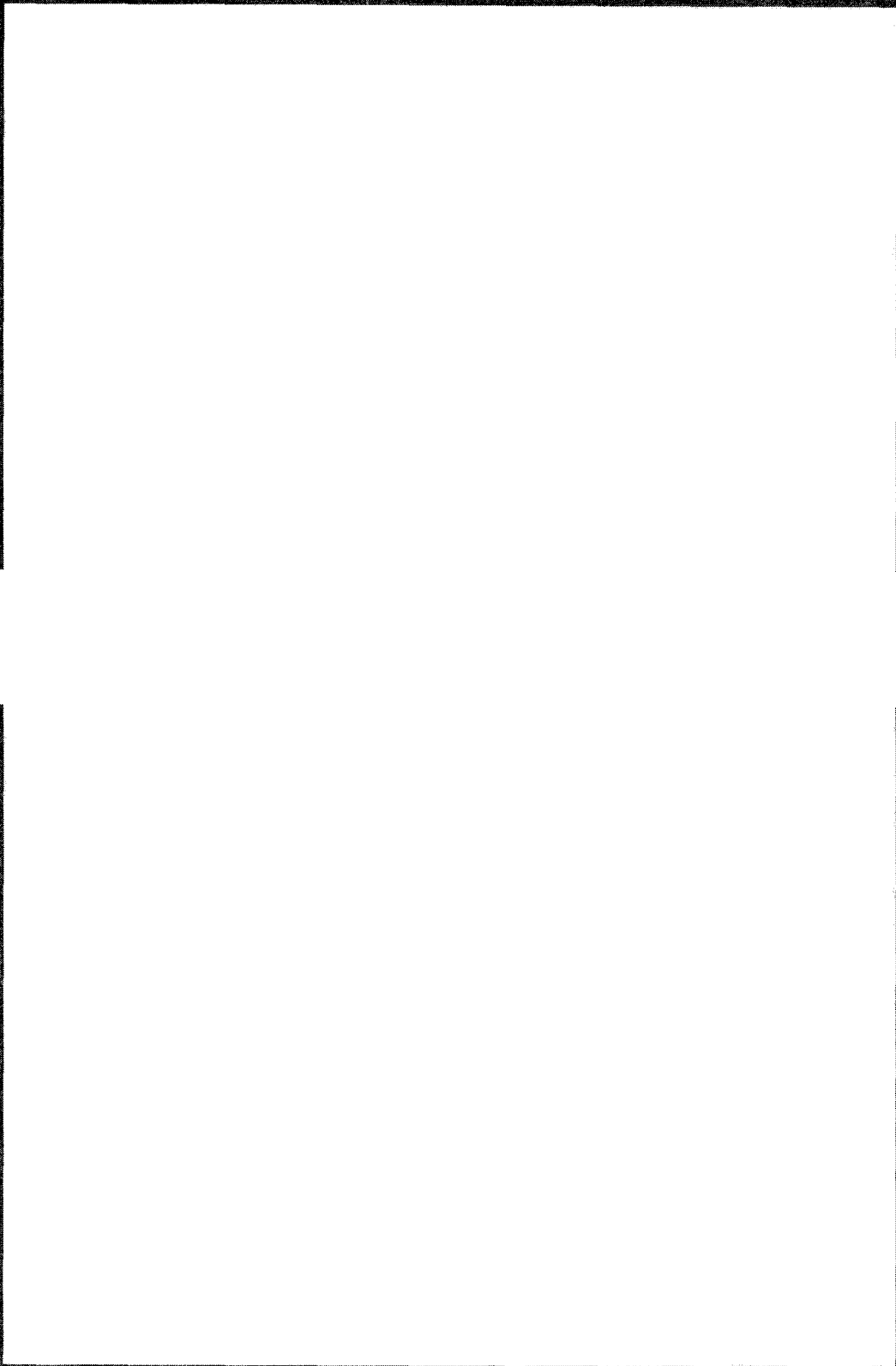
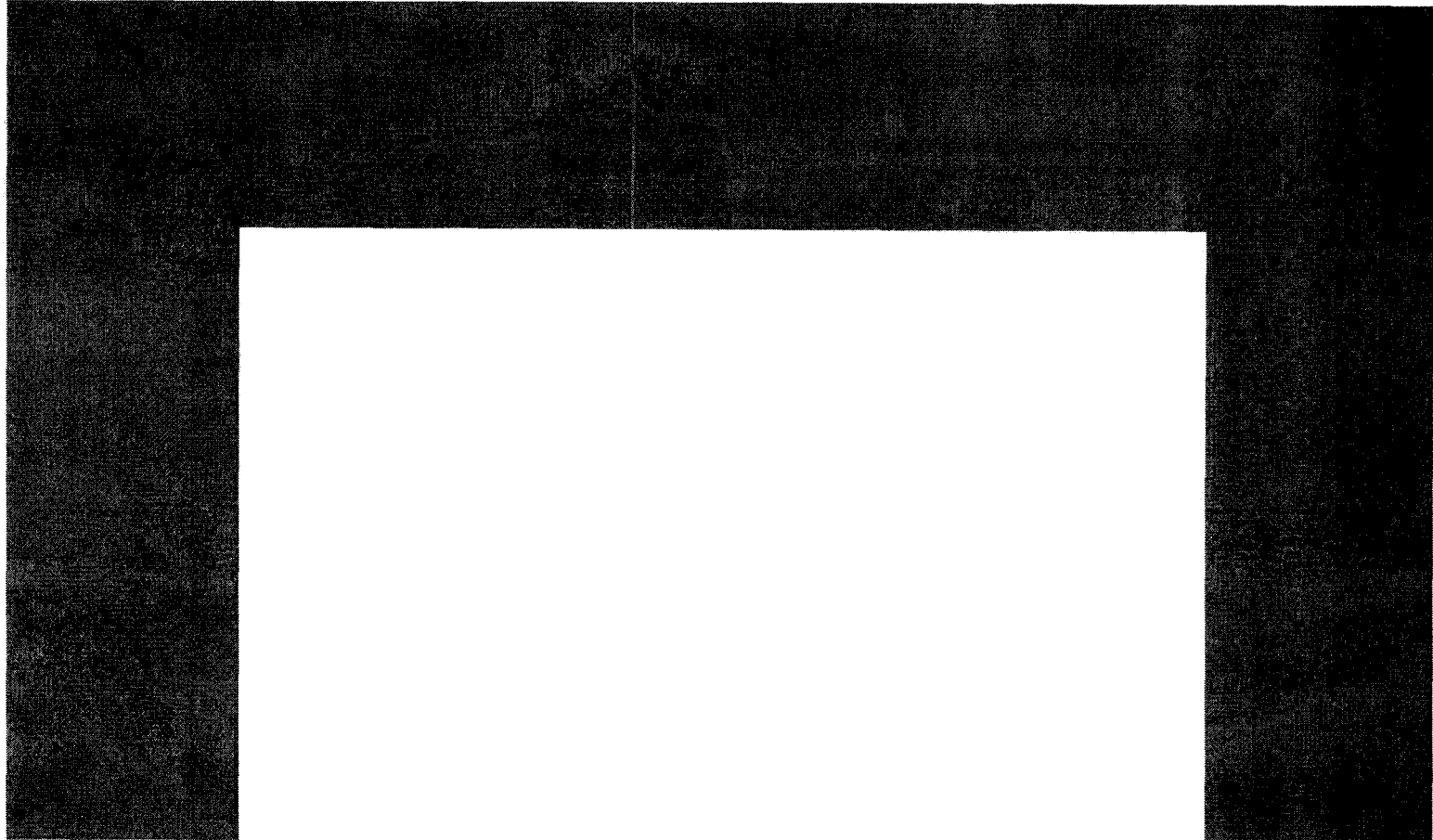
AB 273 assures that lenders get no more than payment in full. Creditors, whether banks, lenders, collection agencies, or other note purchasers, were using deficiency judgments as a profit center for their business. For example, there are some note purchasers who have formed entire business enterprises with the intent of profiting from deficiency judgments. Such a use of deficiency judgments was never the intent. Creditors who advanced no money for the original loan should be limited to what they paid for the opportunity to seek a deficiency judgment. This clarification aims to protect Nevada's methods for calculating a deficiency from being misused as a profit center.

As a whole, AB 273 was intended to clarify and strengthen existing legal protections for borrowers and guarantors. For example, Section 5.5 of AB 273 closed a loophole from prior amendments, making sure that creditors always look to the secured collateral first and can no longer run an end around of the deficiency protections. AB 273 clarified existing law by expressly providing that the same judicial determination of the fair market value of the real property is required if the lender proceeds against the guarantor regardless whether it is pre-or post foreclosure. AB 273 was never intended to take away any existing protections; rather, the goal was to clarify laws that needed clarification and close loopholes used to manipulate sources of recovery.

Conclusion.

AB 273 reinforces the intent of existing Nevada law and public policy and aides Nevada's recovery in the current recession. If AB 273 is not enforced as we intended, our small businesses and entrepreneurial class may disappear. We cannot permit the destruction of our entrepreneurial class, they are the engine of our economy.

Thus, AB 273, particularly Section 5, was made to apply prospectively to all pending cases in the judicial system in which a deficiency judgment had yet to be obtained at the time AB 273 took effect. It is not our intent to reach back and unwind all of the previously negotiated and settled judgments. However, we were interested in, and did intend to, clarify and make the calculation by which the Courts determine the amount of the deficiency in any pending suit currently in the system on a prospective application in which a judgment has not been obtained by a bank or a creditor consistent with the definition of indebtedness in NRS 40.451 which has long been in effect. It is my sincere hope that with the passage of AB 273, our business owners and entrepreneurs and, just as importantly, homeowners in our state will not fall victim to unscrupulous creditors who manipulate sources of recovery and use deficiency judgments as a profit center.



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DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. Bank National Association as Trustee For
The Registered Holders of ML-CFC Commercial
Mortgage Trust 2007-7 Commercial Mortgage
Pass-Through Certificates Series 2007-7, by and
through Midland Loan Services, Inc., as its
Special Servicer,

Plaintiff,

vs.

Palmilla Development Co., Inc., a Nevada
corporation; Hagai Rapaport, an individual; and
Does I to X; and Roe Corporations X to XX,

Defendants.

Case No.: 09-A-595321-C

Dept No.: 20

**REPLY IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT AND
REQUEST FOR DEFICIENCY HEARING
PURSUANT TO NRS 40.457**

Date of Hearing: May 30, 2012

Time of Hearing: 9:00 a.m.

1. Defendants Fail to Rebut Plaintiff's Prima Facia Case for Summary Judgment.

Defendants do not contest the factual allegations raised in the motion for summary judgment that allege all the necessary *prima facia* elements for breach of contract causes of action against both Palmilla under the Promissory Note and against Rapaport under the Guaranty.

(a) **Defendants Have Failed to Allege Facts Necessary to Defeat Summary Judgment on Liability.**

Summary judgment is appropriate because Defendants have failed to meet their burden of demonstrating the existence of any material fact or competent evidence warranting the denial of summary judgment in this case. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (finding "[t]he nonmoving party 'must, by affidavit or otherwise, set forth specific

1 facts demonstrating the existence of a genuine issue for trial or have summary judgment entered
2 against him.”) (*citation omitted*); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382,
3 1386 (1998) (finding “[a] party opposing summary judgment may not rely on the allegations of his
4 pleadings to raise a material issue of fact where the moving party supports his motion with
5 competent evidence.”) (*citing Garvey v. Clark County*, 91 Nev. 127, 130, 532 P.2d 269, 271
6 (1975)).

7 (b) Key Undisputed Facts.

8 None of the key facts alleged by Plaintiff in its Motion for Summary Judgment are
9 disputed by Defendants, who inexplicably claim “it is unnecessary, however, to address those
10 facts at this time.” *See* Opposition 4:6.

- 11 ○ Defendants do not contest that Palmilla borrowed \$20.15 million, as evidenced by the
12 Promissory Note dated March 28, 2007, and secured by a Deed of Trust and an
13 Assignment of Rents. (Undisputed Facts ¶¶ 1—4).
 - 14 ○ Defendants do not contest that by and through valid assignment, that Plaintiff holds all
15 beneficial interest under the note and guaranty and is thereby authorized and
16 empowered to bring this action. (Undisputed Facts ¶¶ 5—8).
 - 17 ○ Defendants do not contest the real property securing the loan was sold by a court-
18 appointed receiver for \$9.5 million. (Undisputed Fact ¶ 10).
 - 19 ○ Defendants do not contest that the amount realized from the receiver’s sale is
20 substantially less than the amount owing under the Loan. (Undisputed Fact ¶ 11).
 - 21 ○ Defendants do not contest that Rapaport personally guaranteed the loan, or that full
22 recourse provisions of the guaranty have been triggered. (Undisputed Facts ¶¶ 12—
23 13).
 - 24 ○ Defendants do not contest that they are equally and unconditionally liable for the full
25 amount of the indebtedness. (Undisputed Fact ¶ 15).
- 26
27
28

1 (c) Only Legal Questions Remain.

2 Because Defendants chose to ignore the prima facie elements of Plaintiff's breach of
3 contract causes of action, the only remaining issues are questions of law, which are ripe for
4 summary judgment.

5 **2. Nevada Law Does Not Require a Mortgage Holder to Foreclose as a Condition**
6 **Precedent to Recovery of Outstanding Indebtedness.**

7 It is undisputed that the indebtedness owed by Defendants greatly exceeds the proceeds
8 from the sale by receiver of the real property securing the loan. (Undisputed Fact ¶ 11).
9 Defendants instead rely on the incorrect and unsupportable proposition that Plaintiff is barred from
10 any judgment on the remaining indebtedness because it did not foreclose. Despite the fact that
11 there is nothing left to foreclose upon, and aside from Defendants' arguments relating to changes
12 to Nevada's anti-deficiency laws (which Defendants admit do not apply to the facts of this case¹),
13 Defendants arguments, in sum, are (A) that the 6-month statute of limitations applicable to
14 deficiencies after foreclosure is equally applicable to remaining amounts owing after sales out of
15 receivership and (B) that in the absence of a foreclosure, no judgment can be entered because the
16 Court has no way of measuring the fair market value of the property. Defendants are wrong on
17 both counts.

18 (a) There is No Applicable 6-Month Statute of Limitations to First Mortgage Holders
19 for Deficiencies After a Sale by Receiver.

20 Defendants assert that a "deficiency"² action must be filed within 6 months *of a*
21 *foreclosure*, and then make the inexplicable leap of logic to conclude that a claim for money

22
23 ¹ See Opposition at 4:20—26 ("...it is important to emphasize that neither the
24 aforementioned statute of limitations argument or the failure to conduct a foreclosure sale
25 argument is in any way affected by AB 273. That is, even if AB 273 had never come into
26 existence, nothing would have changed regarding the Defendants' two aforementioned
27 arguments concerning the statute of limitations defense and the lack of a foreclosure sale
28 defense").

26 ² Defendants, without explicitly saying so, seem to be unduly focused upon a very narrow
27 and strict definition of the term "deficiency" as being limited to the amount remaining on a
28 secured note after a foreclosure. However, whether the amount owed by Defendants is
characterized as a "deficiency" or as "indebtedness", Defendants can point to nothing to
support its argument that a foreclosure is a prerequisite to recovery on these facts where
the property was sold by a court-appointed receiver.

1 damages must also be filed within 6 months *of a sale by receiver*. Defendants offer nothing to
 2 support their wishful argument – an argument that if accepted would create an extraordinarily
 3 harsh³ result for Plaintiff and an incredible windfall for themselves, but they also seek to do so on
 4 nothing more than the assertion itself. The 6-month statute of limitations relied upon by
 5 Defendants makes no reference to other types of realization methods for collateral. *See* NRS
 6 40.455.⁴ The very statute proffered by Defendants lends no support to Defendants self-serving
 7 interpretation.

8 Additionally, the recent changes to NRS 40 include a brand new section that creates a 6-
 9 month statute of limitations to deficiency actions after a foreclosure or sale in lieu of foreclosure
 10 by lenders. *See* NRS 40.4639⁵ (added by AB 273). Tellingly, the newly-added statute limits this
 11 new provision to lenders who hold a junior mortgage. *Id.* If Defendants were correct in their
 12 application of the 6-month statute of limitation to non-foreclosure cases, this entire new section is
 13 surplusage in that it would unnecessarily limit a *junior* mortgage holder's deficiency action to be
 14 filed within 6 months of a sale in lieu of a foreclosure. As Defendants insist, their conjured 6-
 15 month statute of limitations arguments are equally applicable to the law as it existed prior to the
 16 changes in AB 273.⁶ Nevertheless, the Nevada legislature specifically included in AB 273 the

17 ³ *See e.g., Steketee v. Lintz, Williams & Rothberg*, 38 Cal.3d 46, 56-57, 694 P.2d 1153, 115, 210
 18 Cal.Rptr. 781, 786 (1985) (recognizing the well established principal that “[s]tatutorily imposed
 19 limitations on actions are technical defenses which should be strictly construed to avoid the
 20 forfeiture of a plaintiff's rights. Such limitations are obstacles to just claims and the courts may not
 indulge in a strained construction to apply these statutes to the facts of a particular case.”)
 (citations omitted).

21 ⁴ Providing “[e]xcept as otherwise provided in subsection 3, upon application of the judgment
 22 creditor or the beneficiary of the deed of trust *within 6 months after the date of the foreclosure*
 23 *sale or the trustee's sale held pursuant to NRS 107.080*, respectively, and after the required
 24 hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of
 the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's
 deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the
 judgment creditor or the beneficiary of the deed of trust, respectively.” (emphasis added).

25 ⁵ **NRS 40.4639 Period of limitation on commencement of civil action.** A civil action not barred
 26 by NRS 40.430 or 40.4638 by a person to whom an obligation secured by a junior mortgage or
 27 lien on real property is owed to obtain a money judgment against the debtor after a foreclosure
 sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6
 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

28 ⁶ *See* Opposition at 4:20—26 (“...it is important to emphasize that neither the aforementioned
 statute of limitations argument or the failure to conduct a foreclosure sale argument is in any way
 affected by AB 273. That is, even if AB 273 had never come into existence, nothing would have

1 additional provision relating only to *junior* mortgage holders making the 6-month statute of
2 limitations applicable to actions after a foreclosure or a sale in lieu of a foreclosure.

3 There would have been no reason whatever to add this provision if, as Defendants claim,
4 there is a 6-month statute of limitations already in existence for all lenders with a loan secured by
5 a mortgage for foreclosure sales and for other types of collateral realizations. Presumably, the
6 Nevada legislature drafted NRS 40.4639 to have some effect – under Defendants’ interpretation of
7 the law, however, it would have no effect whatsoever. Moreover, when recently enacting very
8 specific legislation dealing with realization of collateral by means other than by foreclosure, the
9 Nevada legislature saw fit to only apply this 6-month statute of limitations to *junior* mortgage
10 holders, and not to *first* mortgage holders. There is no dispute here that Plaintiff was the first
11 mortgage holder, and so even after the changes, the recently added 6-month statute of limitations
12 relating to junior mortgage holders for sales in lieu of foreclosure still cannot not apply to the facts
13 at bar.

14 If the Nevada legislature had intended to limit actions after sales by receivers or sales in
15 lieu of foreclosures to 6-months from the time of the sale, it would have done so, as it did in NRS
16 40.4638 relating to *junior* mortgage holders.

17 (b) Defendants’ Straw Man Argument Concerning Claimed Difficulty with a Date of
18 Value Does not Excuse Defendants’ Liability.

19 Defendants insist that no liability can exist because, they allege, there is no easy way of
20 establishing the fair market value to offset the indebtedness. However, the fact the date of value
21 relevant to a deficiency action after a foreclosure is the date of the foreclosure, does not under any
22 reasonable stretch of the imagination prevent a judgment in the absence of a foreclosure.
23 Moreover, this issue of establishing the fair market value of the property is not before the Court;
24 the issue can be addressed at the prove-up hearing.

25
26
27
28 changed regarding the Defendants' two aforementioned arguments concerning the statute of
limitations defense and the lack of a foreclosure sale defense”).

1 The most obvious date of value is the date the property was sold by the receiver.⁷ In any
 2 event, even if it were a difficult question to establish the date of value, which Plaintiff believes is
 3 not a difficult question at all; Courts deal with difficult questions all the time. There is no reason
 4 why an alleged difficult question should preclude recovery on a valid claim, or that Defendants
 5 should receive an extraordinary windfall for such a reason.

6 **3. The Consideration Paid for the Note by Plaintiff is Irrelevant.**

7 The motion for partial summary judgment pending before this Court does not seek entry of
 8 a money judgment at this time. It merely requests a finding of liability, and further requests a
 9 prove up hearing on the amount owing.⁸ The Court does not have to determine the fair market
 10 value of the real property in order to find liability. Moreover, the amount of consideration
 11 Plaintiff paid for the note is irrelevant because it is undisputed that the promissory note was
 12 entered into in 2007. For the reasons stated in more detail in the Motion, the changes promulgated
 13 by AB 273 do not apply retroactively to loans in existence prior to June 10, 2011.

14 **4. The Definition of "Indebtedness" Found in NRS 40.451 Includes All Amounts Owning**
 15 **Under the Loan.**

16 The changes promulgated by AB 273 do purport to limit the amount of a deficiency for
 17 certain assigned mortgages. However, as Defendants admit, the changes in AB 273 do not apply
 18 to the issues in dispute here. In addition, nothing in NRS 40.451 limits the "indebtedness" to the
 19 amount paid by the lienholder. If it did, to a very large extent, the legislature wasted its time in
 20 enacting AB 273. Rather, NRS 40.451 merely limits the amount of the *lien*. Defendants attempt
 21 to replace the word *lien* with the word *indebtedness*:

22
 23 ⁷ Another possible date of value is the date the action was commenced. *See, e.g.*, NRS 40.495(4)
 24 (providing that "[i]f, before a foreclosure sale of real property, the obligee commences an action
 25 against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust,
 26 to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation
 27 secured by a mortgage or lien upon the real property:

28 (a) The court must hold a hearing and take evidence presented by either party concerning the
 fair market value of the property as of the date of the commencement of the action").

⁸ It may well be that the prove up hearing should not be based upon NRS 40.457, but under NRS
 40.495(4) instead, which provides that when occurring prior to a foreclosure, "[t]he court must
 hold a hearing and take evidence presented by either party concerning the fair market value of the
 property as of the date of the commencement of the action." In any event, the goal should be to
 determine the amount rightfully owing to Plaintiff by Defendants.

NRS 40.451 “Indebtedness” defined. As used in NRS 40.451 to 40.463, inclusive, “indebtedness” means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

NRS 40.459 (emphasis added). Under this statute, the indebtedness includes (a) the principal balance, (b) all interest accrued and unpaid, (c) all costs and fees, (d) all advances, *and* (e) all other amounts secured by the mortgage. *Id.* The amount of the *lien* is thereby limited to the amount paid, but no where does it state that the *indebtedness* is limited. *See id.* The most reasonable interpretation of this language is that the legislature intended to limit the amount of an assignee’s security interest to the amount it paid for the note (*i.e.*, an assignee’s security interest cannot exceed the amount the assignee paid). Any indebtedness that exceeds the amount of the lien is thereby unsecured debt. The language of this statute simply does not support the broad application suggested by Defendants.

5. Legislative History Always Occurs, By Definition, Prior to the Enactment of a Statute.

Defendants complain that the official legislative history cited by Plaintiff occurred prior to enactment of AB 273. However, in order to be legislative history at all, it must by definition have occurred prior to enactment. It seems beyond argument that legislative history is properly given considerable weight in interpreting ambiguous statutes. *See State, Div. of Insurance v. State Farm*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000) (finding when a statute is ambiguous or lacks plain meaning, “a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions”).

(a) Subsequent Comments on Prior Legislative Actions is Inappropriate.

Defendants’ reliance upon the after-the-fact statements posted on the internet by Assemblyman Marcus Conklin as to AB 273 is misplaced. Even if Assemblyman Conklin’s comments were endorsed by or were promulgated by a now-sitting legislature itself, which they are not, subsequent comments, or indeed even official legislative commentary after the fact,

1 constitute a highly hazardous basis for determining what was previously intended. The Nevada
2 Supreme Court has found such after-the-fact commentary, *even occurring during a formal*
3 *legislative session*, is improper and should be given little or no consideration:

4 Declarations of intent by a subsequent Legislature, especially those
5 occurring after commencement of this litigation, are "entitled to
6 little if any weight." *Teamsters v. United States*, 431 U.S. 324, 354
7 n. 39, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). We are concerned here
8 about the intent of the Legislature that amended NRS 533.370 in
9 2003, not the intent of a previous or subsequent Legislature. *See id.*

10 *Great Basin Water Network v. State Eng'r.*, ___ Nev. ___, 234 P.3d 912, 918 (2010). Assemblyman
11 Conklin's after-the-fact commentary should therefore not be considered.

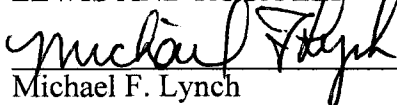
12 **6. Conclusion.**

13 Defendants' argument that Plaintiff somehow lost all rights to a money judgment under
14 some hyper-punitive theory that all indebtedness on a mortgage is wiped out unless the lender
15 forecloses is wholly unsupported by Nevada law. Defendants' arguments concerning the
16 applicability of the 6-month statute of limitations after a foreclosure to sales out of receivership
17 are similarly without basis, authority, or support. Defendants admit that AB 273 does not apply to
18 these facts, but even if it did, this Court should recognize that AB 273's changes apply only
19 prospectively. Finally, it is not necessary at this time to establish the market value of the property
20 to Plaintiff's monetary judgment at this time, as the motion before the Court concerns liability
21 only.

22 Plaintiff therefore requests the Court enter summary judgment against Defendants, finding
23 they are liable for the remaining indebtedness. Plaintiff finally requests that the Court schedule a
24 prove up hearing to establish the amount of Plaintiff's damages.

25 DATED May 25, 2012.

26 LEWIS AND ROCA LLP


27 

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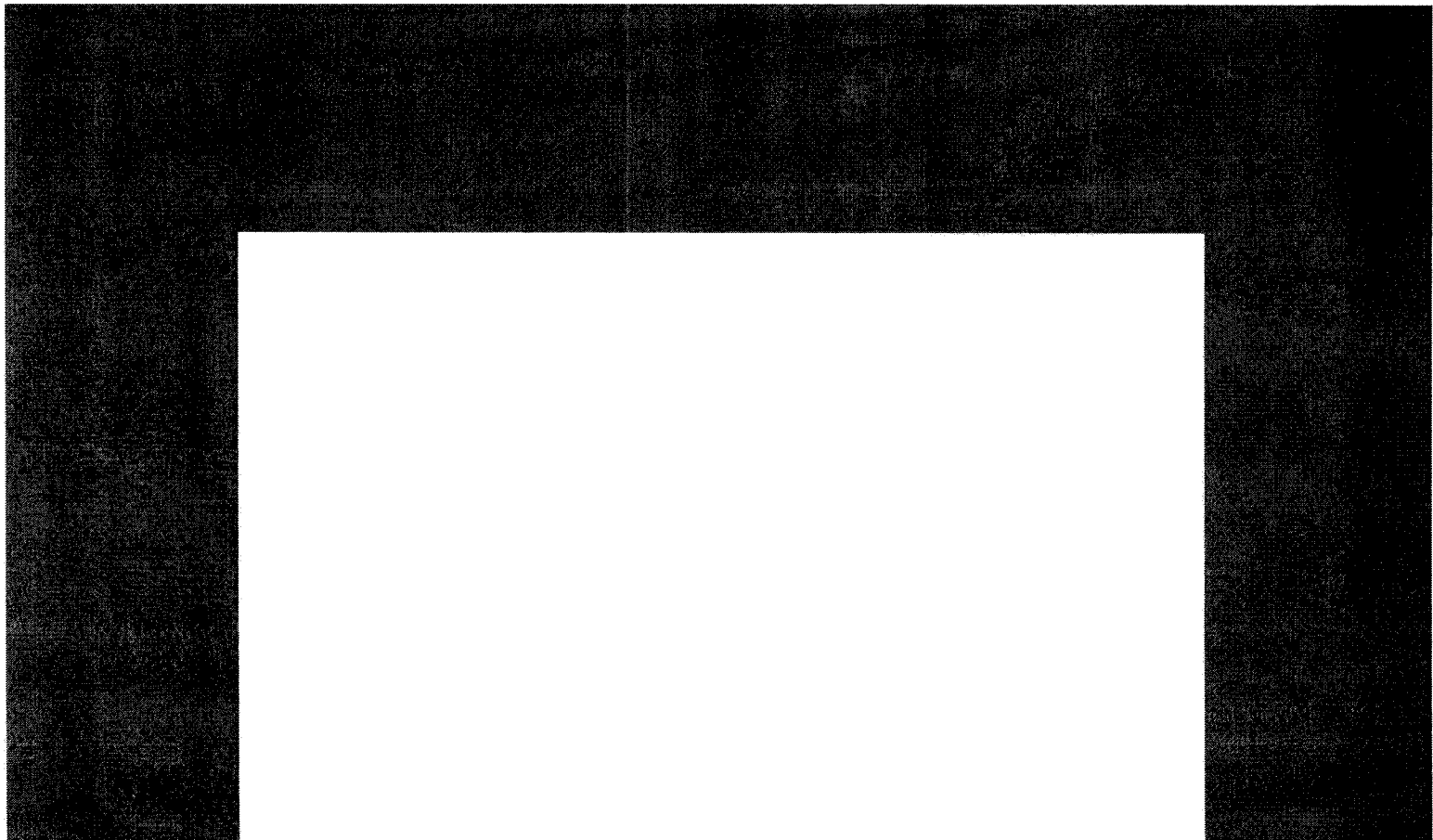
 Attorneys for Plaintiff

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Dated May 25, 2012.



An employee of Lewis and Roca LLP

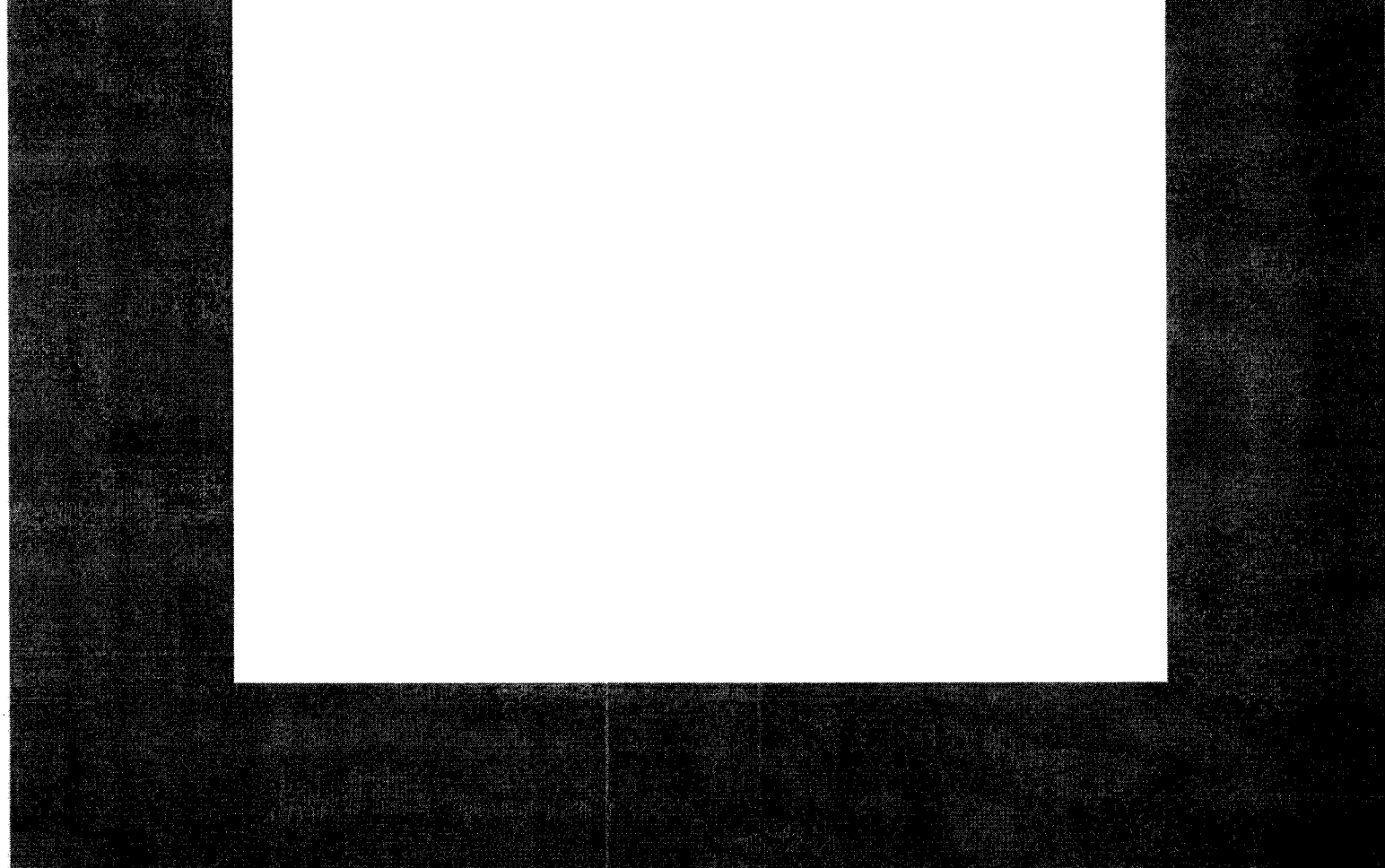


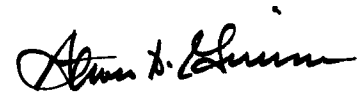
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6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 U.S. Bank National Association as Trustee)
9 for The Registered Holders of ML-CFC)
Commercial Mortgage Trust 2007-7)
10 Commercial Mortgage Pass-Through)
Certificates Series 2007-7, by and through)
11 Midland Loan Services, Inc., as its Special)
Servicer,)

Case No.: 09-A-595321-C

Dept. No.: XX

Plaintiff,

Hearing Date: 05/30/2012
Hearing Time: 9:00 a.m.

v.

14 Palmilla Development Co., Inc., a Nevada)
15 corporation; Hagai Rapaport, an)
individual; Does I to X; and Roe)
16 Corporations X to XX,)

Defendants.

17
18 **DEFENDANTS' SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S**
19 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

20 COME NOW the Defendants, PALMILLA DEVELOPMENT CO., INC. and HAGAI
21 RAPAPORT, by and through their attorney, BRENT LARSEN, ESQ. of the law firm of
22 DEANER, MALAN, LARSEN & CIULLA, and hereby submits this Supplemental
23 Opposition to the Plaintiff's Motion for Partial Summary Judgment.

24 The Plaintiff's Reply in support of its Motion for Summary Judgment alleges certain
25 facts as "undisputed facts" when there are genuine disputes as to such alleged facts. For
26 instance, Plaintiff claims that "Defendants do not contest that by and through valid
27 assignment, that Plaintiff holds all beneficial interest under the note and guaranty and is
28 thereby authorized and empowered to bring this action." The Defendants' Opposition shows

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1 that is one of the issues that is in contest because the Defendants specifically have
2 outstanding discovery requests to the Plaintiff, which demand proof that the Plaintiff actually
3 owns the note that is the subject of this action and any documents to show a valid
4 assignment. *See* Exh. B to Defendants' Opposition filed on May 16, 2012 and the
5 Defendants' First Request for Production of Documents, particularly Request Nos. 1-3.
6 Moreover, the documents attached to the Plaintiffs' Motion or their Complaint do not show
7 any assignment of the guaranty itself, as distinguished from an assignment of the deed of
8 trust. Further, the assignment that the Defendant relies on for the deed of trust, which is Exh.
9 4 to the Plaintiff's Motion for Summary Judgment, does not prove that there was an
10 assignment of any obligation that is the subject of this lawsuit. What is represented in the
11 document the Plaintiff relies on is an assignment of an obligation that is owed by "York
12 Nevada Management, LLC," rather than any obligation owed by any of the Defendants in
13 this action.

14 Defendants also take issue with the Plaintiff's wrongful claim that "Defendants do not
15 contest the amount realized from the receiver sale is substantially less than the amount due
16 and owing under the loan." Again, the discovery requests directed at the Plaintiff attempt to
17 ascertain the amount due and owing under the loan. To determine that amount, it is
18 necessary to receive the documents showing the amount that the Plaintiff paid for the loan to
19 determine the "amount of indebtedness" as prescribed by Nevada statutes. Therefore, the
20 Defendants also further contest the Plaintiff's allegation that the Defendants are "equally and
21 unconditionally liable for the full amount of the indebtedness," because the Defendants don't
22 know what the "amount of the indebtedness" is, and because the Defendants also don't know
23 how much credit the Plaintiff has given for the Defendants' loan payments (of over
24 \$200,000 per month) that the Plaintiff received while the property was in bankruptcy, it is
25 impossible to reach the conclusion that the Plaintiff is asserting. In any event, the Court
26 needs to make a ruling on what is the definition of "indebtedness" before the parties can
27 realistically go any further.

28 The Plaintiff's reply brief also submits a patently inconsistent argument by first

1 arguing that AB 273's definition of "indebtedness" as set forth in § 5.5 of that legislation,
 2 should not have any application to this case, but then the Plaintiff goes on to state that other
 3 sections of AB 273, such as § 3.3, could have application to this case. The comments from
 4 the Legislative Counsel's Digest make it clear which sections of AB 273 apply only
 5 prospectively, while other sections, such as § 5.5 (the legislation that clarifies the definition
 6 of "indebtedness" in terms of seeking the amount of a deficiency judgment), is the only
 7 section of AB 273 that was intended to apply to cases presently pending at the time the
 8 amendment was enacted, but before a judgment has actually been entered.

9 Upon rereading the Defendants' Opposition to Plaintiff's Motion for Summary
 10 Judgment, a clearer statement needs to be made that Defendants contend that § 5.5 of AB
 11 273, which further expounds upon the definition of indebtedness in NRS 40.459, is the only
 12 part of AB 273 that would have any application to this case.

13 Accordingly, Plaintiff's Motion for Summary Judgment should be denied until the
 14 foregoing discovery is complete and the parties have a clear definition from either the
 15 Supreme Court or this Court as to what is the definition of indebtedness from AB 273 that
 16 should be applied to this case. The Defendants also expects to file its own Motion for
 17 Summary Judgment this week, which will show, as a matter of law, that the Defendants are
 18 the parties who are entitled to summary judgment because: (1) the Plaintiff's Complaint was
 19 not timely filed to meet the 6-month statute of limitations as set forth in NRS 40.455; (2) the
 20 Plaintiff failed to comply with NRS 107.081 which requires specific notification to
 21 guarantors; (3) Plaintiff failed to comply with the public notice and auction requirements in

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1 NRS 107.080 and 081 and/or NRS 21.130 and 150 which notice requirements for foreclosure
2 sales are necessary prerequisites for making a deficiency claim.

3 DATED this 28th day of May, 2012.

4 Respectfully submitted,

5 DEANER, MALAN, LARSEN & CIULLA

6  ^{for} Brent
Larsen


7 BRENT LARSEN, ESQ.
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9 720 South Fourth St., #300
10 Las Vegas, Nevada 89101
11 Attorney for Defendants

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CERTIFICATE OF SERVICE

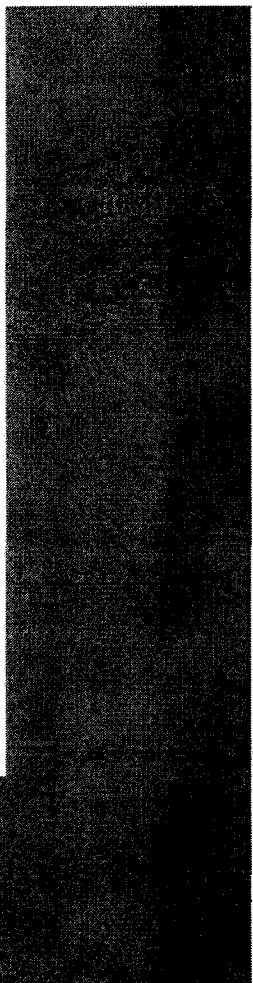
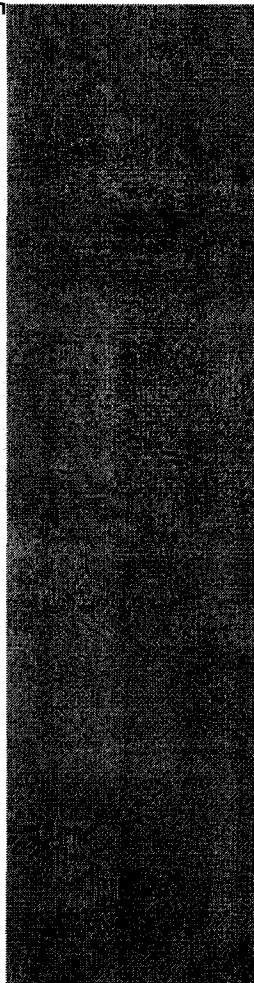
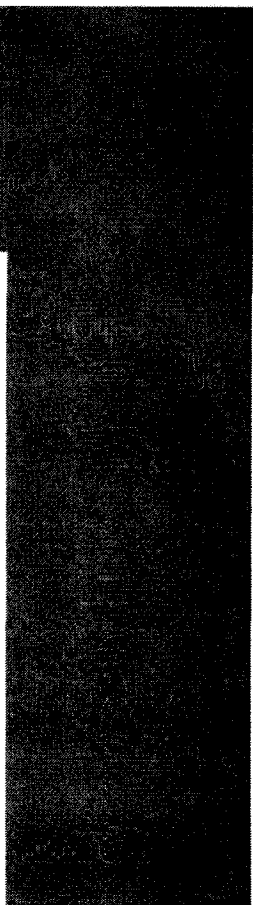
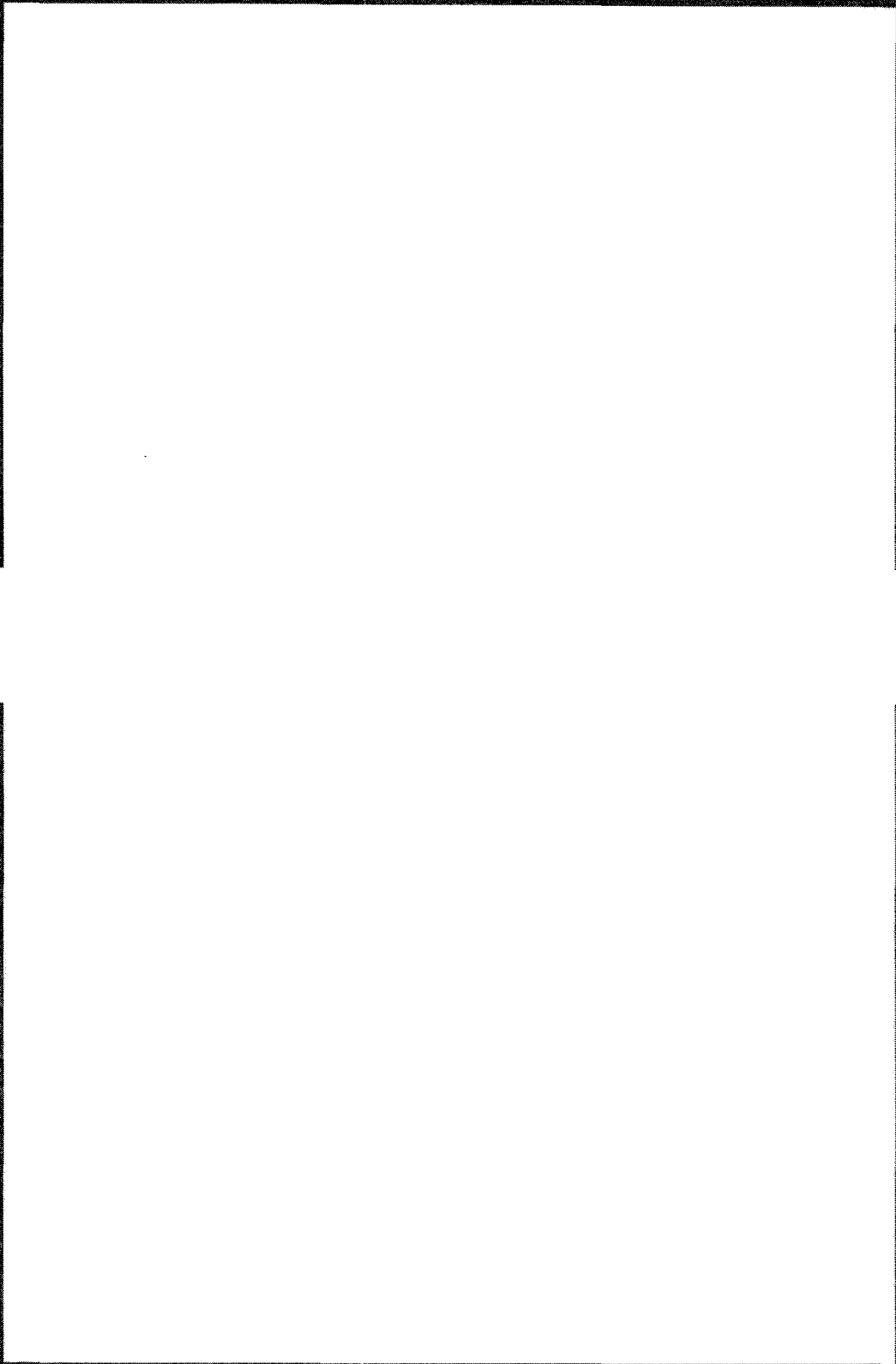
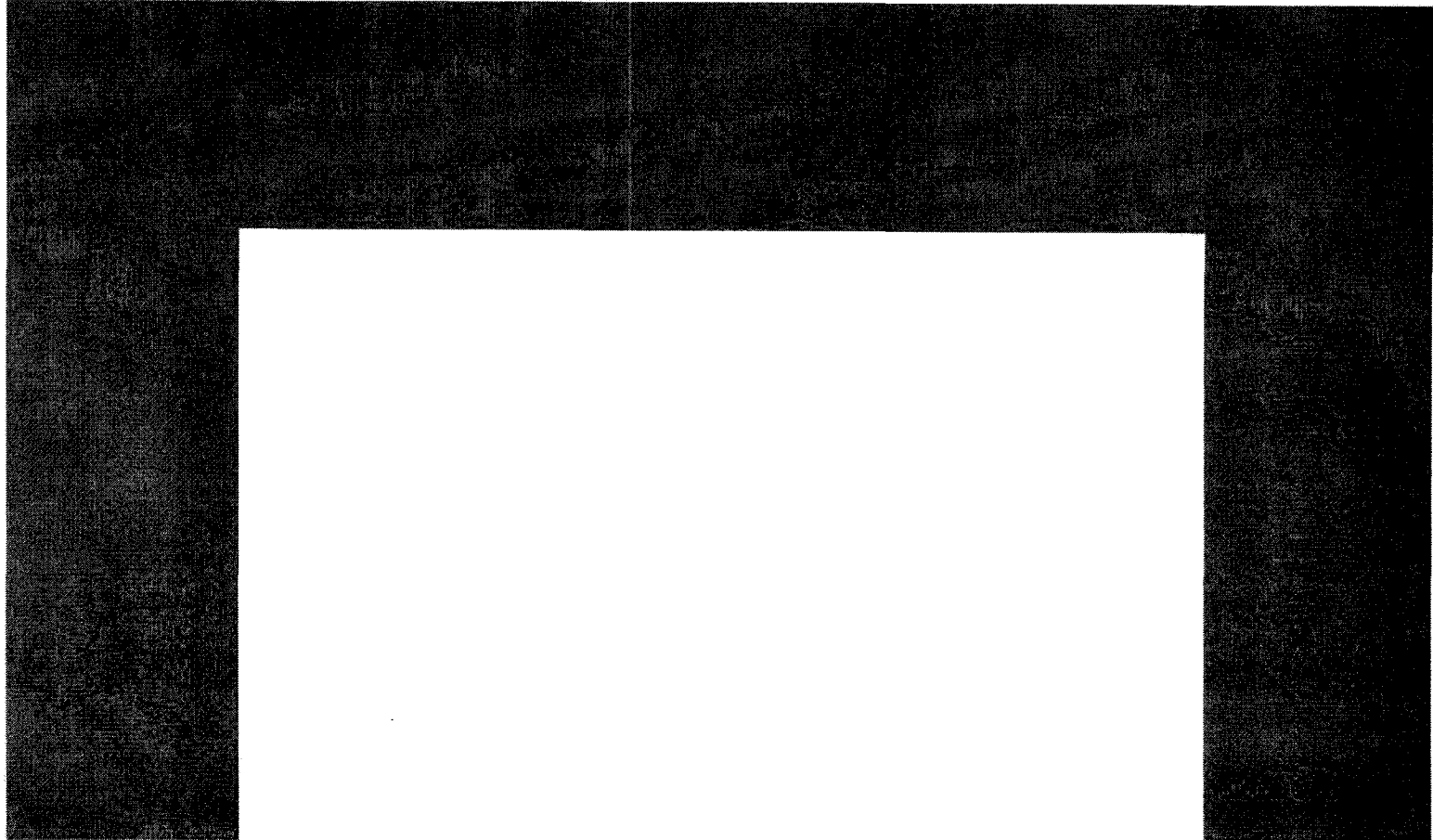
I HEREBY CERTIFY that I am an employee of DEANER, MALAN, LARSEN & CIULLA; that on the 29th day of May, 2012, I served a copy of the above and foregoing DEFENDANTS' SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT by electronic service and in a sealed envelope, postage prepaid, by depositing same in the United States mail, addressed to the following:

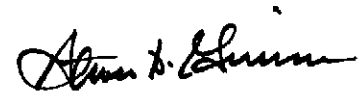
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 CLERK OF THE COURT

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 DISTRICT COURT
 CLARK COUNTY, NEVADA

US BANK NATIONAL ASSOCIATION,

Plaintiff(s),

vs.

PALMILLA DEVELOPMENT
COMPANY INC. ET AL,

Defendant(s).

CASE NO. A595321

DEPT. NO. XX

BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

WEDNESDAY, MAY 30, 2012

**RECORDER'S TRANSCRIPT OF
 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND REQUEST
 FOR DEFICIENCY HEARING**

APPEARANCES:

For the Plaintiff:

MICHAEL F. LYNCH, ESQ.

For the Defendants:

BRENT AUSTIN LARSEN, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 30, 2012, 9:09 A.M.

2 THE COURT: Page six, U.S. Bank National versus Palmilla Development
3 Company, A595321. All right. This is on for a motion for partial summary judgment
4 and request for deficiency hearing. Can everybody state their appearances for the
5 record?

6 MR. LYNCH: Good morning, Your Honor, Michael Lynch on behalf of
7 movant, plaintiff.

8 MR. LARSEN: Brent Larsen on behalf of the defendants.

9 THE COURT: Okay. Basically, this is a, it's a loan that was unpaid, and the
10 basis of the motion for summary -- partial summary judgment is basically they seek,
11 they allege that the facts relating to the origin of the loan what -- the default and
12 what is owed are undisputed, and therefore, they're entitled to at least partial
13 judgment as a matter of law. The opposition that has been filed, and I'll also note,
14 there's some additional briefing, which appears to be the subject of some additional
15 briefing in this case, is a little bit, and Mr. Larsen, I'm kind of addressing this to you,
16 it's a little bit odd because you're kind of saying that, well, they're not entitled to
17 judgment because of this other issues regarding the statute of limitations which is
18 going to be the subject to another brief; and therefore, you're saying that judgment is
19 not appropriate at this time, which is -- well, in the reply, as Mr. Lynch notes, that's,
20 technically speaking, kind of a non-response because you're not saying there are
21 issues, you're actually saying, well, it's a little premature, I have another motion
22 coming which apparently hasn't been filed yet and please wait until, essentially I'm
23 paraphrasing, but please wait until you see the other brief.

24 And then you have this supplemental opposition and then a motion to
25 strike the supplemental opposition or for leave to file a response to the surreply. So

1 it's a little bit complicated now. All right. So, Mr. Larsen, this other motion that
2 you're talking about which is going to apparently raise some of these other issues
3 including the statute-of-limitations issue and whatnot, has that been filed? Or it's
4 just something you're working on and it's going to be filed?

5 MR. LARSEN: Well, ever since they -- we've been collecting research on that
6 motion for some time.

7 THE COURT: Okay.

8 MR. LARSEN: Ever since they filed their motion, we've been preparing a
9 draft. This, I've got a 26-page draft, I've been in Washington for a week in the last
10 three weeks, been in depositions most everyday that I haven't been in Washington.
11 I expect to have that filed this week. But what we pointed out is this case was
12 barred from the moment that the amended complaint for deficiency was filed.

13 THE COURT: Well, why didn't you just do it, I mean, it would have been a
14 little bit easier and tighter and if you had just done it as a countermotion.

15 MR. LARSEN: Because I haven't had the time. I've got a 26-page brief here
16 that I'm thinking of a letter that President Lincoln wrote where he said, I apologize for
17 the length of this letter, but I didn't have time to write a shorter one. And it's going to
18 take time to pare this done. And there's more to it than just the statute of limitations.
19 The fact that they chose to do a private receivership sale, rather than a public
20 auction through a foreclosure sale --

21 THE COURT: Right, no, I understand. You're saying that --

22 MR. LARSEN: -- and that -- that requires setting up that argument, and that
23 argument dovetails with the statute-of-limitations argument. But we've shown on its
24 face, we have a six-month statute of limitations for a deficiency claim, this is a suit
25 for a deficiency claim, and they filed it eight months after the sale. So we think that

1 on its face we have a clear complete defense that the debt is discharged by the
2 failure to timely file a claim for a deficiency. And, like I said, we've got a brief
3 supported by ample case law on all of these issues that we've raised.

4 And in addition to that, we do dispute, you say there's no dispute as to
5 what is owed --

6 THE COURT: Well, I didn't say there's no -- that's their position.

7 MR. LARSEN: Right.

8 THE COURT: They're saying that everything that relates to original loan -- the
9 note, the loan, the amount, the default are basically straightforward and undisputed.

10 MR. LARSEN: But we also have attached outstanding discovery requests
11 that go to the issue as to whether they even own this obligation, we've asked them
12 to produce the original note, the assignment that they have says that it's to York
13 Management Company, or from -- obligation owed by York Management. Mr. Lynch
14 has handed me a document today that he thinks clarifies that, I would need time to
15 do that, but even looking at that document, there's no assignment of the guarantee
16 itself.

17 THE COURT: Well, I mean, obviously, if any document that he handed you
18 today, I have no idea what you're talking about. I haven't seen it, but, all right.

19 Mr. Lynch, let me ask you this, I mean, they have raised this issue of
20 the note, and in your reply you -- you sort of focus on the fact that, well, they haven't
21 raised any general issues of material fact, but as the moving party, you have an
22 initial burden of showing at least a prima facie case that you're entitled to judgment
23 as a matter of law, and in every loan case, as I'm sure you know because I know
24 you do a lot of these, you know, do you have the note, whether you have it is, sort of
25 a predicate issue. I know it's all over the papers, it's like a reflex response, hey, I

1 don't think you have the note. But that's at least part of your burden before the
2 burden shifts to them to them to show that there's a dispute of material facts.

3 So they're saying that -- I don't know if you have the note or not, but
4 they're saying they don't know if you have the note because we haven't even had
5 discovery yet, and you haven't produced a note, and we don't where the note is, but
6 at the very least, whether you have the note is part of your prima facie burden.

7 So what's your response to that?

8 MR. LYNCH: Well, is Your Honor talking about the wet ink note?

9 THE COURT: I'm sorry?

10 MR. LYNCH: Are you talking about the wet ink note? Or are you talking
11 about just possession and the right to enforce it?

12 THE COURT: Well, all of the, I'm not exactly sure, I guess this is my
13 question, some of the facts here, I mean, he mentions the name York, and I saw
14 that, I'm not exactly sure how that plays with all the other parties. So I guess what
15 I'm asking for, do you -- to sort of phrase it more broadly is, do you have all the
16 predicate documents that are necessary to show that you actually have standing to
17 foreclose on -- bring this action and foreclose on the unpaid debt?

18 MR. LYNCH: I can't answer that exactly directly. But the exhibit that we
19 attached, the assignment of assignment -- the assignment of deed of trust and the
20 assignment of assignment of rents, the exhibit itself is a three-page document,
21 apparently you had this -- the wrong second page, this is why surreplys are not
22 allowed because not in -- it wasn't until yesterday that Mr. Larsen brought this
23 argument to my attention.

24 THE COURT: Right.

25 MR. LYNCH: Yesterday I asked our runners, unaffiliated with Lewis and

1 Roca, to go down to the -- to the Clark County Recorder's Office and pull the
2 document.

3 THE COURT: Oh, I don't -- I don't have that document.

4 MR. LYNCH: I pulled the document, here is the document, I gave a copy to
5 Mr. Larsen. It references Palmilla.

6 THE COURT: Okay.

7 MR. LYNCH: So the document that's on record with the Clark County
8 Recorder's Office is correct. The document I attached has an incorrect inclusion.
9 York Management is another loan that was handled.

10 THE COURT: Okay. I was wondering about that. But the document you
11 have right now, I don't -- I don't think I have a copy of that.

12 MR. LYNCH: No, you don't, Your Honor. We just, like I said, we just got
13 notice of this yesterday. The argument wasn't raised before yesterday. And that's
14 why surreplys are so difficult for Your Honor and also for moving counsel.

15 THE COURT: Right.

16 MR. LYNCH: I'm happy to give this to you. But to the extent Your Honor is
17 concerned about this, we would ask for a leave to file a response to the surreply.

18 THE COURT: Well, honestly, I was because they raised an issue that at least
19 appears, you know, based on the document that you say apparently was the wrong
20 document, appeared to have some facial merit to it, which is, you know, who was
21 York and what's the relation here, and --

22 MR. LYNCH: Correct.

23 THE COURT: -- and so based on what I had here, it was -- it was kind of an
24 issue. But you're saying that that was a mistake and you want to, I guess, submit
25 the new paperwork so I can at least look at it is what you're asking for, right?

1 MR. LYNCH: If Your Honor -- if Your Honor is interested considering the
2 surreply, which I think should be stricken because it was late-filed and it's not
3 allowed, there was no motion for leave to file a surreply, we'll point out that
4 defendants had an extra, about a week to file their opposition, gonna file, gonna file,
5 gonna file is not the same as having filed.

6 THE COURT: No, I understand. You know, I can't, you know, technically
7 deny a motion because hypothetically some -- there's a motion coming down the
8 pipe. But, I mean, at least in their opposition, they reference a couple of the
9 arguments that they're going to make although they're not fully flushed out. I mean,
10 if there's a legitimate statute of limitations issue here and they're not actually entitled
11 judgment as a matter of law, I mean, that's on issue, right?

12 MR. LYNCH: Let's address the statute of limitations argument because the
13 only arguments that are before -- that have been briefed in the opposition,
14 essentially there's two, there's one that says, well, you didn't foreclose, therefore,
15 there is no deficiency. And I suppose to the extent you define deficiency as the
16 amount remaining after a foreclosure --

17 THE COURT: Uh-huh.

18 MR. LYNCH: -- if that's the definition of deficiency, well, without a foreclosure
19 you technically don't have a deficiency because --

20 THE COURT: Right.

21 MR. LYNCH: However, there is -- there is an outstanding principal balance
22 on the loan. That has not been contested. We're not stating the amount of the loan
23 is \$13 million. It's approximately what I believe it is, that's not also -- that's also not
24 before the Court. What's not contested is the fact that there's a -- there's an
25 outstanding balance owed. The sale of the receivership is being challenged as a --

1 as a -- essentially, defendants want you to, the Court to say unless you foreclose,
2 any amount left over is wiped away. That may be the law in California, that's not the
3 law here in Nevada. There has been no case, no statute, no nothing provided by
4 defendants to suggest that without a foreclosure, the bank is not entitled to recover
5 the amount remaining on the loan. But whether you call that a deficiency action or
6 an action on a note or whatever you want to call it, it's not wiped away because you
7 failed to foreclose.

8 THE COURT: Well, let me ask you this, procedurally then, where we stand is
9 this, you know, as I noted, their opposition is, look, we've got these other -- this other
10 brief coming and he's been out of town, he hasn't had a chance to brief it and fully
11 brief this, which is going to -- which they say will raise other issues. You have this
12 new document that you just got yesterday.

13 MR. LYNCH: Correct.

14 THE COURT: Which I haven't seen yet, and you're saying that, well, that kind
15 of clarifies what I at least coming in here thought was a potential factual issue in
16 here. So procedurally where does that leave us? Because as of right now, you
17 know, all I have is what I have. And you're saying that, well, one of the documents
18 needs to be at least amended or substituted or whatever you want to call it. You're
19 saying that there's other arguments to be briefed.

20 So, procedurally, what do you both want to do? Because it sounds like
21 at the very least, both of you want to submit supplemental briefing. At the very least
22 you want to submit to me that new document which I haven't seen, right, which
23 clarifies what I indicated I thought was a possible factual dispute? So, what do you
24 want to do with this new documentation?

25 MR. LYNCH: Well, we filed the motion in April, you know, we heard this

1 argument yesterday, I've got the document that shows the record is correct. I'm not
2 sure why exactly we're doing supplemental briefing. I understand the Court's
3 reluctance, but --

4 THE COURT: Well, I mean, normally, I mean, normally, yeah, you're right,
5 technically speaking, normally supplemental briefing is improper except that when I
6 looked at the documents, you know, I -- you know, I guess here's the thing, okay,
7 summary judgment disposes at least of most of the case, and I'm a little bit hesitant
8 to do that even though the supplemental briefing is improper if there is a potential
9 issue out there that hasn't been cleared up.

10 MR. LYNCH: I understand.

11 THE COURT: I mean, yeah, granted they did, but they violated the rules, but,
12 you know, let's talk about the merits here.

13 MR. LYNCH: I understand.

14 THE COURT: And what you're saying is there was at least a mistake in your
15 papers.

16 MR. LYNCH: Correct.

17 THE COURT: So, the question is, you know, I'd like to consider what you
18 have, what you just pulled yesterday because that, at least would clarify one of the
19 questions I did have when I went through the papers. So, do you want to, I guess,
20 procedurally, what are we doing here? Do you want me to continue this for another
21 couple weeks for you to submit that with an, you know, with an affidavit and all
22 that --authenticating and all that kind of stuff, and then you can file what you want to
23 do? Or I just, I'm just asking, what's the easiest thing you guys think I should do?

24 MR. LARSEN: Well, that makes sense.

25 MR. LYNCH: Well, I --

1 THE COURT: The other way I can do it is just deny the motion, you can refile
2 it with the proper paperwork, you can file a response. I mean, but that seems like
3 it's more work for you guys.

4 MR. LARSEN: Well, Your Honor, we're definitely filing our motion for
5 summary judgment as to the issues we -- we've merely highlighted in our opposition.
6 But one of the -- the key -- the most significant issue that was briefed was what
7 extent does AB273 apply to this case.

8 THE COURT: Right.

9 MR. LARSEN: And that's what most of the briefs focused on.

10 THE COURT: Right.

11 MR. LARSEN: When plaintiff's counsel says that what is owed is undisputed,
12 that's just not true because it -- whatever amount the plaintiff would have paid for
13 this promissory note --

14 THE COURT: No, I understand. You're talking about, there's a -- there's a
15 central legal issue here. But they're also -- but, you know, my view coming in here
16 today not knowing that you had this other document was, before we event get to the
17 central legal issue, have they demonstrated that they have all the factual predicates
18 to even get there and with -- they're kind of saying that, look, you know, we screwed
19 up and gave you the wrong document, with this right document we do have it, and
20 then we can get to the legal issue. But I'm, my question is procedurally, you know, I
21 want to look at that document. They're saying it's important and it's part of their
22 case. I don't have it.

23 MR. LARSEN: Right.

24 THE COURT: So the question is how do you get that to me formally with the
25 affidavit authenticating it and all that kind of stuff, and then give you a chance to

1 respond to it? So, I'm asking procedurally from here on, what do you want to do in
2 terms of making sure the record is complete, we've got all the right paperwork, and
3 then we can dispose of all the legal issues?

4 MR. LARSEN: Right, well, I would suggest that you deny the motion at this
5 time without prejudice, let 'em supplement it because even with this document, we're
6 going to be coming right back and saying, where is the original note. We have the
7 right to know that this plaintiff actually is in possession of the note that forms the
8 basis of the obligation.

9 THE COURT: Sure, that's part of their burden, sure.

10 MR. LARSEN: And that's part, I mean, this is -- this is not a new concept.
11 This argument has been around for a couple of years now. We can even cite cases
12 to that effect.

13 Second of all, we've asked for discovery saying show us where you
14 would filed, in other words, this is a supposedly, this note is supposedly owned by
15 lots and lots of investors through some special trust. We want to see any S.E.C.
16 filings in relation to that to see what values they put on this note, what they
17 purchased it for. And we can argue now or we can wait until the Supreme Court
18 rules on cases that are way ahead of ours as to just what the effect of this AB273
19 has. We think it's very clear that the only section of that -- the legislature specifically
20 declared, and the easiest way to understand it is not through what any particular
21 legislator said, but what the notes say from the Legislative Counsel Bureau right at
22 the beginning where they specifically say, These sections apply prospectively, these
23 sections apply on the date of the act, and the only thing that's relevant here is
24 Section 5.5 which give a greater clarification of what the word indebtedness means
25 and it says it applies to effective --

1 THE COURT: All right. Here's what I'm going to do, I mean, just procedurally
2 because as I sit here right now in this instant, you guys are in possession of some
3 document that I don't have, which you both seem to agree has some relevance to
4 this motion. So here's what I'm going to do, I don't, instead of denying the motion
5 and making you file a whole different motion and all the expense, let's just do this,
6 I'm going to continue the hearing on this for maybe 21 days.

7 Mr. Lynch if you can file the document that you have with whatever
8 authentication you need plus whatever argument you have relating to it in, how
9 much time do you need to do that? We'll call that sort of a supplemental motion,
10 let's do it that way.

11 And then you said that you're going to file an opposition, why don't you,
12 I guess you can file it as a separate motion, or you can file it as a countermotion, I
13 don't know if you care either way. But that way, what we can do is maybe we can
14 hear all of this at the same time, your statute of limitations argument, your argument
15 of AB573, and hear it all at the same time. That seems -- and then that way I have
16 all the facts and all the documents before me. That seems like the easiest way to
17 do that.

18 What -- the question is, I know that you've been out of town, what kind
19 of time do you need to get all that together, whether you call it a countermotion or a
20 separate motion? What I'm going to do now is set a hearing date on everything so
21 we can just wrap it all up. That seems like the easiest way to do it.

22 MR. LARSEN: Well, if we filed it as a separate motion, which is what I think
23 should be done, just --

24 THE COURT: Then it's another 30 days from whenever you file it. But I'd
25 like -- but the problem is then, you know, then we have two hearings on legal

1 arguments that are sort of interwoven or at least have some impact on each other.
2 What I'd -- that's why I don't -- what I'm trying to do is set a hearing date where we
3 hear it all together.

4 MR. LARSEN: All right. Well, I would -- let's see --

5 THE COURT: I mean, if you can have it filed this week, I'll just set it out
6 maybe 30 days from this week and then we can just, you know, hear it all at once.

7 MR. LARSEN: Yeah. I've got a couple other briefs in other cases due on
8 Friday, I've got another deposition on Friday. I would be pressed to get it done this
9 week. If I had -- I mean, I've worked on it all over this last three-day weekend. I
10 would like to say by next Wednesday, a week from today.

11 THE COURT: Okay. Mr. Lynch, do you need the full time to respond?
12 Because I think they've sort of at least given you a brief preview of where they're
13 going with this motion, do you -- do you think you need to full ten days, or if I set it
14 out 30 days from today and that sort of cuts your opposition, may cut your
15 opposition time a little bit, does that bother you? Do you still want the full --

16 MR. LARSEN: Well, I would say this, he probably would.

17 THE COURT: Okay.

18 MR. LARSEN: What we gave was a merely a skeletal sketch.

19 THE COURT: Okay.

20 MR. LARSEN: There's a lot of meat to the bone that being added in this brief.

21 MR. LYNCH: Yeah, I'd be more comfortable with going out six weeks.

22 THE COURT: Okay.

23 MR. LYNCH: Or even eight weeks, just get Mr. Larsen enough time to where
24 he can brief it.

25 THE COURT: Right.

1 MR. LYNCH: Enough time where I can oppose it, and enough time that we
2 don't see these day-before-the-hearing filings.

3 THE COURT: Right. And I can get all the documents that I need and all that
4 kind of stuff. All right, let's do this then, you want to set it out 45 days and go from
5 there on the assumption that you'll file your motion next week and we'll hear it all at
6 the same time then? Do you want to try that? Or do you -- is that not enough time
7 for you?

8 MR. LARSEN: Well, 45 days is enough. I have a family vacation in the
9 middle of July that I need to be -- work around.

10 MR. LYNCH: Well, let's go 30 then.

11 THE COURT: All right. How -- let's go what? How about 45 -- how about --
12 today is the end of May.

13 MR. LARSEN: If it's the second week of July, I'm okay with it.

14 THE COURT: June, July, all right, what about 60 days then? Whatever that
15 is.

16 THE CLERK: August 1st.

17 THE COURT: Does that work for you?

18 MR. LARSEN: Yeah.

19 MR. LYNCH: Mr. Larsen just mentioned, I'm not sure if Your Honor heard, the
20 second week of July is okay with him.

21 THE COURT: Oh, no, I didn't hear that. Second week of July, is that enough
22 time for everybody?

23 THE CLERK: July 11th.

24 MR. LYNCH: That's fine for me.

25 THE COURT: Want to try that?

1 MR. LARSEN: Sure.

2 THE COURT: All right, let's do July 11th, that will be on -- a continued hearing
3 on this motion and whatever supplement you want to file with this document that
4 you're referring to. And then when you file your motion next week, what's going to
5 happen is you're going to get a date, a hearing date from the clerk, but when we get
6 the motion, we'll just change it in chambers to that same date.

7 MR. LARSEN: Very good.

8 THE COURT: Does that work for you?

9 MR. LARSEN: Sure.

10 THE COURT: All right. I'll see you guys back then. And that way I'll have
11 everything and I can -- we can just, you know, argue it all and take care of it all at
12 once then.

13 MR. LYNCH: Thank you, Judge.

14 THE COURT: All right. See you guys then.

15 THE CLERK: July 11th, 9:00 a.m.

16 MR. LARSEN: All right. Thank you.

17 PROCEEDING CONCLUDED AT 9:27 A.M.

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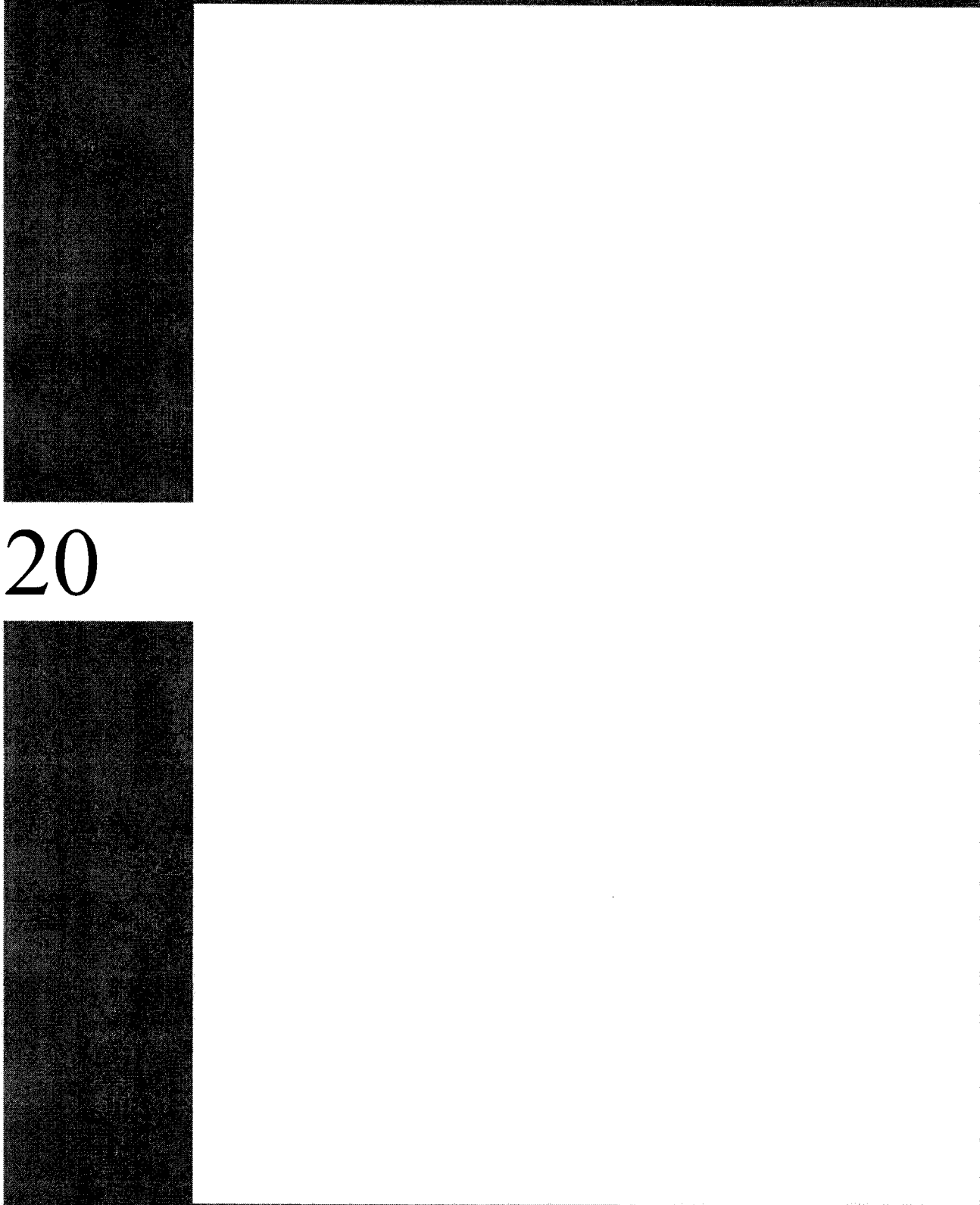
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
video recording of this proceeding in the above-entitled case.

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SARA RICHARDSON
Court Recorder/Transcriber

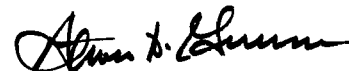


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ORIGINAL

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 2 **MICHAEL F. LYNCH**
 Nevada Bar No. 8555
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 3 **LEWIS AND ROCA LLP**
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 4 Las Vegas, Nevada 89169-5996
 Telephone: (702) 4123-8282
 5 Facsimile: (702) 216-6191



CLERK OF THE COURT

6 *Attorneys for Plaintiff*

7
 8 **DISTRICT COURT**
 9 **CLARK COUNTY, NEVADA**

10 U.S. Bank National Association as Trustee For
 11 The Registered Holders of ML-CFC
 Commercial Mortgage Trust 2007-7
 Commercial Mortgage Pass-Through
 12 Certificates Series 2007-7, by and through
 Midland Loan Services, Inc., as its Special
 13 Servicer,

14 Plaintiff,

15 vs.

16 Palmilla Development Co., Inc., a Nevada
 corporation; Hagai Rapaport, an individual;
 17 and Does I to X; and Roe Corporations X to
 XX,

18 Defendants.
 19

Case No. 09-A-595321

Dept. No. 20

**DECLARATION OF ANDREA HELM IN
 SUPPORT OF PLAINTIFF'S MOTION
 FOR PARTIAL SUMMARY JUDGMENT
 AND REQUEST FOR DEFICIENCY
 HEARING PURSUANT TO NRS 40.457**

Date of (continued) Hearing: 7/11/2012
Time of (continued) Hearing: 9:00 a.m.

20 I, Andrea Helm, make the following declarations:

21 1. I am an asset manager at Midland Loan Services, a division of PNC Bank, National
 22 Association ("Midland"), the special servicer for U.S. Bank National Association ("U.S. Bank") as
 23 Trustee For The Registered Holders of ML-CFC Commercial Mortgage Trust 2007-7 Commercial
 24 Mortgage Pass-Through Certificates Series 2007-7 ("ML-CFC").

25 2. I am over 21 years old and make the following statements based on my personal
 26 knowledge, and can testify to these matters if called to testify before the court. With respect to
 27 matters based upon information and belief, I believe the statements made to be true and correct.

1 3. I make this declaration in support of Plaintiff's Motion for Partial Summary
2 Judgment and Request for Deficiency Hearing Pursuant To NRS 40.457 in the above-entitled case
3 number A-09-595321-C.

4 4. I have personally reviewed the business records of Midland, U.S. Bank, and ML-
5 CFC in the ordinary course of business and based upon my involvement in monitoring the history
6 of the transactions giving rise to the Loan (defined below) and the assignment of the Loan.

7 5. It is Midland's, U.S. Bank's, and ML-CFC's practices and procedures to maintain
8 records and to record transactions, acts, conditions and events concerning Midland, U.S. Bank,
9 and ML-CFC and their various loans, including the Loan (defined below), at or about the time of
10 such transactions, acts, conditions, or events occur. Midland, U.S. Bank, and ML-CFC rely upon
11 these records in connection with its business dealings with borrowers.

12 6. As part of my duties at Midland, I monitor the performance of loan, including the
13 Loan (defined below). In that capacity, I am personally familiar with the manner in which
14 Midland's, U.S. Bank's, and ML-CFC's documents, books, files and records are prepared and
15 maintained.

16 7. I have personally reviewed the business records of Midland, U.S. Bank, and ML-
17 CFC concerning the Loan (defined below). Based upon this review, I have reached the following
18 conclusions.

19 **The Loan Transactions**

20 8. Palmilla Development Co., Inc., a Nevada corporation ("Borrower") borrowed
21 \$20,150,000.00 with interest from Artesia Mortgage Capital Corporation, a Delaware corporation
22 ("Original Lender") on or about March 28, 2007 (the "Loan").

23 9. The Loan is evidenced by, among other things, that certain Fixed Rate Note dated
24 March 28, 2007, bearing an authorized signature on behalf of the Borrower (the "Promissory
25 Note"). A true and correct copy of the Promissory Note is attached hereto as **Exhibit 1**.

26 10. The Loan was secured by that certain Commercial Deed of Trust, Security
27 Agreement, Fixture Filing Financing Statement and Assignment of Leases, Rents, Income and
28 Profits (as same may have been amended) recorded in the Clark County Recorders' Office as

1 Document No. 20070330-0002946 ("Deed of Trust"). *See* Deed of Trust, a true and correct copy
2 of which is attached and incorporated by this reference as **Exhibit "2"**.

3 11. The Loan was further secured by that certain Assignment of Leases, Rents, Income
4 and Profits (as same may have been amended) recorded in the Clark County Recorders' Office as
5 Document No. 20070330-0002947 ("Assignment of Rents"). *See* Assignment of Rents, a true and
6 correct copy of which is attached and incorporated by this reference as **Exhibit "3"**.

7 12. Original Lender assigned all of its rights and interests in and to the Deed of Trust
8 and the Assignment of Rents to LaSalle Bank National Association as Trustee For The Registered
9 Holders of ML-CFC Commercial Mortgage Trust 2007-7 Commercial Mortgage Pass-Through
10 Certificates Series 2007-7 pursuant to that certain Assignment of (a) Commercial Deed of Trust,
11 Security Agreement, Fixture Filing Financing Statement and (b) Assignment Of Leases, Rents,
12 Income and Profits And Assignment of Assignment of Leases, Rents, Income and Profits recorded
13 in the Clark County Recorders' Office as Document No. 20080103-0000543 (the "Assignment of
14 Deed of Trust"). *See* Assignment of Deed of Trust, a true and correct copy of which is attached
15 and incorporated by this reference as **Exhibit "4"**.

16 13. LaSalle Bank resigned its position as trustee on or about June 30, 2008, and Wells
17 Fargo Bank, N.A., was appointed as successor trustee. A true and correct copy of the Resignation
18 of Trustee and Notice of Appointment of Successor Trustee are collectively attached hereto and
19 incorporated herein by this reference as **Exhibit "5"**.

20 14. Wells Fargo Bank, N.A., then resigned its position as trustee on or about December
21 30, 2008, and U.S. Bank National Association was appointed as successor trustee. A true and
22 correct copy of the Resignation of Trustee and Notice of Appointment of Successor Trustee are
23 collectively attached hereto and incorporated herein by this reference as **Exhibit "6"**.

24 15. Pursuant to the Assignment of Deed of Trust, Plaintiff holds all beneficial interest
25 under the Deed of Trust and the Assignment of Rents, and is thereby authorized and empowered to
26 bring this action.

27 16. On Plaintiff's Application, this Court appointed a Receiver in this action on
28 September 3, 2009, to take possession, custody, and control of the real property secured by the

Deed of Trust (the "Property"), as said order was amended on May 19, 2010 (the "Order Appointing Receiver"). A true and correct copy of the Order Appointing Receiver is attached hereto and incorporated herein by this reference as **Exhibit "7"**.

17. Upon the unopposed Motion to Approve Sale, the proposed sale of the Property for \$9,500,000.00 was approved, and the Court entered the following findings:

- a. The Lender has provided sufficient notice of the proposed sale and PSA to all necessary parties to this action;
- b. The PSA is hereby approved as a full and final disposition of the Property;
- c. The purchase price contained within the PSA is in the range of fair market value for the Property, is commercially reasonable, and is an arms' length transaction; and
- d. The Receiver is hereby authorized to sell and to fully convey all of the interest of Palmilla Development Co., Inc., a Nevada corporation ("Borrower"), in the Property, to Buyer, and is hereby authorized to execute and deliver all documents, including without limitation a deed to convey title to the Property of Borrower, in order to consummate the sale and fully and finally convey ownership of the Property in its entirety.

See Order Granting Motion to Approve Sale of Receivership Property, on file herein and attached for ease of reference as **Exhibit "8"**.

18. The amount realized from the receiver's sale is substantially less than the amount owing under the Loan, leaving a deficiency in an amount to be proven.

19. The Loan was and is personally guarantied by Hagai Rapaport ("Guarantor") under a guaranty which provides:

(b) Guarantor shall be and remain personally liable without exculpation or limitation of liability whatsoever for the entire amount of the indebtedness evidenced by the Note (including all principal, interest, and other charges) and all other sums due or to become due under the other Loan Documents, whether at maturity or by acceleration or otherwise, in the following instances:

(iv) the Property or any part thereof becomes an asset in: (1) a voluntary bankruptcy or insolvency proceeding commenced by Borrower; or (2) an involuntary bankruptcy or insolvency

proceeding in which: (A) such proceeding was commenced by any entity controlling, controlled by or under common control with Borrower (individually or collectively, "Affiliate"), including but not limited to any creditor or claimant acting in concert with Borrower or any Affiliate; or (B) any Affiliate objects to a motion by Lender for relief from any stay or injunction from the foreclosure of the Security Instrument or any other remedial action permitted under the Note, Security Instrument or other Loan Documents.


See Limited Recourse Obligations Guarantee, a true and correct copy of which is attached and incorporated by this reference as **Exhibit "9"**.

20. The above-referenced instance was triggered, making the guaranty a full recourse guaranty, when Borrower filed its involuntary bankruptcy petition and thereby made the Property an asset of Borrower's bankruptcy filing. See Schedules filed in Borrower's bankruptcy case 1:09-bk-11504-MT, a true and correct excerpt of which is attached and incorporated by this reference as **Exhibit "10"**.

21. On information and belief, however, no discharge was granted because Borrower's bankruptcy was later dismissed. See Notice of Dismissal entered in Borrower's bankruptcy case 1:09-bk-11504-MT, a true and correct excerpt of which is attached and incorporated by this reference as **Exhibit "11"**.

22. Borrower and Guarantor are equally and unconditionally liable for the full amount of Borrower's indebtedness.

Under penalties of perjury of the State of Nevada, I declare that the Declarations herein above are true of my own knowledge.


Andrea Helm

Respectfully submitted by:

LEWIS AND ROCA LLP



MICHAEL F. LYNCH, ESQ.

Nevada Bar No. 8555

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(702) 413-8282

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Attorneys for Plaintiff

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List of Exhibits

1. Promissory Note
2. Deed of Trust
3. Assignment of Rents
4. Assignment of Deed of Trust
5. LaSalle's Resignation of Trustee and Notice of Appointment of Successor Trustee
6. Wells Fargo's Resignation of Trustee and Notice of Appointment of Successor Trustee
7. Order Appointing Receiver
8. Order Granting Motion to Approve Sale of Receivership Property
9. Limited Recourse Obligations Guarantee
10. Schedules filed in Borrower's bankruptcy case 1:09-bk-11504-MT
11. Notice of Dismissal entered in Borrower's bankruptcy case 1:09-bk-11504-MT

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the foregoing document was made this day by depositing a
3 copy for mailing, first class mail, postage prepaid, at Las Vegas, Nevada, to the following:

4 Brent Larsen, Esq.
5 DEANER, DEANER, SCANN, MALAN & LARSEN
6 720 S. Fourth Street, #300
7 Las Vegas, NV 89101
8 And by email to blarsen@deanerlaw.com

9 Dated June 28, 2012.

10 Marja M Bigak
11 An employee of Lewis and Roca LLP

Exhibit 1

666000

666000

Exhibit 1

LOAN NO.: 810-00001885

FIXED RATE NOTE
[Defeasance]

\$20,150,000.00

March 28, 2007

1. BORROWER'S PROMISE TO PAY.

FOR VALUE RECEIVED, the undersigned, PALMILLA DEVELOPMENT CO., INC., a(n) Nevada corporation, having an office at 235 West Brooks Avenue, 2nd Floor, North Las Vegas, Nevada 89030 ("Borrower"), hereby unconditionally promises to pay to the order of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation (together with its successors and assigns, "Lender"), the principal sum of Twenty Million One Hundred and Fifty Thousand and 00/100 Dollars (\$20,150,000.00), in lawful money of the United States of America with interest thereon to be computed from the date of disbursement under this Note at the Applicable Interest Rate (defined below), and to be paid in installments as provided herein. Any initially capitalized terms which are not specifically defined in this Note shall have the same meanings given to them in the Security Instrument (defined below).

2. INTEREST.

Interest on the principal sum of this Note shall be calculated on the basis of a 360-day year and will be payable on the basis of the actual number of days elapsed. Borrower shall pay interest at the rate of Five and Seventy-Five Hundredths percent (5.75%) per annum (the "Applicable Interest Rate"). If Borrower fails to pay any amount when due under this Note, in addition to any other rights possessed by the Lender, any accrued but unpaid interest may be added to the unpaid principal and accrue interest at the Default Rate (defined below). The first interest accrual period under this Note shall commence on and include the date that principal is advanced under this Note and shall end on and include the next tenth (10th) day of a calendar month, unless principal is advanced on the tenth (10th) day of a calendar month, in which case the first interest accrual period shall consist of only such tenth (10th) day. Each interest accrual period thereafter shall commence on the eleventh (11th) day of each calendar month during the term of this Note and shall end on and include the tenth (10th) day of the next occurring calendar month.

3. PAYMENTS.

(a) **Time and Amounts of Payments.** Borrower shall pay principal and interest by making payments as follows:

(i) Accrued interest only at the Applicable Interest Rate shall be due and payable (aa) on the date that principal is advanced under this Note for the period from the date of disbursement hereunder through and including the tenth (10th) day of the current calendar month (if the date of disbursement hereunder is on or after the first (1st) day of a calendar month and prior to the eleventh (11th) day of a calendar month) or the tenth (10th) day of the next succeeding calendar month (if the date of disbursement hereunder is on or after the eleventh (11th) day of the current calendar month), and (bb) on May 11, 2007, and on the eleventh (11th) day of each calendar month thereafter up to and including April 11, 2008;

(ii) A constant payment in the amount of U.S. \$111,532.40 (the "Constant Payment"), on May 11, 2008, and on the eleventh (11th) day of each calendar month thereafter up to and including March 11, 2018; each of such payments to be applied to the payment of interest computed at the Applicable Interest Rate, and the balance applied toward the reduction of the principal sum; and

IN THE SUPREME COURT OF NEVADA

U.S. BANK NATIONAL ASSOCIATION as
trustee for the Registered Holders of ML-
CFC Commercial Mortgage Trust 2007-7
Commercial Mortgage Pass-Through
Certificates Series 2007-7, by and through
MIDLAND LOAN SERVICES, as its Special
Servicer,

Appellant,

vs.

PALMILLA DEVELOPMENT CO., INC., a
Nevada corporation, and HAGAI RAPAPORT,
an individual,

Respondents.

Electronically Filed
Aug 27 2013 09:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JEROME T. TAO, District Judge
District Court Case No. A595321

**APPELLANT'S APPENDIX
VOLUME 4
PAGES 751-1000**

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ROBERT M. CHARLES, JR.
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Attorneys for Appellant

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01	Complaint	07/16/09	1	01-122
02	Defendant's Opposition to Application for Order to Show Cause	08/12/09	1	123-145
03	Notice of Entry of Order Appointing Receiver	09/09/09	1	146-164
04	Notice of Filing Exhibit in Support of Plaintiff's Motion to Approve Sale of Receivership Property	02/24/10	1	165-211
05	Notice of Non-Opposition to Motion to Approve Sale of Receivership Property	03/10/10	1	212-215
06	Order Granting Motion to Approve Sale of Receivership Property	03/26/10	1	216-222
07	Motion to Approve Receiver's Final Accounting and Report and to Discharge Receiver	09/02/10	1 2	223-250 251-293
08	Notice of Entry of Order Granting Motion Seeking Approval of Receiver's Final Accounting and Report and to Discharge Receiver	11/02/10	2	294-299
09	First Amended Complaint	11/24/10	2	300-423
10	Second Amended Complaint	04/11/11	2 3	424-500 501-557
11	Motion to Dismiss, or in the Alternative, Motion to Require a Substantial Bond from Plaintiff and to Stay the Proceedings Until the Bond is Posted	06/13/11	3	558-599
12	Opposition to Defendant's Motion to Dismiss, or in the Alternative, Motion to Require a Substantial Bond from Plaintiff and to Stay the Proceedings Until the Bond is Posted	06/30/11	3	600-667
13	Defendants' Answer to Second Amended Complaint	08/19/11	3	668-678
14	Notice of Entry of Order Denying Defendants' Motion to Dismiss	09/13/11	3	679-683
15	Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing Pursuant to NRS 40.457	04/25/12	3 4	684-750 751-908

16	Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment	05/16/12	4	909-958
17	Reply in Support of Motion for Partial Summary Judgment and Request for Deficiency Hearing Pursuant to NRS 40.457	05/25/12	4	959-968
18	Defendants' Supplemental Opposition to Plaintiff's Motion for Partial Summary Judgment	05/29/12	4	969-974
19	Recorder's Transcript of Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing	05/30/12	4	975-990
20	Declaration of Andrea Helm in Support of Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing Pursuant to NRS 40.457	06/28/12	4 5	991-1000 1001-1178
21	Defendants' Motion for Summary Judgment	07/05/12	5 6	1179-1250 1251-1312
22	Plaintiff's Objection to Motion for Summary Judgment	07/23/12	6	1313-1352
23	Reply Brief in Support of Defendants' Motion for Summary Judgment	08/03/12	6	1353-1401
24	Recorder's Transcript of Defendant's Motion for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing	08/08/12	6	1402-1423
25	Order Granting Defendants' Motion for Summary Judgment	08/16/12	6	1424-1444
26	Plaintiff's Motion to Alter or Amend Order Granting Defendants' Motion for Summary Judgment Pursuant to NRCP 52(B) and 59(E); Alternatively, Motion for Reconsideration of order Granting Defendants' Motion for Summary Judgment	08/31/12	6 7	1445-1500 1501-1596
27	Declaration of Andrea Helm in Support of Plaintiff's Motion to Alter or Amend Order Granting Defendants' Motion for Summary Judgment Pursuant to NRCP 52(B) and 59(E); Alternatively, Motion for Reconsideration or order granting Defendants' Motion for Summary Judgment	09/13/12	7	1597-1610
28	Opposition to Plaintiff's Motion to Amend Order or, Alternatively, Motion for Reconsideration	09/20/12	7	1611-1654

29	Reply in Support of Plaintiff's Motion to Alter or Amend Order Granting Defendants' Motion for Summary Judgment Pursuant to NRCP 52(B) and 59(E); Alternatively, Motion for Reconsideration of order Granting Defendants' Motion for Summary Judgment	10/04/12	7 8	1655-1750 1751-1826
30	Notice of Entry of Judgment	10/12/12	8	1827-1859
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09	First Amended Complaint	11/24/10	2	300-423
07	Motion to Approve Receiver's Final Accounting and Report and to Discharge Receiver	09/02/10	1 2	223-250 251-293
11	Motion to Dismiss, or in the Alternative, Motion to Require a Substantial Bond from Plaintiff and to Stay the Proceedings Until the Bond is Posted	06/13/11	3	558-599
31	Notice of Appeal	11/09/12	8	1860-1896
30	Notice of Entry of Judgment	10/12/12	8	1827-1859
03	Notice of Entry of Order Appointing Receiver	09/09/09	1	146-164

14	Notice of Entry of Order Denying Defendants' Motion to Dismiss	09/13/11	3	679-683
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28	Opposition to Plaintiff's Motion to Amend Order or, Alternatively, Motion for Reconsideration	09/20/12	7	1611-1654
25	Order Granting Defendants' Motion for Summary Judgment	08/16/12	6	1424-1444
06	Order Granting Motion to Approve Sale of Receivership Property	03/26/10	1	216-222
15	Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing Pursuant to NRS 40.457	04/25/12	3 4	684-750 751-908
26	Plaintiff's Motion to Alter or Amend Order Granting Defendants' Motion for Summary Judgment Pursuant to NRCp 52(B) and 59(E); Alternatively, Motion for Reconsideration of order Granting Defendants' Motion for Summary Judgment	08/31/12	6 7	1445-1500 1501-1596
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24	Recorder's Transcript of Defendant's Motion for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing	08/08/12	6	1402-1423
19	Recorder's Transcript of Plaintiff's Motion for Partial Summary Judgment and Request for Deficiency Hearing	05/30/12	4	975-990
23	Reply Brief in Support of Defendants' Motion for Summary Judgment	08/03/12	6	1353-1401

17	Reply in Support of Motion for Partial Summary Judgment and Request for Deficiency Hearing Pursuant to NRS 40.457	05/25/12	4	959-968
29	Reply in Support of Plaintiff's Motion to Alter or Amend Order Granting Defendants' Motion for Summary Judgment Pursuant to NRCP 52(B) and 59(E); Alternatively, Motion for Reconsideration of order Granting Defendants' Motion for Summary Judgment	10/04/12	7 8	1655-1750 1751-1826
10	Second Amended Complaint	04/11/11	2 3	424-500 501-557

(12) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Secured Obligations in such order, priority and proportions as Lender shall determine; or

(13) pursue such other remedies as Lender may have under applicable state or federal law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 2.02(a) hereof to the contrary, if any Event of Default as described in clause (h), (i), (j) or (k) of Section 2.01 hereof shall occur, the entire unpaid Secured Obligations shall be automatically due and payable, without any further notice, demand or other action by Lender.

(b) **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Secured Obligations in such priority and proportions as Lender shall determine.

(c) **Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Secured Obligations. The cost and expense of any cure hereunder (including, without limitation, attorneys' fees to the extent permitted by law), with interest as provided in this Section 2.02(c) hereof, shall constitute a portion of the Secured Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Secured Obligations and shall be immediately due and payable upon demand by Lender therefor.

(d) **Actions and Proceedings.** Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender decides should be brought to protect its interest in the Property.

(e) **Recovery of Sums Required To Be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Secured Obligations as the same become due, without regard to whether or not the balance of the Secured Obligations shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

(f) **Examination of Books and Records.** Lender, its agents, accountants and attorneys shall have the right upon reasonable prior notice to Borrower (unless an Event of Default exists, in which case no notice shall be required), to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower and its affiliates or of any Guarantor or Indemnitor which pertain to their financial condition or the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor.

where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers.

(g) Other Rights, etc.

(1) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (1) the failure of Lender or Trustee to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (2) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Secured Obligations or any portion thereof, or (3) any agreement or stipulation by Lender extending the time of payment, changing the rate of interest, or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(2) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the insurance policies required pursuant to Section 1.07 hereof, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief. If any such possession is requested or obtained, with respect to any portion of the Property, or collateral not in Lender's possession.

(3) Lender may resort for the payment of the Secured Obligations to any other security held by Lender in such order and manner as Lender may elect. Lender or Trustee may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(h) Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other Property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

(i) Violation of Laws. If the Property is not in compliance with applicable laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

(j) Right of Entry. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times. Except in case of emergency, such entries shall be with reasonable prior notice and shall be with due regard for rights of tenants.

**ARTICLE 3.
ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS**

3.01 Assignment; Priority of Assignment. Borrower (referred to in this Article 3 as "Assignor") hereby irrevocably, absolutely, presently and unconditionally grants, sells, assigns, transfers, pledges and sets over to Lender (referred to in this Article 3 as "Assignee"):

(a) any and all Leases, together with all of Assignor's right, title and interest in and to the Leases including, without limitation, all modifications, amendments, extensions and renewals of the Leases and all rights and privileges incident thereto and all demands of claims arising thereunder (including, without limitation, any cancellation fees or other premiums collected in connection with the Leases) or under any policies insuring against loss of rents or profits;

(b) all Rents, including, without limitation, expenses paid by tenants; and

(c) all security deposits, guarantees and other security now or hereafter held by Assignor as security for the performance of the obligations of the tenants under such Leases.

The foregoing assignment of Rents and Leases is intended by Assignor and Assignee to create and shall be construed to create a present and absolute assignment to Assignee of all of Assignor's right, title and interest in the Rents and in the Leases and shall not be deemed to create merely an assignment for security only for the payment of any indebtedness or the performance of any obligations of Assignor under any of the Loan Documents. This assignment is included within the text of this Security Instrument for convenience only, but such inclusion shall not derogate from its effectiveness any other assignment of Rents or Leases contained in any other Loan Documents or otherwise and all shall be supplementary to one another.

Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Assignee with respect to any Lease, including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the tenant under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such tenant shall have been thereby terminated. Assignor and Assignee further agree that, during the term of this Security Instrument, the Rents shall not constitute property of Assignor (or of any estate of Assignor) within the meaning of 11 U.S.C. §541, as may be amended from time to time.

Assignor hereby represents and warrants that (i) Assignor has good title to the Leases and the full power and right to assign the Leases; (ii) no other persons have any title or interest in the Leases; (iii) the Leases are in full force and effect and have not been modified except as set forth in the certified occupancy statement delivered to and approved by Assignee; (iv) there are no defaults under any of the Leases; (v) no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding; (vi) all Rents due have been paid in full; (vii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (viii) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (ix) the property demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (x) there exist no offsets or defenses to the payment of any portion of the Rents; (xi) Assignor has received no notice from any tenant challenging the validity or enforceability of any Lease; (xii) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (xiii) the Leases are valid and enforceable against Assignor and the tenants set forth therein; (xiv) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (xv) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (xvi) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recordable subordination agreement; (xvii) no Lease has the benefit of a non-disturbance agreement other than the non-disturbance agreements executed by the Lender in connection with the closing of the Loan and the non-disturbance provisions contained within the Lease(s) provided by the Borrower and reviewed by the Lender in connection with the closing of the Loan; (xviii) all security

deposits relating to the Leases reflected on the certified rent roll delivered to Assignee have been collected by Assignor; and (xix) no brokerage commissions or finders fees are due and payable regarding any Lease.

Assignor shall take such action and execute, deliver and record such documents as may be reasonably necessary to evidence such assignment, to establish the priority thereof and to carry out the intent and purpose hereof.

Assignor shall faithfully perform and discharge all of Assignor's obligations under the Leases and to enforce all obligations undertaken by tenants thereunder. Assignor shall defend Assignee in any action relating to the Leases and shall indemnify, defend and hold Assignee harmless from and against any claims of tenants or third parties with respect to the Leases. Assignor shall not receive or collect any Rents in advance of the date due or waive or defer any terms of the Leases without the consent of Assignee. Assignor shall not pledge, assign or further encumber the Leases or any Rents or (except as is permitted by Section 1.26(b) above) modify or terminate the Leases, or permit any assignment or sublease thereunder, without Assignee's prior written consent. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at the option of Assignee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Assignor, Trustee or Assignee, for all such Rents, and apply the same to the Secured Obligations.

3.02 Grant of Revocable License to Collect Rents. So long as an Event of Default shall not have occurred and be continuing under this Security Instrument, Assignee hereby grants to Assignor a revocable license to enforce the Leases, to collect the Rents, to apply the Rents to the payment of the costs and expenses incurred in connection with the Property and to any Secured Obligations. If requested by Assignee, Assignor shall (a) give written notice to the tenants under the Leases of the assignment of Rents and Leases by Assignor to Assignee pursuant to Section 3.01 hereof, of the grant of the revocable license by Assignee to Assignor pursuant to this Section 3.02, and of the respective rights of Assignor and Assignee under this Article 3; and (b) obtain such tenants' agreements to be bound by and comply with the provisions of such assignment and grant. All Leases hereafter executed with respect to the Property shall contain a reference to the foregoing assignment and grant and shall state that the tenant executing such Lease shall be bound by and shall comply with the provisions hereof.

3.03 Revocation of License; Assignee's Rights. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, subject to applicable laws, the license granted to Assignor hereunder shall automatically be revoked. Upon such revocation, Assignor shall promptly deliver to Assignee all Rents then held by or for the benefit of Assignor. Assignee, in addition to any other rights granted to Assignee under this Security Instrument, shall have the right: (i) to notify the tenants under the Leases that Assignor's license to collect Rents has been revoked, and, with or without taking possession of the Property, to direct such tenant to thereafter make all payments of Rent and to perform all obligations under its Lease to or for the benefit of Assignee or as directed by Assignee; (ii) to enter upon the Property and to take over and assume the management, operation and maintenance of the Property, to enforce all Leases and collect all Rents due thereunder, to amend, modify, extend, renew and terminate any or all Leases and execute new Leases; and (iii) to perform all other acts which Assignee shall determine to be necessary or desirable to carry out the foregoing. Each tenant under any Lease shall be entitled to rely upon any notice from Assignee and shall be protected with respect to any payment of Rent made pursuant to such notice, irrespective of whether a dispute exists between Assignor and Assignee with respect to the existence of an Event of Default or the rights of Assignee hereunder. The payment of Rent to Assignee pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Assignee shall not cause Assignee to assume or be bound by the provisions of such Lease including, without limitation, the duty to return any security deposit to the tenant under such Lease unless and to the extent such security deposit was paid to Assignee by Assignor. Assignor shall indemnify, defend and hold Assignee harmless from and against any and all losses, claims, damage or liability arising out of any claim by a tenant with respect thereto.

3.04 **Application of Rents; Security Deposits:** All Rents received by Assignee pursuant to this Security Instrument shall be applied by Assignee, as determined by Assignee, to any of the following: (i) the costs and expenses of collection, including, without limitation, attorneys' fees and receivership fees, costs and expenses; (ii) the costs and expenses incurred in connection with the management, operation and maintenance of the Property; (iii) the establishment of reasonable reserves for working capital and for anticipated or projected costs and expenses, including, without limitation, capital improvements which may be necessary or desirable or required by law; and (iv) the payment of any indebtedness then owing by Assignor to Assignee. In connection therewith, Assignor further agrees that all Rents received by Assignee from any tenant may be allocated first, if Assignee so elects, to the payment of all current obligations of such tenant under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Assignor's license to collect such Rents. Assignee may, but shall have no obligation to, pursue any tenant for the payment of Rent which may be due under its Lease with respect to any period prior to the exercise of Assignee's rights hereunder or which may become due thereafter. Assignor agrees that the collection of Rents by Assignee and the application of such Rents by Assignee to the costs, expenses and obligations referred to in this Section 3.04 shall not cure or waive any default or Event of Default or invalidate any act (including, without limitation, any sale of all or any portion of the Property now or hereafter securing the Loan) done in response to or as a result of such default or Event of Default or pursuant to any notice of default or notice of sale issued pursuant to any Loan Document.

3.05 **No Mortgagee In Possession:** Nothing contained in this Security Instrument shall be construed as constituting Assignee a "mortgagee in possession" in absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

ARTICLE 4. SECONDARY MARKET

4.01 **Transfer of Loan.** Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any rating agency ("Rating Agency") rating such Securities (collectively, the "Investor") and each prospective investor, all documents and information which Lender now has or may hereafter acquire relating to the Loan and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower shall cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably required by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such investors or such prospective investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower as may be requested by Lender, any investor or any prospective investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer (including, without limitation, any subservicer or master servicer) or agent. Lender may make such assignment or delegation on behalf of the investors if the Note is sold or this Security Instrument or the other Loan Documents are assigned. All references to "Lender" in the Loan Documents shall refer to and include any such servicer or agent, to the extent applicable, in each case as designated by Lender, from time to time.

4.02 **Conversion to Registered Form.** At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "Registrar") acceptable to Lender which

shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the U.S. Internal Revenue Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligations of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Lender or any other Lender in respect of transfers of the Note and this Security Instrument (other than taxes and governmental charges and fees).

4.03 Estoppel Certificate. Upon any transfer or proposed transfer contemplated by Section 4.01 above, at Lender's request, Borrower, or any guarantors or indemnitors shall provide an estoppel certificate to the investor or any prospective investor in such form, substance and detail as Lender, such investor or prospective investor may require.

ARTICLE 5. FURTHER ASSURANCES

5.01 Recording of Security Instrument; Other Assurances. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note or deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

5.02 Further Acts. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender and Trustee the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this paragraph. Borrower specifically agrees that all power granted to Lender under this Security Instrument may be assigned by Lender to its successors or assigns as holder of the Note.

5.03 Changes in Laws Regarding Taxation; Documentary Stamps.

(a) In the event of the passage after the date of this Security Instrument of any law of the State where the Property is located deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or loans secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, (including, without limitation, a withholding tax) either directly or indirectly, on this Security Instrument, the Note or the Loan, Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand in Lender, whichever is less, provided, however, that if, in the opinion of the attorneys for Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the right, at its option, to declare the Loan due and payable on a date specified in a prior notice to Borrower of not less than thirty (30) days. Any prepayment made by Borrower pursuant to the terms of this paragraph shall be made without any Prepayment Charge (as defined in the Note).

(b) If at any time the United States of America, any State thereof, or any governmental subdivision of any such State, shall require revenue or other stamps to be affixed to the Note or this Security Instrument, Borrower will, upon demand, pay for the same, with interest and penalties thereon, if any.

ARTICLE 6.

NEVADA PROVISIONS/MODIFICATIONS AND OTHER PROVISIONS

6.01 **Governing Provisions.** In the event of any conflicts or inconsistencies between the terms and conditions of this Article 6 and the remainder of this Security Instrument, the terms and conditions of this Article 6 shall control and be binding, but only to the extent of any such conflicts or inconsistencies.

6.02 **Evasion of Prepayment Terms.** If an Event of Default shall occur, a tender of any payment of principal by Borrower, its successors or assigns or by anyone on behalf of Borrower, its successors or assigns, in excess of the amount which would have been payable had the Event of Default not occurred, shall constitute an evasion of the prepayment terms of the Note, as incorporated herein by reference, and shall be deemed to be a voluntary prepayment thereunder and any such payment, to the extent permitted by law, must include the prepayment charge computed in accordance with the terms of the Note.

6.03 **Receiver.** In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Section 2.02(a):

If an Event of Default shall occur, the Lender shall be entitled as a matter of right and without notice to Borrower or anyone claiming under Borrower and without giving bond and without regard to the solvency or insolvency of the Borrower or any party bound for the payment of the Secured Obligations, or waste of the Property or adequacy of the security of the Property for the obligations then secured hereby or the then value of the Property, to apply *ex parte* for the appointment of a receiver in accordance with the statutes and law made and provided for and such receiver shall have, in addition to all rights and powers customarily given to and exercised by such receivers and all rights and powers granted to such receiver or Lender under this Security Instrument (to the extent allowed by law), all the rights, powers and remedies as provided by law or as may be contained in any court order or decree applying such remedy. A court is authorized to appoint a receiver on request or petition of Lender, and Borrower irrevocably consents to the appointment of a receiver and waives any notice of application therefor. Such receiver shall collect the Rents as hereinafter defined, and all other income of any kind; manage the Property so to prevent waste; execute Leases (as hereinafter defined) within or beyond the period of receivership, pay all expenses for normal maintenance of the Property and perform the terms of this Security Instrument and apply the Rents to the costs and expenses of the receivership, including reasonable attorneys' fees, to the repayment of the Secured Obligations and to the operation, maintenance and upkeep and repair of the Property, including payment of taxes on the Property and payments of premiums of insurance on the

Property and any other rights permitted by law, Borrower does hereby irrevocably consent to such appointment. Lender's right to appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness secured hereby by a substantial amount and without any showing as required by N.R.S. 107.100. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Property, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove Borrower or any other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all Rents and do the things the receiver finds necessary to preserve and protect the Property, whether during pendency of foreclosure, during a redemption period, if any, or otherwise, and as further provided in any assignment of Rents and Leases executed by the Borrower to the Lender, whether contained in this Security Instrument or in a separate instrument. Borrower shall not contest the appointment of a receiver to operate the Property at any time from and after the occurrence of an Event of Default including, without limitation, during the institution of foreclosure proceedings. Upon an Event of Default, Borrower shall peacefully turn over possession of the Property to a receiver upon request of Lender.

6.04 Right to Collect Rents. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Section 3.03:

Upon an Event of Default and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Property or during any period of redemption the Lender, and without regard to waste, adequacy of the security or solvency of the Borrower, may revoke the privilege/license granted Borrower hereunder to collect the Rents and may, at its option, without notice in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding, or by a duly appointed receiver, give or require Borrower to give, notice to any or all tenants under any Lease authorizing and directing the tenant to pay Rents to Lender or such receiver, as the case may be; collect all of the Rents; enforce the payment thereof and exercise all of the rights of the landlord under any Lease (as hereinafter defined) and all of the rights of Lender hereunder; enter upon, take possession of, manage and operate said Property, or any part thereof; may cancel, enforce or modify any Leases, and fix or modify Rents, and do any acts which the Lender deems proper to protect the security hereof with or without taking possession of the Property.

Any Rents whether collected by the Lender or by such receiver, as the case may be, shall be applied to the costs and expenses of operation, management and collection, including reasonable attorneys' fees, to the payment of the fees and expenses of any agent or receiver so acting, to the payment of taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Property, to the performance of the landlord's obligations under the Leases and to any Secured Obligations, all in such order as the Lender may determine.

The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default under this Security Instrument or affect any notice of default or invalidate any act done pursuant to such notice nor in any way operate to prevent the Lender from pursuing any other remedy which it may now or hereafter have under the terms of this Security Instrument or the Note or any other security securing the same, nor shall it in any way be deemed to constitute the Lender a mortgagee-in-possession. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Property are in danger of being lost, materially injured or damaged or whether the Property are adequate to discharge the Secured Obligations. The rights contained herein are in addition to and shall be cumulative with the rights given in any separate instrument, assigning any Rents or Leases of the Property and shall not amend or modify the rights in any such separate agreement.

6.05 Right to Foreclose. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Section 2.02(a):

If an Event of Default shall occur the Lender may, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceedings or remedy to enforce payment of the Secured Obligations or the performance of any other term hereof or any other right and the Borrower hereby authorizes and fully empowers the Lender to foreclose or cause to be foreclosed this Security Instrument by judicial proceedings or non-judicial proceedings, including without limitation by advertisement with power of sale (to the extent allowed by law), or by such other statutory procedure available in the State where the Property is located and grants to the Lender full authority to cause Trustee to sell the Property at public auction and convey title to the Property to the purchaser, either in one parcel or separate lots and parcels, at the option of Lender, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the Secured Obligations together with all such sums of money as Lender shall have expended or advanced pursuant to this Security Instrument or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including without limitation lawful maximum reasonable attorneys' fees, the cost of environmental inspection and appraisal costs and expenses, with the balance, if any, to be paid to the persons entitled thereto by law. In any such proceeding the Lender may apply all or any portion of the Secured Obligations to the amount of the purchase price.

6.08 Forbearance by Lender Not A Waiver. Borrower waives to the extent permitted by law, notice of election to mature or declare due the whole of the Secured Obligations. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Security Instrument after the due date of such payment shall not be a waiver of Lender's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Secured Obligations nor shall Lender's receipt of any awards, proceeds or damages under this Security Instrument operate to cure or waive Borrower's default in payment of sums secured by this Security Instrument.

6.07 Remedies Cumulative and Not Exclusive. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Section 2.02(g):

Lender shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Security Instrument or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale (to the extent allowed by law) or other rights, powers and remedies herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Security Instrument and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every right, power or remedy given by any of the Loan Documents to Lender or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and Lender may pursue inconsistent remedies.

6.08 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower, to the fullest extent allowed by law,

hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

6.09 Nevada Covenants. The covenant numbers 1, 3, 4 (the default rate of interest as provided in the Note), 5, 6, 7 (counsel fees), 8 and 9 of N.R.S. 107.030, are hereby adopted and made a part of this Security Instrument; provided, however, that the express provisions of this Security Instrument shall control if in conflict with Covenant Nos. 1, 3, 4 and 9, and the provisions of Covenant Nos. 5, 6, 7 and 8 shall control if in conflict with the express provisions of this Security Instrument; the provisions of both otherwise to be cumulative. Any default of Borrower shall entitle Lender to the remedies available for a violation of the covenants incorporated by reference.

6.10 Waiver of N.R.S. 675. The Borrower does hereby warrant to Lender, that Borrower as owner of the Property, does hereby waive its rights, if any, under N.R.S. 675.080 and N.R.S. 675.470, and does further warrant to Lender that Borrower will not use N.R.S. 675.080 and/or N.R.S. 675.470 as a defense in its obligation for repayment of the Loan and indebtedness secured hereby to Lender.

6.11 Acknowledgment of Waiver of Hearing Before Sale.

Borrower understands that under the Constitution of the United States and the Constitution of the State where the Property is located it may have the right to notice and hearing before the Property may be sold and that the non-judicial procedures for foreclosure, including, without limitation, by advertisement with power of sale, do not insure that personal notice will be given to the Borrower and neither said non-judicial procedures nor the Uniform Commercial Code may require any hearing or other judicial proceeding. BORROWER HEREBY EXPRESSLY CONSENTS AND AGREES THAT THE PROPERTY MAY BE FORECLOSED BY NON-JUDICIAL PROCEDURES AND THAT THE PERSONAL PROPERTY MAY BE DISPOSED OF PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE WHERE THE PROPERTY IS LOCATED. BORROWER ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL AND THAT BEFORE SIGNING THIS DOCUMENT THIS PARAGRAPH AND BORROWER'S CONSTITUTIONAL RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL AND THAT BORROWER UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

6.12 Trustee.

It shall be no part of the duty of the Trustee to see to any recording, filing or registration of this Security Instrument or any other instrument in addition or supplemental thereto, or to give any notice thereof, or to see to the payment of or be under any duty in respect of any tax or assessment or other governmental charge which may be levied or assessed on the Property, or any part hereof, or against the Borrower, or to see to the performance or observance by the Borrower of any of the covenants and agreements contained herein. The Trustee shall not be responsible for the execution, acknowledgment or validity of this Security Instrument or of any instrument in addition or supplemental hereto, or for the sufficiency of the security purported to be created hereby, and makes no representation in respect thereof or in respect of the rights of the Lender. The Trustee shall have the right to advise with counsel upon any matters arising hereunder and shall be fully protected in relying as to legal matters on the advice of counsel. The Trustee shall not incur any personal liability hereunder except for its own willful misconduct; and the Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine.

In case of the death, inability, refusal or incapacity of the Trustee to act, or at the option of the Lender at any time and without cause or notice, a successor or substitute Trustee may be named, constituted and appointed, and the successor trustee shall so notify the Borrower. Successor or substitute trustees may be named, constituted and appointed without procuring the resignation of the

former trustee and without other formality except the execution and acknowledgment by the Lender of a written instrument (which instrument, if the Lender is a corporation, shall be executed by the President or any Vice President, without the necessity of any action by the Board of Directors authorizing such appointment) appointing and designating such successor or substitute trustee, whereupon such successor or substitute trustee shall become vested with and succeed to all of the rights, titles, privileges, powers and duties of the Trustee named herein. Such right of appointment of a substitute or successor trustee shall exist as often and whenever for any of said causes the original or successor or substitute trustee cannot or will not act or has been removed as herein provided.

6.13 Maturity Date. The final payment of the indebtedness evidenced by the Note is due and payable on April 11, 2018 (the "Maturity Date").

6.14 Default Rate. The "highest rate permitted under applicable law" referred to in Section 1.03 shall mean the Default Rate (as defined in the Note) if such a rate is not specified by applicable law.

6.15 Planned Community. The Property includes certain units in, together with an undivided interest in the common elements/common elements of a residential community-interest planned community project known as: Palmilla (the "Planned Community"). If the Palmilla Homeowner's Association, a Nevada non-profit corporation, or another entity which acts for the Planned Community (the "Planned Community Association"), holds title to the Property, or any part thereof or interest therein, for the benefit or use of the Owners (as that term is defined in the Declaration [defined below]), the Property also includes Borrower's interest in the Planned Community Association and the uses, proceeds and benefits of Borrower's interest. In addition to the covenants and agreements made in this Security Instrument, Borrower and Lender further covenant and agree as follows:

(a) **Planned Community Obligations.** Borrower shall perform all of Borrower's obligations under the Planned Community's Constituent Documents. The "Constituent Documents" are collectively the: (i) Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Palmilla, recorded December 10, 2003 in Book 20031210 as Document No. 03078, as amended by Annexation Amendments thereto recorded August 21, 2006 in Book 20060821 as Document No. 003685, recorded September 8, 2006 in Book 20060908 as Document No. 00388, recorded February 7, 2006 in Book 20080207 as Document No. 02991 and recorded February 27, 2007, in Book 20070227 as Document No. 0003972, and as amended by the instruments recorded on July 1, 2004, in Book 20040701 as Document No. 04832, July 2, 2004, in Book 20040702 as Document No. 03888, May 19, 2005, in Book 20050519 as Document No. 03905, all such instruments and documents being recorded in the real estate records of Clark County, Nevada (collectively, the "Declaration"); (ii) the and articles of incorporation and by-laws of the Planned Community Association; (iii) any rules and regulations adopted by the Planned Community Association; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

(b) **Public Liability Insurance.** Borrower will take such actions as may be reasonable to insure that the Planned Community Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Lender.

(c) **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of any unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by this Security Instrument as provided in Section 1.08 of this Security Instrument. The Borrower shall immediately notify Lender in writing of: (i) the receipt by the Borrower of any notice or other writing or communication from the Planned Community, or any person or party acting on behalf of the Planned Community, noting or claiming any default by the Borrower in performance or observance under the Constituent Documents; and (ii) the occurrence of any damage or destruction to, or commencement or institution of any condemnation or eminent domain proceeding against, the Land or

improvements, Borrower shall accept direction of Lender with respect to the exercise of the Borrower's rights and options under the Constituent Documents.

(d) Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to or cause any of the following to occur:

(i) the abandonment or termination of the Planned Community except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the Constituent Documents;

(iii) termination of professional management and assumption of self-management of the Planned Community Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Planned Community Association unacceptable to Lender.

(e) Remedies. If Borrower does not pay Planned Community dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this Section 6.15 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable with interest, upon notice from Lender to Borrower requesting payment.

(f) Books and Records. Borrower will maintain books and records and bank accounts separate from those of the Planned Community and the Planned Community Association.

(g) Funds. Borrower will not commingle the funds and other assets of Borrower with those of the Planned Community or Planned Community Association.

(h) Contracts and Agreements. Borrower will not enter into any contract or agreement with the Planned Community or Planned Community Association except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than the Planned Community or Planned Community Association.

(i) Compliance With Covenants. Borrower agrees to cause to be done all things necessary to comply with the covenants contained in this Security Instrument and the other Loan Documents, except to the extent the Borrower is prevented from doing so by the Constituent Documents.

(j) Planned Community Association Actions. Borrower will not take any action, or will withhold approval from, as the case may be, any action proposed to be taken by the Planned Community Association which, if taken by Borrower would be an Event of Default hereunder. Without limiting the foregoing, Borrower covenants and agrees to exercise its voting rights in the Planned Community Association:

(i) to disapprove any proposed action to decrease any member of the Planned Community Association's contribution to the Planned Community's reserve account which is maintained for the Property's common area repair and maintenance (the "Reserve Account") if the effect of such decrease would be to decrease the Reserve Account below a level sufficient to fund anticipated repairs, maintenance and improvements, as determined by the Planned Community's operating budget, its current reserve account analysis and any current property assessment reports; provided, however, that if Lender based upon a current property assessment report for the Property, determines that such decrease was not appropriate, Lender may require Borrower to increase the On-going Replacement

Reserve (as defined in the Reserve Agreement of even date herewith executed by Borrower) by an amount sufficient in Lender's reasonable discretion, based upon such property assessment report, to meet anticipated repairs, maintenance and improvements, provided however, that in no event shall such increase per unit exceed the amount of decrease per unit otherwise approved by the Planned Community;

(II) to disapprove disbursements from the Reserve Account for matters other than repair and maintenance to the Property's common areas;

(III) to disapprove any proposed action which would result in any further encumbrance of the Property;

(iv) to initiate and approve increases in the member's contribution to the Reserve Account if such increase is necessary to establish the reserve fund at a level sufficient to fund anticipated repairs, maintenance and improvements, as determined by the Planned Community Association's operating budget, its current reserve account analysis and any current property assessment reports; and

(v) for purposes hereof, action taken by the Borrower shall also mean that taken by the directors of the Planned Community Association nominated and appointed by the Borrower.

(k) **Assessment Report.** Not more often once during each calendar year, Lender may require that a current property assessment report be prepared, at Borrower's expense, to estimate the need for current and anticipated repairs, maintenance and improvements for the Planned Community, or any portion thereof.

(l) **Planned Community Association Reports.** Borrower agrees, upon request, to provide copies to Lender, in a timely manner, of reports, financial analyses, budgets, notices, minutes of Planned Community - related meetings, and any other material information received by Borrower affecting the operation and management of the Property.

(m) **Proxy Agreement.** Borrower shall not vote to amend or modify or otherwise approve, consent to or suffer the amendment or modification of the Constituent Documents in any manner whatsoever without obtaining Lender's prior written approval. Borrower hereby appoints Lender as Borrower's irrevocable power-of-attorney, coupled with an interest, to act on behalf of Borrower with respect to (a) voting to amend or modify the Constituent Documents (except that Borrower shall not be deemed to have breached the foregoing by reason of any amendment or modification of the Constituent Documents not requiring the approval of the Borrower under the Constituent Documents), and (b) voting with respect to the disposition of casualty proceeds or any condemnation award which shall be voted at the direction of Lender and consistently with the provisions of this Security Instrument. Borrower agrees to enter into a Proxy Agreement(s) and to execute such other documents and take such other action as Lender may require to evidence Lender's rights to exercise Borrower's voting rights in the Planned Community while any Event of Default is continuing.

(n) **Control.** The Planned Community Association shall at all times be under the collective control of Borrower. As used in this Subsection 6.15(n), the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract, by operation of law, or otherwise.

(o) **Declarant Rights.** Borrower shall not convey, transfer, assign, relinquish or otherwise dispose of its rights and interests as the "Declarant" under the Declaration without the Lender's prior written consent.

(p) Increase in the Number of Units in the Association. Without limiting any of the foregoing, without the Lender's prior written consent, the Borrower shall not exercise any rights it may have, as the "Declarant" under the Declaration, under Section 14.1(h)(2) of the Declaration (captioned "Certain Other Rights").

(q) Conversion. Borrower agrees not to convert the Property to any additional common interest community, condominium, planned community or cooperative of any kind, and the conversion or recording of any additional common interest community, condominium, planned community or cooperative documents on the Property or any part thereof with respect to the Property shall be an Event of Default hereunder.

ARTICLE 7. MISCELLANEOUS

7.01 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

7.02 Borrower Waiver of Rights; Waiver of Automatic Stay.

(a) Borrower waives to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Property, (ii) all rights of valuation, appraisement, stay of execution, reinstatement and redemption laws and marshaling in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State where the Property is located, pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other obligation secured by this Security Instrument, and (v) any rights, legal or equitable, to require marshaling of assets or to require upon foreclosure sales in a particular order. Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

(b) WITHOUT LIMITING ANY OF THE FOREGOING SET FORTH IN SUBSECTION (a) ABOVE, BORROWER HEREBY AGREES THAT, IN CONSIDERATION OF LENDER'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, IF BORROWER SHALL (i) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE; (ii) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (iii) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (iv) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (v) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ANY BORROWER FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, LENDER SHALL THEREUPON BE ENTITLED AND BORROWER HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 542 OF THE BANKRUPTCY CODE OR SIMILAR

LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE AVAILABLE TO LENDER AS PROVIDED IN THE NOTE AND THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND BORROWER HEREBY IRREVOCABLY WAIVES ITS RIGHT TO OBJECT TO SUCH RELIEF.

7.03 Statements by Borrower. Borrower shall, within ten (10) days after written notice thereof from Lender, deliver to Lender (or any person designated by Lender) a written statement, in form satisfactory to Lender, fully acknowledged, stating the unpaid principal of and interest on the Note and any other amounts secured by this Security Instrument and stating whether any offset, counterclaim or defense exists against such sums and the obligations of this Security Instrument.

7.04 Loan Statement Fees. Lender or its authorized loan servicing agent may impose a service charge for any statement requested by Borrower regarding the Secured Obligations; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

7.05 Notices. Whenever Borrower, Trustee or Lender shall desire to give or serve any notice, demand, request or other communication with respect to this Security Instrument, each such notice, demand, request or communication shall be given in writing at the address of the intended recipient set forth below by any of the following means: (a) personal service (including, without limitation, service by overnight courier service); (b) electronic communication, whether by telex, telegram, facsimile or telecopying (if confirmed in writing sent by personal service or by registered or certified, first class mail, return receipt requested); or (c) registered or certified, first class mail, return receipt requested:

If to Lender: ARTESIA MORTGAGE CAPITAL CORPORATION
1180 NW Maple Street, Suite 202
Issaquah, Washington 98027
Attn: Servicing Department
Fax: (425) 313-1005

with a copy to: BEST & FLANAGAN LLP
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Thomas G. Garry
Fax: (612) 339-5897

If to Borrower: PALMILLA DEVELOPMENT CO., INC.
235 West Brooks Avenue, 2nd Floor,
North Las Vegas, Nevada 89030
Fax: (702) 399-6243
Attn: Hagai Rapoport

with a copy to: RONALD E. GILLETTE, Esq.
235 West Brooks Avenue, 2nd Floor
North Las Vegas, Nevada 89030
Fax: (702) 399-6243

If to Trustee: Equity Title, LLC, a Nevada limited liability company
7360 West Flamingo Road
Las Vegas, Nevada 89147
Attn: Robert Rosales
Fax: (702) 432-1113

Such addressees may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to subsection (c) shall be deemed received five (5) days following deposit in the mail.

7.06 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of reference only and are not a part of this Security Instrument.

7.07 Savings Clause; Invalidity of Certain Provisions. Notwithstanding any provisions in the Note or in this Security Instrument to the contrary, the total liability for payments in the nature of interest, including, without limitation, prepayment charges, default interest and late fees, shall not exceed the limits imposed by the laws of the State where the Property is located or the United States of America relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the Secured Obligations, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable laws. If Lender ever receives, collects or applies as interest such amount which would be excessive, such interest shall be applied to reduce the unpaid principal balance of the Note, and any remaining excess shall be paid over to person or persons legally entitled thereto. Every provision of this Security Instrument is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegal or invalid or unenforceable term or provision shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

7.08 Provisions Regarding Trustees. At any time, or from time to time, without liability therefor and without notice to Borrower, upon written request of Lender and presentation of this Security Instrument and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the Secured Obligations (subject to the limitations on recourse set forth in the Note) or the effect of this Security Instrument upon the remainder of the Property, Trustee (or the one acting) may (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Lender so to do, or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Lender and upon recording of the substitution in the land records of the County where the Property is located, any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

7.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds have been or will be advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

7.10 Costs and Expenses; Attorneys' Fees for Preparation and Enforcement.

(a) Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (i) the extension, renewal, modification, amendment and termination of the Loan, (ii) the release or substitution of collateral therefor, (iii) obtaining certain consents, waivers and approvals with respect to the Property, or (iv) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance and attornment agreement (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all attorneys' fees and disbursements of Lender.

(b) Borrower shall pay all attorneys' fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the other Loan Documents, and (ii) the items set forth in Section 7.10(a) above. In addition, Borrower shall pay to Lender on demand any and all expenses, including, without limitation, attorneys' fees and costs, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including, without limitation, commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

As used in this Security Instrument, the terms "attorneys' fees" or "attorneys' fees and costs" or "attorneys' fees, costs and expenses" shall mean the reasonable attorneys' fees and the costs and expenses of counsel to Lender (including, without limitation, in-house counsel employed by Lender), which may include, without limitation, printing, duplicating, telephone, fax, air freight and other charges, and fees billed for law clerks, paralegals, librarians, expert witnesses and others not admitted to the bar but performing services under the supervision of an attorney and all such fees, costs and expenses incurred with respect to trial, appellate proceedings, arbitrations, out-of-court negotiations, workouts and settlements, and bankruptcy or insolvency proceedings (including, without limitation, seeking relief from stay in bankruptcy proceedings), and whether or not any action or proceeding is brought or is concluded with respect to the matter for which such fees, costs and expenses were incurred, and whether or not the Lender is the prevailing party. Lender shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment action or proceeding to enforce and collect the judgment. This Section 7.10 is separate and several, shall survive the discharge of this Security Instrument, and shall survive the merger of this Security Instrument into any judgment on this Security Instrument.

7.11 No Merger of Lease. If both the Borrower's and tenant's estate under any Lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Security Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by

this Security Instrument on the Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

7.12 Governing Law. This Security Instrument shall be governed by and construed in accordance with the laws of the State where the Property is located.

7.13 Joint and Several Obligations. If this Security Instrument is signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Security Instrument. Any married person signing this Security Instrument agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

7.14 Interpretation. In this Security Instrument the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

7.15 Reconveyance by Trustee. Upon written request of Lender stating that all sums secured hereby have been paid, and upon surrender of this Security Instrument and the Note to Trustee for cancellation and retention and upon payment by Borrower of Trustee's fees, Trustee shall reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Property.

7.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

7.17 Effect of Security Agreement; Fixture Filing. To the extent of the existence of any Personal Property encumbered by this Security Instrument, this Security Instrument constitutes both (a) a security agreement intended to create a security interest in such Personal Property in favor of Lender; and, (b) a financing statement filed as a fixture filing in the real estate records of the county in which the Property is located with respect to any and all fixtures included within the Personal Property with respect to any goods or other personal property that may now be or hereafter become such fixtures. The information in the subsections below this paragraph is provided in connection with the filing of this Security Instrument as a financing statement as referred to above, and the Borrower hereby represents and warrants such information to be true and complete as of the date of this Security Instrument. This Security Instrument shall be self-operative with respect to such Personal Property, but Borrower shall, upon the request of Lender, execute and deliver to Lender, in form and content satisfactory to Lender, such financing statements, descriptions of property and such further assurances as Lender may determine from time to time to be necessary or desirable to create, perfect, continue and preserve the lien and encumbrances hereof and the security interest granted herein upon and in the Personal Property specifically described herein, or generally described and intended to be the subject of the security interest, lien and encumbrance hereby created, granted and conveyed. Lender, at the expense of Borrower, may cause such statements, descriptions and assurances as provided in this Security Instrument to be recorded and re-recorded, filed and refilled, at such times and in such places as may be required or permitted by law to so create, perfect and preserve the lien and encumbrance hereof upon all of the Personal Property. By signing this Security Instrument, Borrower authorizes Lender to file such financing statements before, on or after the date hereof, and to file such amendments or continuation

statements, all as Lender determines necessary or desirable from time to time to perfect or continue the lien of the Lender's security interest in the Personal Property.

(a) The Borrower is the record owner of the real estate described in this Security Instrument. The name and mailing address of the record owner of the real estate described in this Security Instrument is set forth in the first paragraph of this Security Instrument.

(b) The name, mailing address, type of organization and state of formation of the Borrower is set forth in the first paragraph of this Security Instrument. The Organizational Identification Number of the Borrower is NV C32085-2003.

(c) The name and mailing address of the Secured Party (Lender) is:

ARTESIA MORTGAGE CAPITAL CORPORATION
1180 NW Maple Street, Suite 202
Issaquah, Washington 98027
Attn: Servicing Department

(d) This document covers goods which are or are to become fixtures.

7.18 Spouse's Separate Property. Any Borrower who is a married person expressly agrees that recourse may be had against his or her separate property, subject to the limitations on recourse set forth in Section 10 of the Note.

7.19 Offsets. No Secured Obligations shall be deemed to have been offset or to be offset or compensated by all or part of any claim, cause of action, counterclaim or cross claim, whether liquidated or unliquidated, which Borrower or any successor to Borrower now or hereafter may have or may claim to have against Lender; and, in respect to the indebtedness now or hereafter secured hereby, Borrower waives, to the fullest extent permitted by law, the benefits of any law which authorizes or permits such offsets.

7.20 Construction of this Security Instrument. Borrower and Lender agree that this Security Instrument shall be interpreted in a fair, equal and neutral manner as to each of the parties.

7.21 Clerical Error. In the event Lender at any time discovers that the Note, any other note secured by this Security Instrument, this Security Instrument or any other Loan Document contains an error that was caused by a clerical mistake, calculation error, computer malfunction, printing error or similar error, Borrower agrees, upon notice from Lender, to re-execute any documents that are necessary to correct any such error(s). Borrower further agrees that Lender will not be liable to Borrower for any damages incurred by Borrower that are directly or indirectly caused by any such error.

7.22 Lost, Stolen, Destroyed or Mutilated Loan Documents. In the event of the loss, theft or destruction of the Note, any other note secured by this Security Instrument or any other Loan Document, or in the event of the mutilation of any of the Loan Documents, upon Lender's surrender to Borrower of the mutilated Loan Document, Borrower shall execute and deliver to Lender a Loan Document in form and content identical to, and to serve as a replacement of, the lost, stolen, destroyed, or mutilated Loan Document and such replacement shall have the same force and effect as the lost, stolen, destroyed, or mutilated Loan Document, and may be treated for all purposes as the original copy of such Loan Document.

7.23 Time is of the Essence. Time is of the essence in the performance of each provision of this Security Instrument.

7.24 Legislation Affecting Lender's Rights. If enactment or expiration of applicable laws has the effect of rendering any material provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may demand immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted under this Security Instrument.

7.25 RESERVED.

7.26 Exhibits and Riders. The exhibits and riders, if any, attached hereto are incorporated herein by reference and made a part hereof.

7.27 Successors and Assigns. Without in anyway limiting or affecting the provisions of Section 1.15 hereof, all of the terms, covenants, provisions and conditions herein contained shall be for the benefit of, apply to, and bind the heirs, successors and assigns of the Borrower and the Lender, and are intended and shall be held to be covenants running with the Land.

7.28 Declaration of No Offset. The Borrower represents and warrants to the Lender that the Borrower has no knowledge of any offsets, counterclaims or defenses to the principal of the Secured Obligations, or to any part thereof, or the interest thereon, either at law or in equity.

7.29 Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement between the Borrower and the Lender relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in this Security Instrument and/or other Loan Documents are null and void and superseded in their entirety by the provisions of this Security Instrument and the other Loan Documents.

7.30 No Joint Venture or Partnership. The relationship of the Borrower and the Lender created hereby is strictly of debtor-creditor and nothing contained herein or in any other documents or instrument secured hereby shall be deemed or construed to create a partnership or joint venture between Borrower and Lender.

7.31 No Lender Obligations.

(a) Notwithstanding any of the provisions contained herein with respect to Lender taking a security interest in the Leases, Lender is not undertaking the performance of any obligations under the Leases.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

7.32 Estoppel Certificates. After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth the amount of the original principal amount of the Note, the unpaid principal amount of the Note, the rate of interest of the Note, the terms of payment and maturity date of the Note, the date installments of interest and/or principal were last paid, that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an Event of Default under the Note or this Security Instrument, that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, whether any offsets or defenses exist against the Secured Obligations and, if any are alleged to exist, a detailed description thereof, that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth

all modifications), the date to which the Rents thereunder have been paid pursuant to the Leases, whether or not, to the best knowledge of Borrower, any of the tenants under the Leases are in default under the Leases, and, if any of the tenants are in default, setting forth the specific nature of all such defaults, the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and as to any other matters reasonably requested by Lender and reasonably related to the Leases, the Secured Obligations, the Property or this Security Instrument.

7.33 Renewals and Extensions. Any renewal or extension, modification or amendment of the Note and/or this Security Instrument will not operate to release, in any manner, the liability of Borrower or any other party liable for the Loan and their respective successors in interest.

7.34 Incorporation. The terms and conditions of all the other Loan Documents are hereby incorporated by reference.

[Signatures on Following Page(s)].

IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year first above written.

BORROWER:

PALMILLA DEVELOPMENT CO., INC.,
a Nevada corporation

By: 

Hagai Rapaport, President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on _____, 2007, by Hagai Rapaport, the President of Palmilla Development Co., Inc., a Nevada corporation.

Notary Public

My Commission Expires: _____

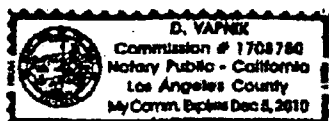
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California.

County of Los Angeles

} ss.

On March 29, 2007 before me, Dorel Vapnik, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Hagai Rappaport
(Name(s) of Signer(s))

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

D. Vapnik
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and attachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer is Representing: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The Property is located in Clark County, Nevada, and is legally described as follows:

Parcel One (1):

Lot Seven (7) in Building Three (3) of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as amended by Certificate of Amendment recorded March 15, 2005 in Book 20050315 as Document No. 02792, Official Records, and by Certificate of Amendment recorded March 16, 2005 in Book 20050316 as Document No. 04127, Official Records

Parcel Two (2):

Lots Three (3), Seven (7), Eight (8), Ten (10) and Eleven (11) in Building Six (6); Lots One through Twelve (1-12) inclusive, in Building Seven (7); Lots One through Twelve (1-12) inclusive, in Building Eight (8); Lots One through Twelve (1-12) inclusive, in Building Nine (9); Lots One through Twelve (1-12) inclusive, in Building Ten (10); Lots One through Twelve (1-12) inclusive, in Building Eleven (11); Lots One through Twelve (1-12) inclusive, in Building Twelve (12); Lots One through Twelve (1-12) inclusive, in Building Thirteen (13); Lots One through Twelve (1-12), inclusive, in Building Fourteen (14); Lots One through Twelve (1-12), inclusive, in Building Fifteen (15); Lots One through Twelve (1-12) inclusive, in Building Sixteen (16); Lots One through Twelve (1-12) inclusive, in Building Seventeen (17); Lots One through Twelve (1-12), inclusive, in Building Eighteen (18); Lots One (1), Four (4), Nine (9), Ten (10) and Twelve (12) in Building Nineteen (19); and Lots Eleven (11) and Twelve (12) in Building Twenty (20) of PALMILLA TOWNHOMES - PHASE 2 as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada.

Parcel Three (3):

The non-exclusive easements appurtenant to the property described in Parcels One (1) and Two (2) over, across and for the use of the Private Streets, Common Elements and Common Areas as delineated upon the Plat of PALMILLA TOWNHOMES - PHASE 2, as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada, and upon the Plat of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as further set forth in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Palmilla, recorded December 10, 2003 in Book 20031210 as Document No. 03076, Official Records, and in Annexation Amendments thereto recorded August 21, 2006 in Book 20060821 as Document No. 003685, recorded September 6, 2006 in Book 20060906 as Document No. 00388, and recorded February 7, 2006 in Book 20060207 as Document No. 02991, and recorded February 27, 2007 in Book 20070227 as Document No. 03972, Official Records.

016075270010/531943_7

CLARIFICATION**EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

The Property is located in Clark County, Nevada, and is legally described as follows:

Parcel One (1):

Lot Seven (7) in Building Three (3) of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as amended by Certificate of Amendment recorded March 15, 2005 in Book 20050315 as Document No. 02792, Official Records, and by Certificate of Amendment recorded March 16, 2005 in Book 20050316 as Document No. 04327, Official Records

Parcel Two (2):

Lots Three (3), Seven (7), Eight (8), Ten (10) and Eleven (11) in Building Six (6); Lots One through Twelve (1-12) inclusive, in Building Seven (7); Lots One through Twelve (1-12) inclusive, in Building Eight (8); Lots One through Twelve (1-12) inclusive, in Building Nine (9); Lots One through Twelve (1-12) inclusive, in Building Ten (10); Lots One through Twelve (1-12) inclusive, in Building Eleven (11); Lots One through Twelve (1-12) inclusive, in Building Twelve (12); Lots One through Twelve (1-12) inclusive, in Building Thirteen (13); Lots One through Twelve (1-12), inclusive, in Building Fourteen (14); Lots One through Twelve (1-12), inclusive, in Building Fifteen (15); Lots One through Twelve (1-12) inclusive, in Building Sixteen (16); Lots One through Twelve (1-12) inclusive, in Building Seventeen (17); Lots One through Twelve (1-12), inclusive, in Building Eighteen (18); Lots One (1), Four (4), Nine (9), Ten (10) and Twelve (12) in Building Nineteen (19); and Lots Eleven (11) and Twelve (12) in Building Twenty (20) of PALMILLA TOWNHOMES - PHASE 2 as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada.

Parcel Three (3):

The non-exclusive easements appurtenant to the property described in Parcels One (1) and Two (2) over, across and for the use of the Private Streets, Common Elements and Common Areas as delineated upon the of Plat of PALMILLA TOWNHOMES - PHASE 2, as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada, and upon the Plat of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as further set forth in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Palmilla, recorded December 10, 2003 in Book 20031210 as Document No. 03076, Official Records, and in Annexation Amendments thereto recorded August 21, 2006 in Book 20060821 as Document No. 003685, recorded September 6, 2006 in Book 20060906 as Document No. 00388, and recorded February 7, 2006 in Book 20060207 as Document No. 02991, and recorded February 27, 2007 in Book 20070227 as Document No. 03972, Official Records.

Exhibit 3

Exhibit 3

ART WHSE
010-00001695

20070330-0002947

Fee: \$26.00
N/C Fee: \$0.00

03/30/2007 12:04:42

T200703300002947

Requestor:
EQUITY TITLE OF NEVADA

Debbie Conway SS1
Clark County Recorder Pgs: 13

25

APN: 124-30-311-031
124-30-312-014 and 015
124-30-312-017 and 018
124-30-312-025 through 169
124-30-312-171 and 172
124-30-312-177; and
124-30-312-180 through 182

Recording requested by
and when recorded mail to :

Name: Best & Flanagan LLP
Attention: Thomas G. Garry
Address: 225 South Sixth Street, Suite 4000
City/State/Zip: Minneapolis, Minnesota 55402

Assignment of Leases, Rents,
Income and Profits
(Title on Document)

This page added to provide additional information required by N.R.S. 111.312
Sections 1-2. (Additional recording fee applies)

This cover page must be typed or printed in black ink only.

APN: 124-30-312-014; 124-30-312-025 through 169, inclusive; 124-30-312-171 and 172; 124-30-312-177; 124-30-312-180 through 182, inclusive; 124-30-311-031; 124-30-312-017 and 018; 124-30-312-022; 124-30-312-015

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

BEST & FLANAGAN LLP
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Thomas G. Garry

Order/Escrow No.: 07450038
Loan No.: 010-00001895

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (this "Assignment") is made as of March 28, 2007, by PALMILLA DEVELOPMENT CO., INC., a(n) Nevada corporation ("Borrower"). This Assignment is being given to secure the payment of that certain Fixed Rate Note of even date herewith in the amount of Twenty Million One Hundred and Fifty Thousand and 00/100 Dollars (\$20,150,000.00) (the "Note") executed by Borrower, payable to the order of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, and its successors and assigns, having its principal office at 1180 NW Maple Street, Suite 202, Issaquah, Washington 98027 (the "Lender").

Borrower is justly indebted to Lender in the aggregate sum of Twenty Million One Hundred and Fifty Thousand and 00/100 Dollars (\$20,150,000.00), with interest thereon as set forth in the Note, which Note is due and payable on or before April 11, 2018 (the "Maturity Date"); and

Borrower is the present owner in fee simple of that certain piece, parcel or tract of real property more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"); and

Lender is the owner and holder of the Security Instrument (as defined in the Note) encumbering the Property, which Security Instrument secures the payment of the Note; and

Lender, as a condition to making the aforesaid loan and to obtain additional security therefor, has required the execution of this Assignment by Borrower; and

NOW THEREFORE, in order to further secure the payment of the indebtedness of Borrower to Lender evidenced by the Note, which Note is secured by the Security Instrument, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby irrevocably, absolutely, presently and unconditionally grants, sells, assigns, transfers, pledges and sets over to Lender,

(a) any and all leases, contracts, subleases, licenses, franchises, concessions, occupancy agreements, rights to use or other agreements now or hereafter affecting all or any portion of the Property or the use or occupancy thereof, whether written or verbal (individually, a "Lease", collectively, the "Leases"), together with all of Borrower's right, title and interest in the Leases including all modifications, amendments, extensions and renewals of the Leases and all rights and privileges incident thereto and all demands or claims arising thereunder (including any cancellation fees or other premiums collected in connection with the Leases) or under any policies insuring against loss of rents or profits;

(b) all rents, royalties, issues, revenues, profits, proceeds, income and other benefits, including accounts receivable, of, accruing to or derived from such Leases, or now due and which may hereafter become due under or by virtue of the Leases, including without limitation expenses paid by tenants (collectively, "Rents"), and

(c) all security deposits, guaranties and other security now or hereafter held by Borrower as security for the performance of the obligations of the tenants under such Leases.

The foregoing assignment of Rents and Leases is intended by Borrower and Lender to create and shall be construed to create a present and absolute assignment to Lender of all of Borrower's right, title and interest in the Rents and in the Leases and shall not be deemed to create merely an assignment for security only for the payment of any indebtedness or the performance of any obligations of Borrower under any of the Loan Documents, as defined in the Security Instrument. This assignment is included within the text of the Security Instrument for convenience only, but such inclusion shall not derogate from its effectiveness as a present and absolute assignment. Nothing contained herein shall operate or be construed to obligate Lender to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Lender with respect to any Lease, including without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained; in the event the tenant under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such tenant shall have been thereby terminated, Borrower and Lender further agree that, during the term of the Security Instrument, the Rents shall not constitute property of Borrower (or of any estate of Borrower) within the meaning of 11 U.S.C. §541, as may be amended from time to time.

Borrower hereby represents and warrants that, to Borrower's knowledge, except as otherwise expressly set forth in the certified rent roll delivered to Lender: (i) Borrower has good title to the Leases and the full power and right to assign the Leases; (ii) no other persons have any title or interest in the Leases; (iii) the Leases are in full force and effect and have not been modified except as set forth in the certified occupancy statement delivered to and approved by Lender; (iv) there are no defaults under any of the Leases; (v) no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding; (vi) all Rents due have been paid in full; (vii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (viii) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (ix) the property demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (x) there exist no offsets or defenses to the payment of any portion of the Rents; (xi) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (xii) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (xiii) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (xiv) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (xv) no person or entity has any possessory interest in, or right to occupy, the Property except under and

pursuant to a Lease; (xvi) each Lease is subordinate to the Security Instrument, either pursuant to its terms or a recordable subordination agreement; (xvii) no Lease has the benefit of a non-disturbance agreement other than the non-disturbance agreements executed by the Lender in connection with the closing of the Loan and the non-disturbance provisions contained within the Lease(s) provided by the Borrower and reviewed by the Lender in connection with the closing of the Loan; (xviii) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower; and (xix) no brokerage commissions or finders fees are due and payable regarding any Lease.

Borrower agrees to take such action and to execute, deliver and record such documents as may be reasonably necessary to evidence such assignment, to establish the priority thereof and to carry out the intent and purpose hereof.

Borrower agrees to faithfully perform and discharge all of Borrower's obligations as landlord or lessor under the Leases and to enforce all obligations undertaken by tenants thereunder. Borrower shall defend Lender in any action relating to the Leases and shall indemnify, defend and hold Lender harmless from and against any claims of tenants or third parties with respect to the Leases. Borrower shall not receive or collect any Rents in advance of the date due or waive or defer any terms of the Leases without the consent of Lender. Borrower shall not pledge, assign or encumber the Leases or any Rents or (except as is permitted by Section 1.26(b) of the Security Instrument) modify or terminate the Leases, or permit any assignment or sublease thereunder, without the consent of Lender. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower or Lender, for all such Rents, and apply the same to the indebtedness secured hereby. Borrower specifically agrees that all power granted to Lender under this paragraph may be assigned by Lender to its successors and assigns.

All initially capitalized terms used herein which are defined in the Security Instrument shall have the same meaning herein unless the context otherwise requires.

ARTICLE 1 REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BORROWER

1.1 Representations, Warranties, Covenants and Agreements of Borrower. In furtherance of the foregoing assignment, Borrower represents, warrants, covenants and agrees as follows:

(a) Borrower represents and warrants that Borrower is the owner in fee simple of the Property and has good title to the Leases and Rents and has good right to assign the same, and that no other person, entity, firm or corporation has any right, title or interest therein; that Borrower has not previously sold, assigned, transferred, mortgaged or pledged the Leases or Rents; and that payment of any of the same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(b) Except as provided in Section 1.28 of the Security Instrument, Borrower agrees, and warrants that, without the prior written consent of Lender, the terms of any Lease will not be amended, altered, modified or changed in any manner whatsoever, nor will they be surrendered or canceled, nor will proceedings for dispossession or eviction of any lessee under any Lease be instituted by Borrower.

(c) Borrower agrees and warrants that no request will be made of any lessee to pay any Rents, and no Rents will be accepted by Borrower, for more than one (1) month in advance of the date such Rents become due and payable under the terms of any and all Leases, it being agreed between Borrower and Lender that Rents shall be paid as provided in said Leases and not otherwise.

The foregoing shall not prevent Borrower from charging and collecting security deposits from each tenant leasing space at the Property.

(d) Borrower authorizes Lender, by and through its employees or agents or a duly appointed receiver, at its option, after the occurrence of an Event of Default, to enter upon the Property and to collect, in the name of Borrower, as Borrower's agent and lawful attorney (which appointment is coupled with an interest), or in Lender's own name, any Rents accrued but unpaid and/or in arrears at the date of such default, as well as the Rents thereafter accruing and becoming payable during the period of the continuance of such Event of Default or any other default. To this end, Borrower further agrees to cooperate with and facilitate, in all reasonable ways, Lender's collection of Rents and upon request by Lender, execute a written notice to each tenant, occupant or licensee directing said tenant, occupant or licensee to pay directly to Lender all Rents due and payable under the Leases; provided, however, that Lender may notify said tenant, occupant or licensee of the effectiveness of this Assignment without giving notice to Borrower or requesting Borrower to give such notice or join in such notice.

(e) Borrower authorizes Lender, upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts necessary and proper and to expend such sums out of the income of the Property as in Lender's sole discretion may be reasonable or necessary in connection therewith, in the same manner and to the same extent as Borrower theretofore might do. Borrower hereby releases all claims against Lender arising out of such management, operation and maintenance, except for the gross negligence or willful misconduct of Lender.

(f) Borrower agrees to execute, upon the request of Lender, any and all other instruments requested by Lender to effectuate this Assignment or to accomplish any other purpose deemed by Lender to be necessary or appropriate in connection with this Assignment.

(g) Borrower agrees and acknowledges that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to Lender in the Note, the Security Instrument or any of the other Loan Documents. The collection and application of the Rents as described herein shall not constitute a waiver of any default or Event of Default which might at the time of application or thereafter exist under the Note, the Security Instrument or any of the other Loan Documents, and the exercise by Lender of the rights herein provided shall not prevent Lender's exercise of any rights provided under the Note, the Security Instrument or any of the other Loan Documents.

ARTICLE 2 ABSOLUTE ASSIGNMENT

2.1 **Grant of Revocable License to Collect Rents.** So long as an Event of Default shall not have occurred and be continuing, Lender hereby grants to Borrower a revocable license to enforce the Leases, to collect the Rents, to apply the Rents to the payment of the costs and expenses incurred in connection with the Property and to any indebtedness secured thereby. If requested by Lender, Borrower shall (a) give written notice to the tenants under the Leases of the Assignment of Rents and Leases by Borrower to Lender herein and pursuant to Section 3.01 of the Security Instrument, of the grant of the revocable license by Lender to Borrower herein and pursuant to Section 3.02 of the Security Instrument, and of the respective rights of Borrower and Lender hereunder and under Article 3 of the Security Instrument; and (b) obtain such tenants' agreements to be bound by and comply with the provisions of such assignment and grant. All Leases hereafter executed with respect to the Property shall contain a reference to the foregoing assignment and grant and shall state that the tenant executing such Lease shall be bound by and shall comply with the provisions hereof.

2.2 **Revocation of License; Lender's Rights.** Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, subject to applicable laws, the license granted to Borrower pursuant to Section 2.1 shall automatically be revoked. Upon such revocation, Borrower

shall promptly deliver to Lender all Rents then held by or for the benefit of Borrower. Lender, in addition to any other rights granted to Lender under the Security Instrument, shall have the right: (i) to notify the tenants under the Leases that Borrower's license to collect Rents has been revoked, and, with or without taking possession of the Property, to direct such tenant to thereafter make all payments of Rent and to perform all obligations under its Lease to or for the benefit of Lender or as directed by Lender; (ii) to enter upon the Property and to take over and assume the management, operation and maintenance of the Property, to enforce all Leases and collect all Rents due thereunder, to amend, modify, extend, renew and terminate any or all Leases and execute new Leases; and (iii) to perform all other acts which Lender shall determine, in its sole discretion, to be necessary or desirable to carry out the foregoing. Each tenant under any Lease shall be entitled to rely upon any notice from Lender and shall be protected with respect to any payment of Rent made pursuant to such notice, irrespective of whether a dispute exists between Borrower and Lender with respect to the existence of an Event of Default or the rights of Lender hereunder. The payment of Rent to Lender pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Lender shall not cause Lender to assume or be bound by the provisions of such Lease including but not limited to the duty to return any security deposit to the tenant under such Lease unless and to the extent such security deposit was paid to Lender by Borrower. Borrower agrees to indemnify, defend and hold Lender harmless from and against any and all losses, claims, damage or liability arising out of any claim by a tenant with respect thereto.

2.3 Application of Rents. All Rents received by Lender pursuant to this Assignment shall be applied by Lender, in its sole discretion, to any of the following: (i) the costs and expenses of collection, including, without limitation, reasonable attorneys' fees and receivership fees, costs and expenses; (ii) the costs and expenses incurred in connection with the management, operation and maintenance of the Property, including without limitation the payment of management fees and expenses, taxes, assessments and insurance premiums; (iii) the establishment of reasonable reserves for working capital and for anticipated or projected costs and expense, including, without limitation, capital improvements which may be necessary or desirable or required by law; (iv) the performance of landlord's obligations under the Leases; and (v) the payment of any indebtedness then owing by Borrower to Lender. In connection therewith, Borrower further agrees that all Rents received by Lender from any tenant may be allocated first, if Lender so elects, to the payment of all current obligations of such tenant under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Borrower's license to collect such Rents. Lender may, but shall have no obligation to, pursue any tenant for the payment of Rent which may be due under its Lease with respect to any period prior to the exercise of Lender's rights hereunder or which may become due thereafter. Borrower agrees that the collection of Rents by Lender and the application of such Rents by Lender to the costs, expenses and obligations referred to in this Section 2.3 shall not cure or waive any default or Event of Default or invalidate any act (including, but not limited to, any sale of all or any portion of the Property now or hereafter securing the Loan) done in response to or as a result of such default or Event of Default or pursuant to any notice of default or notice of sale issued pursuant to any Loan Document.

ARTICLE 3 GENERAL

3.1 Limitation of Lender's Liability. Lender shall not be obligated to perform or discharge any obligation under the Leases hereby assigned or under or by reason of this Assignment, and Borrower hereby agrees to indemnify, hold harmless and defend Lender against any and all liability, loss or damage which Lender might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms of such Leases, except for claims and demands arising by reason of Lender's gross negligence or willful misconduct.

3.2 Tenant's Notification of Assignment. Upon request by Lender, at any time, Borrower will deliver a written notice to each of the tenants and lessees of the Property, which notice shall inform

such tenants and lessees of this Assignment and instruct them that upon receipt of notice by them from Lender of the existence of a default by Borrower under the Note, the Security Instrument or any of the other Loan Documents, all rent due thereafter shall be paid directly to Lender. Any tenant or occupant of the Property is hereby authorized and directed upon receipt of notice to it by the Lender to pay all Rents to Lender.

3.3 Satisfaction of Security Instrument; Satisfaction of Assignment. This Assignment shall remain in full force and effect as long as the indebtedness evidenced by the Note and secured by the Security Instrument remains unpaid in whole or in part. It is understood and agreed that a complete release or satisfaction of the aforesaid Security Instrument shall operate as a complete release or satisfaction of all of Lender's rights and interest hereunder, and that recording of a satisfaction of the Security Instrument shall operate to satisfy this Assignment.

3.4 No Mortgagee In Possession. Nothing contained in this Assignment shall be construed as constituting Lender a "mortgagee in possession" in absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower. Further, entry upon and taking possession of the Property by a receiver shall not constitute possession by Lender.

ARTICLE 4 NEVADA PROVISIONS

4.1 Governing Provisions. In the event of any conflicts or inconsistencies between the terms and conditions of this Article 4 and the remainder of this Assignment, the terms and conditions of this Article 4 shall control and be binding, but only to the extent of any such conflicts or inconsistencies.

4.2 Revocation of License; Lender's Additional Rights. In furtherance of and not in limitation of any other provisions of this Assignment, including without limitation Section 2.2:

Upon an Event of Default and at any time thereafter during the continuance thereof, subject to applicable laws, and whether before or after the institution of legal proceedings to foreclose the lien of the Security Instrument or before or after sale of the Property or during any period of redemption the Lender, without regard to waste, adequacy of the security or solvency of the Borrower, may declare all indebtedness secured hereby immediately due and payable, may revoke the privilege/license granted Borrower hereunder to collect the Rents of the Property, and may, at its option, without notice in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding, or by a receiver duly appointed by a court, give, or require Borrower to give, notice to any or all tenants under any Leases authorizing and directing the tenant to pay the Rents to Lender or such receiver, as the case may be; collect all of the Rents; enforce the payment thereof and exercise all of the rights of the landlord under any Leases and all of the rights of the Lender hereunder; may enter upon, take possession of, manage and operate the Property, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify the Rents, and do any acts which the Lender deems proper to protect the security hereof with or without taking possession of the Property. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or affect any notice of default or invalidate any act done pursuant to such notice nor in any way operate to prevent the Lender from pursuing any other remedy which it may now or hereafter have under the terms of the Security Instrument or the Note or any other security securing the same. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Property is in danger of being lost, materially injured or damaged or whether the Property is adequate to discharge the indebtedness secured hereby. The rights contained herein are in addition to and shall be cumulative with the rights given in any separate instrument, assigning any Leases and Rents and shall not amend or modify the rights in any such separate agreement.

4.3 **Receiver.** If an Event of Default shall occur, the Lender shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of the Borrower, or waste of the Property or adequacy of the security of the Property, to apply *ex parte* for the appointment of a receiver who shall have all the rights, powers and remedies as provided by law or as may be contained in any court decree applying such remedy and who shall collect and apply the Rents in such order as Lender may require to all expenses for management, operation and maintenance of the Property and to the costs and expenses of the receivership, including, without limitation, reasonable attorneys' fees and the repayment of the indebtedness secured hereby. A court is authorized to appoint a receiver on request or petition of Lender, and Borrower irrevocably consents to the appointment of a receiver and waives any notice of application therefor. Borrower shall not contest the appointment of a receiver to operate the Property at any time from and after the occurrence of an Event of Default including, without limitation, during the institution of foreclosure proceedings and shall peaceably turn over possession of the Property to such receiver upon request of Lender.

4.4 **Collection of Rents.** Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to the collection of Rents. The Lender is also specifically empowered to endorse the name of the Borrower, or any subsequent owner of the Property, on any checks, notes, or other instruments for the payment of money, to deposit the same in bank accounts, to give any and all acquittances or any other instrument in relation thereto in the name of the Borrower, and to institute, prosecute, settle, or compromise any summary or legal proceedings in the name of the Borrower or in the name of the Lender for the recovery of such rents, income or profits, or for the recovery of any damages done to the Property or for the abatement of any nuisance thereon, and to defend any legal proceedings brought against the Borrower arising out of the operation of the Property. The Borrower will reimburse the Lender for any charges, expenses or fees, including attorneys' fees and costs, incurred by the Lender.

4.5 **Application of Rents.** In no event will this Assignment reduce the indebtedness owing under the terms of, and evidenced by, the Note or otherwise secured by the Security Instrument and this Assignment, except only to the extent, if any, that Rents are actually received by Lender and applied as payment of the indebtedness secured hereby. Without impairment of its rights hereunder, Lender may, at its option, at any time and from time to time, release to Borrower Rents so received by Lender or any part thereof.

4.6 **Enforcement.** Lender may enforce this Assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Assignment, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

4.7 **References to Other Documents.** The Note and Security Instrument are hereby made a part hereof as if expressly set forth herein. Wherever the Note or Security Instrument are inconsistent with the terms hereof, the provisions which impose the greater or more stringent requirements, liability and obligations upon the Borrower shall govern and prevail.

ARTICLE 5 MISCELLANEOUS

5.1 **Remedies Cumulative.** It is understood and agreed that the Lender's rights and remedies under this Assignment are not to be deemed to be mutually exclusive and Lender may pursue all such remedies simultaneously.

5.2 **Captions.** The captions set forth at the beginning of the various paragraphs of this Assignment are for convenience only and shall not be used to interpret or construe the provisions of this Assignment.

5.3 **Invalidity of Certain Provisions.** Every provision of this Assignment is intended to be severable: in the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

5.4 **Successors and Assigns.** The provisions of this Assignment shall inure to the benefit of Lender and its successors and assigns, and shall be binding upon Borrower, its heirs, personal representatives, successors and assigns. The creation of rights and powers under this Assignment in favor of, or available to, Lender shall, in no way whatsoever, be construed to impose concomitant duties or obligations on Lender in favor of Borrower except as expressly set forth herein.

5.5 **Governing Law.** This Assignment is executed and delivered as additional security for a loan transaction governed by and negotiated and consummated in the County and State where the Property is located and is to be governed by and construed according to the laws of the State where the Property is located, and if controlling, by the laws of the United States.

5.6 **Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.7 **Interpretation.** In this Assignment the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

5.8 **Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

5.9 **Construction of this Assignment.** Borrower and Lender agree that this Assignment shall be interpreted in a fair, equal and neutral manner as to each of the parties.

[SIGNATURE PAGE(S) ATTACHED]

IN WITNESS WHEREOF, the Borrower has executed this Assignment as of the day and year first above written.

PALMILLA DEVELOPMENT CO., INC.,
a Nevada corporation

By: 

Hagai Rapaport, President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on _____, 2007, by Hagai Rapaport, the President of Palmilla Development Co., Inc., a Nevada corporation.

Notary Public

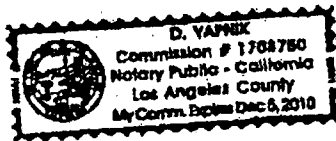
My Commission Expires: _____

THIS DOCUMENT WAS DRAFTED BY:

Thomas G. Garry
BEST & FLANAGAN LLP
225 South Sixth Street
Suite 4000
Minneapolis, Minnesota 55402
(612) 339-7121

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.On March 29, 2001, before me, Derek Vagnik Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Hagai Rapaport
Name(s) of Signer(s)☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

D. Vagnik

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

DO NOT SIGN HERE
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Signer is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

DO NOT SIGN HERE
 Top of thumb here

Signer is Representing: _____

EXHIBIT ALEGAL DESCRIPTION OF PROPERTY

The Property is located in Clark County, Nevada, and is legally described as follows:

Parcel One (1):

Lot Seven (7) in Building Three (3) of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as amended by Certificate of Amendment recorded March 15, 2005 in Book 20050315 as Document No. 02792, Official Records, and by Certificate of Amendment recorded March 16, 2005 in Book 20050316 as Document No. 04327, Official Records

Parcel Two (2):

Lots Three (3), Seven (7), Eight (8), Ten (10) and Eleven (11) in Building Six (6); Lots One through Twelve (1-12) inclusive, in Building Seven (7); Lots One through Twelve (1-12) inclusive, in Building Eight (8); Lots One through Twelve (1-12) inclusive, in Building Nine (9); Lots One through Twelve (1-12) inclusive, in Building Ten (10); Lots One through Twelve (1-12) inclusive, in Building Eleven (11); Lots One through Twelve (1-12) inclusive, in Building Twelve (12); Lots One through Twelve (1-12) inclusive, in Building Thirteen (13); Lots One through Twelve (1-12), inclusive, in Building Fourteen (14); Lots One through Twelve (1-12), inclusive, in Building Fifteen (15); Lots One through Twelve (1-12) inclusive, in Building Sixteen (16); Lots One through Twelve (1-12) inclusive, in Building Seventeen (17); Lots One through Twelve (1-12), inclusive, in Building Eighteen (18); Lots One (1), Four (4), Nine (9), Ten (10) and Twelve (12) in Building Nineteen (19); and Lots Eleven (11) and Twelve (12) in Building Twenty (20) of PALMILLA TOWNHOMES - PHASE 2 as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada.

Parcel Three (3):

The non-exclusive easements appurtenant to the property described in Parcels One (1) and Two (2) over, across and for the use of the Private Streets, Common Elements and Common Areas as delineated upon the Plat of PALMILLA TOWNHOMES - PHASE 2, as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada, and upon the Plat of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as further set forth in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Palmilla, recorded December 10, 2003 in Book 20031210 as Document No. 03076, Official Records, and in Annexation Amendments thereto recorded August 21, 2006 in Book 20060821 as Document No. 003685, recorded September 6, 2006 in Book 20060906 as Document No. 00388, and recorded February 7, 2006 in Book 20060207 as Document No. 02991, and recorded February 27, 2007 in Book 20070227 as Document No. 03972, Official Records.

016075276010/521937_4

CLARIFICATION**EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

The Property is located in Clark County, Nevada, and is legally described as follows:

Parcel One (1):

Lot Seven (7) in Building Three (3) of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as amended by Certificate of Amendment recorded March 15, 2005 in Book 20050315 as Document No. 02792, Official Records, and by Certificate of Amendment recorded March 16, 2005 in Book 20050316 as Document No. 04327, Official Records

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The non-exclusive easements appurtenant to the property described in Parcels One (1) and Two (2) over, across and for the use of the Private Streets, Common Elements and Common Areas as delineated upon the of Plat of PALMILLA TOWNHOMES - PHASE 2, as shown by map thereof on file in Book 115 of Plats, Page 49, in the Office of the County Recorder of Clark County, Nevada, and upon the Plat of AMENDED PLAT OF PALMILLA TOWNHOMES - PHASE 1, as shown by map thereof on file in Book 118 of Plats, Page 8, in the Office of the County Recorder of Clark County, Nevada, as further set forth in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Palmilla, recorded December 10, 2003 in Book 20031210 as Document No. 03076, Official Records, and in Annexation Amendments thereto recorded August 21, 2006 in Book 20060821 as Document No. 003685, recorded September 6, 2006 in Book 20060906 as Document No. 00388, and recorded February 7, 2006 in Book 20060207 as Document No. 02991, and recorded February 27, 2007 in Book 20070227 as Document No. 03972, Official Records.

Exhibit 4

000790

000790

Exhibit 4

20080103-0000543

Fee: \$15.00

N/C Fee: \$0.00

01/03/2008

09:28:18

120000000003

Requestor:

ANDERSON MCCOY & ORTA

Debbie Conway

BRT

Clark County Recorder Pgs: 3

THIS DOCUMENT PREPARED BY AND
UPON RECORDATION RETURN TO:
VANESSA ORTA, ESQ.
ANDERSON, MCCOY & ORTA, P.C.
100 North Broadway, Suite 2600
Oklahoma City, Oklahoma 73102
Telephone: 888-236-0007
AMO File No. 1146.001
Loan/Property Name: PALMILLA APARTMENTS
Custodian ID No. 1536-0148-000
County of Clark, Nevada

3
4/4

APN: 124-30-311-031; 124-30-312-014 and 015; 124-30-312-017 and 018; 124-30-312-025 thru 169;
124-30-312-171 and 172; 124-30-312-177; and 124-30-312-18- thru 182

**ASSIGNMENT OF COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT,
FIXTURE FILING FINANCING STATEMENT AND ASSIGNMENT OF LEASES,
RENTS, INCOME AND PROFITS**

AND

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

KNOW THAT

ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation,
having an address at 1180 NW Maple Street, Suite 202, Issaquah, Washington 98027,
("Assignor"),

For valuable consideration paid by:

LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
REGISTERED HOLDERS OF ML-CFC COMMERCIAL MORTGAGE TRUST 2007-7,
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-7,
having an address of 135 South LaSalle Street, Suite 1640, Chicago, Illinois 60603,
("Assignee"),

the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby grant, bargain, sell, convey, assign, transfer, and set over, without recourse, representation and warranty, except as set forth in that certain related Mortgage Loan Purchase Agreement, all of Assignor's right, title and interest, of any kind whatsoever, including that of mortgagee, beneficiary, payee, assignee or secured party (as the case may be), in and to the following:

000791

000791

Commercial Deed of Trust, Security Agreement, Fixture Filing Financing Statement and Assignment of Leases, Rents, Income and Profits (as same may have been amended) by YORK NEVADA MANAGEMENT, LLC II, a Nevada limited liability company, ("Borrower") to Assignor, and recorded April 13, 2007, as Instrument Number 20070413-0000918, in the Real Estate Records pertaining to land situated in the State of Nevada, County of Clark ("Real Estate Records");

Assignment of Leases, Rents, Income and Profits (as same may have been amended) by Borrower to Assignor and recorded April 13, 2007, as Instrument Number 20070413-0000919, in the Real Estate Records;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever.

IN WITNESS WHEREOF, the Assignor has caused these presents to be effective as of June 13, 2007.

(The remainder of this page has been intentionally left blank.)

~~RECORDED~~

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS ACCRUED OR TO ACCRUE UNDER SAID COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING FINANCING STATEMENT AND ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS.

DATED: April 17, 2007

WITNESS:

Cynthia Root

PRINT NAME: Cynthia Root

Judy Hoffine

PRINT NAME: JUDY HOFFINE

ARTESIA MORTGAGE CAPITAL CORPORATION,
a Delaware corporation

BY: Diana Kelsey Kutas

NAME: Diana Kelsey Kutas

TITLE: Managing Director

STATE OF WASHINGTON

COUNTY OF KING

On this 17th day of April, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Diana Kelsey Kutas, to me known to be the Managing Director of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and seal the day and year first above written.

B. Sonia Nelson
Notary Public residing at Calhoun, WA
Print Name: B. Sonia Nelson
My Commission Expires: 3-23-2011



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Page 2

Exhibit 5

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Exhibit 5

LaSalle Global Trust Services

June 30, 2008

NOTICE OF RESIGNATION OF TRUSTEE

To: The parties listed on Schedule A


RE: ML-CFC Commercial Mortgage Trust 2007-7,
Commercial Mortgage Pass-Through Certificates Series 2007-7

Reference is hereby made to the Pooling and Servicing Agreement, dated as of June 1, 2007 (the "Pooling Agreement"), by and among Merrill Lynch Mortgage Investors, Inc., as Depositor, Midland Loan Services, Inc., as Master Servicer No.1, Wachovia Bank, National Association, as Master Servicer No.2, Midland Loan Services, Inc., as Special Servicer, and LaSalle, as Trustee and as Custodian. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Pooling Agreement.

In connection with the pending acquisition by Bank of America Corporation of Countrywide Financial Corporation, scheduled to close July 1, 2008, and pursuant to Section 8.07(a) of the Pooling Agreement, LaSalle hereby resigns as Trustee, Certificate Registrar, Authenticating Agent and REMIC Administrator under the Pooling Agreement, effective as of the date hereof.

This notice shall also satisfy the notice requirements with respect to resignation of the Trustee set forth in Section 11.11 of the Pooling Agreement.

LASALLE BANK NATIONAL ASSOCIATION

By: 
Name: Peter Sablich
Title: Assistant Vice President

CMBS Services, 114-135-18-25
135 S. LaSalle Street, Chicago, IL 60603

G:\Bancorp\New

SCHEDULE A

LaSalle Global Trust Services

Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: David M. Rodgers	Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: Director of CMBS Securitizations
Merrill Lynch Mortgage Investors, Inc. 4 World Financial Center, 12 th Floor 250 Vesey Street New York, New York 10080 Attn: General Counsel for Global Commercial Real Estate in the Office of the General Counsel	Wachovia Bank, National Association 8739 Research Drive, URP4 Charlotte, North Carolina 28262-1075 Re: ML-CFC Commercial Mortgage Trust 2007-7, Commercial Mortgage Pass-Through Certificates, Series 2007-7 Facsimile: 704.715.0036
Midland Loan Services, Inc. 10851 Mastin, Building 82, 7 th Floor Overland Park, Kansas 66210 Attn: President Facsimile: 913.253.9001	Dechert LLP 30 Rockefeller Plaza New York, New York 10112 Attn: Stephanie M. Tita Facsimile: 212.698.3599
Moody's Investors Services, Inc. 7 World Trade Center 250 Greenwich Street New York, New York 10007 Attn: Commercial Mortgage Surveillance	Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. 55 Water Street New York, New York 10041 Attn: CMBS Surveillance Group
Certificateholders	Controlling Class Representative
Non-Trust Noteholders	

CMBS Services, IL 4-135-15-25
135 S. LaSalle Street, Chicago, IL 60603

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890



Corporate Trust Services
 MAC N2702-011
 9062 Old Annapolis Road
 Columbia, MD 21045
 410 884-2000
 410 715-2380 Fax

Wells Fargo Bank, N.A.

NOTICE OF APPOINTMENT OF SUCCESSOR TRUSTEE

To: The parties listed on Schedule A

RE: ML-CFC Commercial Mortgage Trust 2007-7,
 Commercial Mortgage Pass-Through Certificates Series 2007-7

Reference is hereby made to the Pooling and Servicing Agreement, dated as of June 1, 2007 (the "Pooling Agreement"), by and among Merrill Lynch Mortgage Investors, Inc., as depositor, Midland Loan Services, Inc., as Master Servicer No.1 and as Special Servicer, Wachovia Bank, National Association, as Master Servicer No.2, and LaSalle, as Trustee and Custodian. Capitalized terms used but not defined herein have the respective meanings assigned thereto in the Pooling Agreement.

Pursuant to Section 8.08(c) of the Pooling Agreement, notice is hereby provided that LaSalle has resigned as Trustee and Wells Fargo Bank, N.A. ("Wells Fargo") has been appointed as successor Trustee pursuant to Section 8.07 of the Pooling Agreement. LaSalle, as agent on behalf of Wells Fargo, as successor Trustee, will continue to make available each month the Distribution Date Statement on its website, located at www.ctrustee.net. The address of the corporate trust office for Wells Fargo is:

Wells Fargo Bank, N.A.
 9062 Old Annapolis Road
 Columbia, Maryland 21045
 Attention: Corporate Trust Services (CMBS)—ML-CFC 2007-7
 Tel: (410) 884-2000
 Fax: (410) 715-2380

Pursuant to Sections 5.02(a), 8.12 and 8.14 of the Pooling Agreement notice is also hereby provided that Wells Fargo has appointed LaSalle to act as Certificate Registrar, Authenticating Agent and REMIC Administrator, respectively, in accordance with the terms of the Pooling Agreement.

WELLS FARGO BANK, N.A.,
 as Trustee

By:

Name:

Judith J. Pishel

Title:

Vice President

SCHEDULE A

Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: David M. Rodgers	Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: Director of CMBS Securitizations
Merrill Lynch Mortgage Investors, Inc. 4 World Financial Center, 12 th Floor 250 Vesey Street New York, New York 10080 Attn: General Counsel for Global Commercial Real Estate in the Office of the General Counsel	Midland Loan Services, Inc. 10851 Mastin, Building 82, 7 th Floor Overland Park, Kansas 66210 Attn: President Facsimile: 913.253.9001
Wachovia Bank, National Association 8739 Research Drive, URP4 Charlotte, North Carolina 28262-1075 Re: ML-CFC Commercial Mortgage Trust 2007-7, Commercial Mortgage Pass-Through Certificates, Series 2007-7 Facsimile: 704.715.0036	Dechert LLP 30 Rockefeller Plaza New York, New York 10112 Attn: Stephanie M. Tita Facsimile: 212.698.3599
LaSalle Bank National Association 135 South LaSalle Street, Suite 1625 Mailcode: IL4-135-16-25 Chicago, Illinois 60603	Non-Trust Noteholders
Certificateholders	

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Exhibit 6

Exhibit 6



Corporate Trust Services
 MAC N2702-011
 9062 Old Annapolis Road
 Columbia, MD 21045
 410.884.2000
 410.715.2380 Fax

Wells Fargo Bank, N.A.

December 30, 2008

NOTICE OF RESIGNATION OF TRUSTEE

To: The parties listed on Schedule A

RE: ML-CFC Commercial Mortgage Trust 2007-7 Commercial Mortgage Pass-Through Certificates Series 2007-7

Reference is hereby made to the Pooling and Servicing Agreement, dated as of June 1, 2007 (the "Pooling Agreement"), by and among Merrill Lynch Mortgage Investors, Inc., as Depositor, Midland Loan Services, Inc., as Master Servicer No.1, Wachovia Bank, National Association, as Master Servicer No.2, Midland Loan Services, Inc., as Special Servicer, Wells Fargo Bank, N.A. ("Wells Fargo"), as Trustee and Bank of America, N.A., successor by merger to LaSalle Bank National Association, as Custodian. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Pooling Agreement.

In connection with the pending acquisition of Wachovia Corporation, the parent company of Wachovia Bank, National Association and the indirect parent corporation of Wachovia Commercial Mortgage Securities, Inc., by Wells Fargo & Company, the parent corporation of Wells Fargo Bank, N.A. which is scheduled to close at 11:59 p.m. on December 31, 2008 (the "Acquisition Closing Date"), under applicable law, Wells Fargo is required to resign as trustee from various securitization transactions, including the above-referenced transaction, by the Acquisition Closing Date. Pursuant to Section 8.07(a) of the Pooling Agreement, Wells Fargo hereby resigns as Trustee, Certificate Registrar, Authenticating Agent, and REMIC Administrator under the Pooling Agreement, effective as of December 31, 2008.

For purposes of clarification, the resignation of Wells Fargo, as Trustee, Certificate Registrar, Authenticating Agent, and REMIC Administrator under the Pooling Agreement shall be deemed to occur at the last moment of time on December 31, 2008. U.S. Bank National Association will be appointed as successor trustee and such appointment shall be deemed to occur at the first moment of time on January 1, 2009.

This notice shall also satisfy the notice requirements with respect to resignation of the Trustee set forth in Section 11.11 of the Pooling Agreement.

WELLS FARGO BANK, N.A.

By: Elisabeth A. Brewster
 Name: Elisabeth A. Brewster
 Title: Vice President

SCHEDULE A

Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: David M. Rodgers	Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: Director of CMBS Securitizations
Merrill Lynch Mortgage Investors, Inc. 4 World Financial Center, 12 th Floor 250 Vesey Street New York, New York 10080 Attn: General Counsel for Global Commercial Real Estate in the Office of the General Counsel	Wachovia Bank, National Association NC 1075, 9th Floor 201 South College Street Charlotte, NC 28244-1075 Re: ML-CFC Commercial Mortgage Trust 2007-7 Commercial Mortgage Pass-Through Certificates, Series 2007-7 Facsimile: 704.715.0036
Midland Loan Services, Inc. 10851 Mastin, Building 82, 7 th Floor Overland Park, Kansas 66210 Attn: President Facsimile: 913.253.9001	Dechert LLP 30 Rockefeller Plaza New York, New York 10112 Attn: Stephanie M. Tita Facsimile: 212.698.3599
Moody's Investors Services, Inc. 7 World Trade Center 250 Greenwich Street New York, New York 10007 Attn: Commercial Mortgage Surveillance	Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. 55 Water Street New York, New York 10041 Attn: CMBS Surveillance Group
Certificateholders	Controlling Class Representative
Non-Trust Noteholders	

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usbank.com

Corporate Trust Services
 Rookery Building
 209 South LaSalle Street, Suite 300
 Chicago, IL 60604

January 2, 2009

NOTICE OF APPOINTMENT OF SUCCESSOR TRUSTEE

To: The parties listed on Schedule A

RE: ML-CFC Commercial Mortgage Trust 2007-7
 Commercial Mortgage Pass-Through Certificates, Series 2007-7

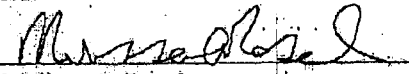
Reference is hereby made to the Pooling and Servicing Agreement, dated as of June 1, 2007 (the "Pooling Agreement"), by and among Merrill Lynch Mortgage Investors, Inc., as depositor, Midland Loan Services, Inc., as Master Servicer No.1 and as Special Servicer, Wachovia Bank, National Association, as Master Servicer No.2, Wells Fargo Bank, N.A. ("Wells Fargo"), as Trustee and Bank of America, N.A., successor by merger to LaSalle Bank National Association, as Custodian. Capitalized terms used but not defined herein have the respective meanings assigned thereto in the Pooling Agreement.

Pursuant to Section 8.08(c) of the Pooling Agreement, notice is hereby provided that Wells Fargo has resigned as Trustee and U.S. Bank National Association ("U.S. Bank") has been appointed as successor Trustee pursuant to Section 8.07 of the Pooling Agreement. Bank of America, N.A., as agent on behalf of U.S. Bank, as successor Trustee, will continue to make available each month the Distribution Date Statement on its website, located at www.etrustee.net. The address of the corporate trust office for U.S. Bank is:

U.S. Bank National Association
 209 South LaSalle Street Suite 300
 Chicago, Illinois 60604
 Tel: 312-325-8904
 Fax: 312-325-8905
 Attention: ML-CFC 2007-7

Pursuant to Sections 5.02(a), 8.12 and 8.14 of the Pooling Agreement notice is also hereby provided that U.S. Bank has appointed Bank of America, N.A. to act as Certificate Registrar, Authenticating Agent and REMIC Administrator, respectively, in accordance with the terms of the Pooling Agreement.

U.S. BANK NATIONAL ASSOCIATION
 as Trustee

By: 
 Name: Melissa A. Rosal
 Title: Vice President



SCHEDULE A

Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: David M. Rodgers	Merrill Lynch Mortgage Investors, Inc. c/o Global Commercial Real Estate 4 World Financial Center, 16 th Floor 250 Vesey Street New York, New York 10080 Attn: Director of CMBS Securitizations
Merrill Lynch Mortgage Investors, Inc. 4 World Financial Center, 12 th Floor 250 Vesey Street New York, New York 10080 Attn: General Counsel for Global Commercial Real Estate in the Office of the General Counsel	Midland Loan Services, Inc. 10851 Mastin, Building 82, 7 th Floor Overland Park, Kansas 66210 Attn: President Facsimile: 913.253.9001
Wachovia Bank, National Association NC 1075, 9th Floor 201 South College Street Charlotte, NC 28244-1075 Re: ML-CFC Commercial Mortgage Trust 2007-7, Commercial Mortgage Pass-Through Certificates, Series 2007-7 Facsimile: 704.715.0036	Dechert LLP 30 Rockefeller Plaza New York, New York 10112 Attn: Stephanie M. Tita Facsimile: 212.698.3599
Wells Fargo Bank, N.A. 9062 Old Annapolis Road Columbia, Maryland 21045-1951	Bank of America, N.A. 135 South LaSalle Street Mailcode: IL4-135-16-25 Chicago, Illinois 60603
Certificateholders	Non-Trust Noteholders

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Exhibit 7

Exhibit 7

1 **ORD**
 2 MICHAEL F. LYNCH, ESQ.
 2 Nevada Bar No. 8555
 3 MLynch@lrlaw.com
 3 LEWIS AND ROCA LLP
 4 3993 Howard Hughes Parkway, Suite 600
 4 Las Vegas, Nevada 89169-5996
 5 Telephone: (702) 949-8200
 5 Facsimile: (702) 949-8398
 6 *Attorneys for Plaintiff*

FILED
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7 **DISTRICT COURT**
 8 **CLARK COUNTY, NEVADA**

9 U.S. Bank National Association as Trustee
 9 For The Registered Holders of ML-CFC
 10 Commercial Mortgage Trust 2007-7
 10 Commercial Mortgage Pass-Through
 11 Certificates Series 2007-7, by and through
 11 Midland Loan Services, Inc., as its Special
 12 Servicer,

13 Plaintiff,

14 vs.

15 Palmilla Development Co., Inc., a Nevada
 15 corporation; and Roe Corporations X to XX,

16 Defendants.

Case No.: 09-A595321

Dept. No.: IX

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

ORDER APPOINTING RECEIVER

Date of Hearing: 8/18/2009

Time of Hearing: 9:00 a.m.

17
 18 This matter came before the Court on August 18, 2009, on U.S. Bank National
 19 Association as Trustee For The Registered Holders of ML-CFC Commercial Mortgage Trust
 20 2007-7 Commercial Mortgage Pass-Through Certificates Series 2007-7, by and through
 21 Midland Loan Services, Inc., as its Special Servicer's ("Plaintiff") Application for an Order to
 22 Appear and Show Cause Why a Receiver Should not be Appointed on Order Shortening Time,
 23 which was originally scheduled to come on for hearing on August 13, 2009.

24 Palmilla Development Co., Inc. ("Defendant") filed a Countermotion for a Continuance
 25 and Opposition to Application for Order to Show Cause. On August 13, the Court granted
 26 Defendant a continuance of the hearing to August 18. On August 17, Plaintiff filed a Reply
 27

1 Brief in Support of Appointment of Receiver. No other documents or briefing was submitted in
2 connection with the order to show cause hearing.

3 Michael F. Lynch, Esq. appeared on behalf of Plaintiff and Brent Larson, Esq. appeared
4 on behalf of Defendant. Also present was Mr. Hagai Rapaport, a corporate representative of
5 Defendant.

6 The Court read and considered the pleadings and papers filed herein, the oral argument
7 of counsel, and good cause appearing therefor, the Court rules as follows:

8 **FINDINGS OF FACT**

9 Plaintiff provided credible and admissible prima facie evidence of the following facts.
10 Unless otherwise noted herein, Defendant either conceded and/or failed to dispute the following
11 facts in the briefing and papers filed in connection with the Order to Show Cause hearing or
12 otherwise during oral argument. Therefore, good cause appearing, the Court therefore makes
13 following findings of facts:

14 1. Defendant borrowed \$20,150,000.00 with interest from Artesia Mortgage Capital
15 Corporation, a Delaware corporation ("Original Lender") on or about March 28, 2007 (the
16 "Loan").

17 2. The Loan is evidenced by, among other things, that certain Fixed Rate Note
18 dated March 28, 2007, bearing an authorized signature on behalf of the Borrower (the
19 "Promissory Note"). (A true and correct copy of the Promissory Note was attached to
20 Plaintiff's Application as Exhibit "3").

21 3. The Loan was and is secured by that certain Commercial Deed of Trust,
22 Security Agreement, Fixture Filing Financing Statement and Assignment of Leases, Rents,
23 Income and Profits (as same may have been amended) recorded in the Clark County Recorders'
24 Office as Document No. 20070330-0002946 ("Deed of Trust"). (A true and correct copy of the
25 Deed of Trust was attached to Plaintiff's Application as Exhibit "4").

26 4. The Loan was and is further secured by that certain Assignment of Leases,
27 Rents, Income and Profits (as same may have been amended) recorded in the Clark County

1 Recorders' Office as Document No. 20070330-0002947 ("Assignment of Rents"). (A true and
2 correct copy of the Assignment of Rents was attached to Plaintiff's Application as Exhibit "5")

3 5. Original Lender assigned all of its rights and interests in and to the Deed of Trust
4 and the Assignment of Rents to the Plaintiff pursuant to that certain Assignment of (a)
5 Commercial Deed of Trust, Security Agreement, Fixture Filing Financing Statement and (b)
6 Assignment of Leases, Rents, Income and Profits And Assignment of Assignment of Leases,
7 Rents, Income and Profits recorded in the Clark County Recorders' Office as Document No.
8 20080103-0000543 (the "Assignment of Deed of Trust"). (A true and correct copy of the
9 Assignment of Deed of Trust was attached to Plaintiff's Application as Exhibit "6").

10 6. LaSalle Bank resigned its position as trustee on or about June 30, 2008, and
11 Wells Fargo Bank, N.A., was appointed as successor trustee (A true and correct copy of the
12 Resignation of Trustee and Notice of Appointment of Successor Trustee were collectively
13 attached was attached to Plaintiff's Application as Exhibit "7").

14 7. Wells Fargo Bank, N.A., then resigned its position as trustee on or about
15 December 30, 2008, and U.S. Bank National Association was appointed as successor trustee (A
16 true and correct copy of the Resignation of Trustee and Notice of Appointment of Successor
17 Trustee were collectively attached to Plaintiff's Application as Exhibit "8").

18 8. Pursuant to the Assignment of Deed of Trust, the Plaintiff holds all beneficial
19 interest under the Deed of Trust and the Assignment of Rents, and is thereby authorized and
20 empowered to bring this action.

21 9. As detailed more fully in the Deed of Trust, the real property securing the
22 Promissory Note (the "Real Property") is identified by the Clark County Tax Assessor Parcel
23 Nos:

- 24 a. 124-30-311-031;
25 b. 124-30-312-014 and 015;
26 c. 124-30-312-017 and 018;
27 d. 124-30-312-025 – 169, inclusive;

- 1 e. 124-30-312-171 and 172;
2 f. 124-30-312-177; and
3 g. 124-30-312-180 – 182, inclusive,

4 more commonly referred to as the Palmilla Townhomes, generally located northeast of the
5 intersection of West Ann Road and North Decatur Boulevard in North Las Vegas, and more
6 specifically described in the Legal Description attached was attached to Plaintiff's Application
7 as Exhibit "9".

8 10. The Real Property is a development of an estimated 155¹ single-family rental
9 townhomes, each of which is currently generating, or capable of generating, rental income.
10 Occupancy is estimated to be approximately 80%.

11 11. The Promissory Note and the Deed of Trust provided that Defendant was to
12 remit monthly payments in a constant amount of \$111,530.40, with a final maturity date of
13 April 11, 2018.

14 12. Defendant is in substantial arrears on interest and other monies owed to Plaintiff
15 including fees, other penalties, and other fees and costs.

16 13. Defendant is in default of its obligations to Plaintiff, by its failure to make past
17 due payments. This failure constitutes "Events of Default" under the Loan, the Promissory
18 Note, the Deed of Trust, and the Limited Recourse Obligations Guarantee.

19 14. Defendant's counsel conceded in open court that the Deed of Trust authorizes the
20 appointment of a receiver, but Defendant nevertheless argued against it on the alleged grounds
21 that a receiver was unnecessary because the Plaintiff could acquire actual ownership of the
22 property within the next 21 days, by proceeding with noticing a foreclosure sale of the property.

23 15. Greystar Real Estate Partners, with John Rials as its agent ("Receiver") is
24 qualified to act as Receiver in this action, to take possession, custody, and control of the
25 Property.

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27 ¹ Plaintiff believes a more accurate estimate is 157 units.

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1 f. Undertake efforts to maximize the market value and/or marketability of
2 the Property.

3 21. In light of the foregoing findings of fact and conclusions of law, Plaintiff is
4 contractually entitled to the Appointment of a Receiver, on the terms and conditions as provided
5 for herein, subject to further order of the Court.

6 **ORDER**

7 Therefore, IT IS HEREBY ORDERED as follows:

8 1. **Receiver's Oath**

9 The Receiver shall execute a Receiver's Oath. The Receiver's Oath may be filed by
10 facsimile transmission and this Order shall become effective upon the Court's receipt of such
11 facsimile transmission; provided, however, that the Receiver replace the facsimiles with
12 originals within seven (7) days of filing.

13 2. **Receiver's Fees**

14 The Court's final determination of the Receiver's Fees shall be deferred pursuant to the
15 following conditions. Defendant shall file any opposition to the reasonableness of the proposed
16 Receiver's Fees on or before September 8, 2009. Plaintiff shall file its reply within 10 days of
17 any such objection, by September 18. Regardless of whether Defendant files an objection, the
18 Court will make its final determination on the proposed Receiver's Fees on September 24,
19 2009, at 9:00 a.m., or as soon thereafter as counsel may be heard.

20 The deferral of the Receivership fees notwithstanding, in addition to whatever Receiver
21 fees are ultimately approved, the Receiver shall also be reimbursed for all costs and expenses as
22 are reasonable and necessary for the Receiver to accomplish the purposes and tasks set forth in
23 this Order, including, but not limited to legal expenses, the premium incurred to obtain the
24 Receiver's bond, travel, mileage, faxes, copies, photographs, printing and similar Receiver-
25 provided benefits, which shall be accounted for in the monthly financial report. Five (5) days
26 after submission of the monthly report, without further Order of the Court, the Receiver shall be
27 entitled to its fees and costs. Notwithstanding periodic payment of fees and expenses, the

1 Defendant reserves the right to object to any fees or costs at such time as the receiver files its
2 periodic reports to seek confirmation of all their transactions.

3 3. Receiver's Authority and Duties

4 (A) Except as otherwise provided in Paragraph 10, the Receiver shall take
5 immediate and exclusive possession, custody and control of all real and personal property
6 owned by Defendant,² including, without limitation, all equipment, fixtures, furnishings,
7 records, inventory, assets, royalties, rents, receivables, accounts, deposits, equities, and profits
8 whatsoever. Receiver shall care for, preserve and maintain the Property, and may incur any
9 expenses necessary for this purpose. All such expenses shall be paid from funds of the
10 Receivership Estate.

11 (B) The Receiver is hereby given the power and authority usually held by
12 receivers and reasonably necessary to accomplish the purpose of this Receivership including,
13 without limitation, the specific power to:

14 i. Change any and all locks on the Property and limit access thereto;
15 ii. Maintain, protect, collect, sell, liquidate, or otherwise dispose of
16 property; provided, however, that the Receiver shall not sell or otherwise dispose of any
17 property, other than in the ordinary course of business. Notwithstanding the foregoing, the sale,
18 liquidation, or other conversion of any real property by the Receiver shall be subject to prior
19 Court approval;

20 iii. Except as otherwise provided in Paragraph 10, take possession of
21 all funds in all bank and other deposit accounts of the Defendant; open, transfer and change all
22 bank and trade accounts relating to the Property, so that all such accounts are in the name of the
23 _____

24 ² With respect to the computer(s) that is/are located at the Property used by Defendant or its
25 employees in operating the Property, Defendant has represented to Plaintiff that these are not
26 the property of Defendant. As such, Defendant shall be allowed to remove the computer(s)
27 from the Property, but Plaintiff and Receiver reserve all rights to contest or challenge
Defendant's ownership or possessory rights to said computer(s) in the future. Defendant and
Plaintiff shall work together in good faith to allow the Receiver to harvest Property-related data
from the computer(s). Receiver shall take all reasonable efforts to refrain from accessing or
taking data unrelated to the Property.

1 Receiver; and make disbursements in payment of expenses incurred by the Receiver in
2 accordance with this Order;

3 iv. Hire, on a contract basis, professionals, employees, real estate
4 brokers, general contractors, tradesmen, and other personnel or entities necessary to manage,
5 preserve, market and sell the Receivership Property;

6 v. Retain existing employees of the Defendant or related parties as
7 Defendant's employees in order to continue any business operations. As of the date and time
8 this order is entered, Defendant shall no longer be deemed to be the employer of any employee
9 working at or on the Property. If the Receiver chooses to retain any such employee(s), the
10 Receiver shall carry said employee on its books in connection with payroll taxes, workers
11 compensation insurance, and related costs;

12 vi. Hire, employ, pay and terminate servants, agents, employees,
13 clerks and accountants; purchase materials, supplies, advertising, and other services at ordinary
14 and usual rates and prices using funds that shall come into the Receiver's possession; collect or
15 compromise debts of the Receivership Estate; incur risks and obligation ordinarily incurred by
16 owners, managers, and operators of similar enterprises, which in the Receiver's reasonable
17 judgment, are necessary for the operation of the business, and no such risk or obligation
18 incurred shall be the personal risk or obligation of the Receiver but only that of the Receivership
19 Estate;

20 vii. Reject any leases or unexpired contracts of the Defendant that are,
21 in the Receiver's judgment, burdensome on the Receivership Estate, subject to Court approval;

22 viii. Make and enter into leases for a term not exceeding one year,
23 obtain and eject tenants, and set or modify rents and terms of rent without this Court's prior
24 approval;

25 ix. Borrow funds from Plaintiff required to continue operation of the
26 existing business. Nothing in this Order shall obligated Receiver to advance any such funds.
27 Nothing in this Order shall obligate Plaintiff to provide such funds and Plaintiff shall be entitled

1 to the issuance of a Receiver's Certificate in the event it does advance such funds, in accordance
2 with Section 16 of this order;

3 x. Collect all rents, profits and income, which now or hereafter may
4 be due from the operation of any business connected with the Property and improvements
5 thereon, including such rents, income and profits presently held in bank accounts for the
6 Property;

7 xi. Employ and compensate unlawful detainer attorneys or eviction
8 services with respect to the operation of the Property without prior Court approval;

9 xii. With prior Court approval, abandon property the Receiver
10 considers to be of little or no value to the Receivership Estate;

11 xiii. Retain inspectors and others reasonably necessary to investigate
12 the status and condition of the Property. The Receiver shall report to the Court what it learns
13 from such inspections, and recommend to the Court what action should be taken with regard to
14 repairs and rehabilitation of the Property;

15 xiv. The Receiver shall not make any capital expenditure in excess of
16 \$5,000 without prior approval from the Court, except for matters pertaining to health, safety, or
17 welfare or exigent circumstances; and

18 xv. The Receiver shall have the discretion, but not the obligation, to
19 exercise such rights as Receiver deems necessary to preserve and protect the Receivership
20 Property.

21 (C) The Receiver shall not be obligated to file any federal or state income tax,
22 returns, schedules or other forms, which continue to be an obligation of the Defendant.

23 4. Overhead Expenses of Receiver

24 All fees and expenses incurred by the Receiver, which pertain solely to the Receiver's
25 general office administration and/or overhead, including, but not limited to office supplies,
26 employee wages, taxes and benefits and other charges shall not be an expense of the
27

1 Receivership Estate unless incurred directly and solely for the benefit of the Receivership
2 Estate.

3 5. Inventory

4 Within thirty (30) days after entry of this Order hereunder, the Receiver shall file an
5 inventory of all of the personal property taken into possession pursuant to this Order.

6 6. Security Deposits

7 Any security or other deposits which tenants have paid to Defendant or its agents and
8 which are not paid to the Receiver, and over which the Receiver has no control, shall be
9 obligations of the Defendant and the Receiver may, but shall not be obligated to, refund such
10 deposits without an Order of this Court. Any other security or other deposits that tenants have
11 paid or may pay to the Receiver or which Defendant actually turns over to the Receiver, if
12 otherwise refundable under the terms of their leases or agreements with the Receiver, may be
13 refundable by the Receiver in accordance with the leases or agreements.

14 7. Monthly Reports

15 The Receiver shall prepare and serve on Plaintiff and Defendant interim reports of the
16 condition and operation of the Property in the Receivership Estate within thirty (30) days of the
17 closing of each accounting period or month. These interim reports shall include the Receiver's
18 fees and expenses of the Receivership Estate, including fees and costs of accountants and
19 attorneys authorized by the Court, incurred for each reporting period in the operation and
20 administration of the Receivership Estate. The Receiver shall follow accounting standards
21 typical for similar properties, and may enlist the aid of accountants for preparation of Receiver's
22 reports to the Court. Any objections to the Monthly Reports must be received within twenty
23 (20) days of service of said interim report(s) in order to be timely and considered by the Court.

24 8. Management of the Property and/or Business Entity

25 Receiver shall operate and manage the Property including, but not limited to, collecting
26 rent, and operating any related business entity. The Receiver may employ such agents,
27 independent contractors, employees and management companies to assist Receiver in managing

1 the Receivership Property including, but not limited to, a company in which Receiver is a
2 principal, provided the amount of compensation paid to any such agent or firm is comparable to
3 that charged by similar entities for similar services. Receiver may undertake the risks and
4 obligations ordinarily incurred by owners, managers and operators of similar businesses and
5 enterprises and Receiver shall pay for these services from the funds of the Receivership Estate.
6 No such risk or obligation so incurred shall be the personal risk or obligation of this Receiver,
7 but shall be the risk and obligation of the Receivership Estate. All who are acting, or have acted,
8 on behalf of the Receiver at the request of the Receiver are protected and privileged with the
9 same protections of this Court as the Receiver has.

10 9. Police Assistance

11 Receiver may request assistance of law enforcement officials when taking possession, or
12 at any other time during the term of the Receivership, if in the opinion of Receiver, such
13 assistance is necessary to preserve the peace and protect the Receivership assets.

14 10. Bank Accounts

15 With reference to the Order Granting Motion for Relief from the Automatic Stay,
16 entered on July 2, 2009, in *In re: Palmilla Development Company, Inc.*, 1:09-bk-11504 MT,
17 pending in the United States Bankruptcy Court, Central District of California, and subject to the
18 entry of an order from that Court clarifying the Stay Relief Order as it relates to funds now
19 remaining in Defendant's/Debtor in Possession's accounts, the Receiver shall take possession
20 of, and receive from all depositories, banks, brokerages and otherwise, any money on deposit in
21 such institutions belonging to or arising from the operation of the Property, whether such funds
22 be in accounts titled in the name of the Defendant or not, and Receiver may indemnify the
23 institution upon whom such demand is made, and is empowered to open or close any other
24 accounts.

25 Receiver shall deposit monies and funds collected and received in connection with the
26 Receivership Estate at federally-insured banking institutions or savings associations which are
27 not parties to this case. Monies coming into the possession of the Receiver and not expended for

1 any purposes herein authorized shall be held by the Receiver pending further orders of this
2 Court. Additionally, Monies on deposit as of August 28, 2009, shall not be considered in
3 calculating the Receiver's management fee of 3% of the Total Income, or a minimum of \$25 per
4 unit per month, whichever is greater (simply stated, the Receiver shall not receive 3% of these
5 funds simply for accepting tender of these funds by Defendant).

6 11. Use of Funds

7 The Receiver shall pay only those bills that are reasonable and necessary for the
8 operation or the protection of the Receivership Property and shall allocate funds in the
9 following order of priority: (1) the costs and expense of the Receiver and the Receivership
10 Estate including its utilities, insurance premiums, salaries and wages of employees working at
11 the Receivership Property, general and special taxes or assessments levied on the Property and
12 improvements thereon; (2) amounts due to Plaintiff; and (3) the creation and retention by the
13 Receiver of a reasonable working capital fund.

14 12. Utilities

15 Any utility company providing services to the Property, including gas, electricity, water,
16 sewer, trash collection, telephone, communications or similar services, shall be prohibited from
17 discontinuing service to the Property based upon unpaid bills incurred by Defendant. Further,
18 such utilities shall transfer any deposits held by the utility to the exclusive control of such
19 Receiver and be prohibited from demanding that the Receiver deposit additional funds in
20 advance to maintain or secure such services. New accounts under the name of the Receivership
21 shall be established within thirty (30) days. Utility companies are prohibited from discontinuing
22 service while the new Receivership accounts are in process of being established.

23 13. Mail

24 Receiver may issue demand that the U.S. Postal service grant exclusive possession and
25 control of mail including postal boxes as may have been used by Defendant and may direct that
26 certain mail related to the Property and its business be re-directed to Receiver.

27

1 14. Insurance

2 The Receiver shall determine upon taking possession of the Property whether in the
3 Receiver's judgment, there is sufficient insurance coverage. With respect to any insurance
4 coverage in existence or obtained, the Receiver, Plaintiff and the property management
5 company, if any one exists, shall be named as an additional insured on the policies for the
6 period of the Receivership. If sufficient insurance coverage does not exist, the Receiver shall
7 immediately notify the parties to this lawsuit and shall have thirty (30) calendar days to procure
8 sufficient all-risk and liability insurance on the Property (excluding earthquake and flood
9 insurance) provided, however, that if the Receiver does not have sufficient funds to do so, the
10 Receiver shall seek instructions from the Court with regard to adequately insuring the Property.
11 The Receiver shall not be responsible for claims arising from the lack of procurement or
12 inability to obtain insurance.

13 15. Legal Counsel

14 Receiver may hire independent legal counsel and pay such persons for their services at
15 such rates as the Receiver deems reasonably appropriate for the services provided, and subject
16 to prior Court approval.

17 16. Receiver's Certificates

18 In the event that income from the operation of the Property is insufficient to meet
19 normal operating expenses and costs, the Receiver is authorized to borrow money from Plaintiff
20 and to issue Receiver's Certificates to secure such indebtedness. The total amount of all monies
21 borrowed and Receiver's Certificates issued shall be subject to the further order of this Court, as
22 provided for in Plaintiff's security instrument.

23 17. Plaintiff to Notify Receiver of the Appearances of all Parties

24 Plaintiff is ordered to promptly notify the Receiver of the names, addresses, and
25 telephone numbers of all parties and their counsel who appear in the action, so that the Receiver
26 may give notice to all parties of any matters affecting the Receivership.

27

1 18. Receiver's Final Report and Account

2 As soon as is practicable after the Receivership terminates, the Receiver shall file, serve,
3 and set for hearing in this Court its Final Report and Account. Notice shall be given to all
4 persons whom the Receiver has received notice of potential claims against the Receivership
5 Estate.

6 The motion to approve the final report and accounting, and for discharge of the
7 Receiver, shall contain a summary of the Receivership accounting including enumeration, by
8 major categories, of total revenues and total expenditures, the net amount of any surplus or
9 deficit with supporting facts, a declaration under penalty of perjury of the basis for the
10 termination of the Receivership, and evidence to support an order for the distribution of any
11 surplus, or payment of any deficit, in the Receivership Estate.

12 19. Instructions from the Court

13 The Receiver and the parties to this case may at any time apply to this Court for
14 instructions or orders. The Court may grant any order requested by the Receiver, without further
15 notice of hearing, if no objection is filed with the Court and served on the Receiver and the
16 parties within twenty (20) days after the filing and service of Receiver's request.

17 20. General Provisions

18 (A) No person or entity shall file suit against the Receiver, or take other
19 action against the Receiver, without an order of this Court permitting the suit or action;
20 provided, however, that no prior Court order is required to file a motion in this action to enforce
21 the provisions of this Order or any other order of this Court in this action.

22 (B) The Receivership Estate and its employees, agents, attorneys and all
23 professionals and management companies retained by the Receiver shall have no liability for
24 any obligations, or debts incurred by Defendant. The Receiver and its employees, agents and
25 attorneys shall have no personal liability, and they shall have no claim asserted against them
26 relating to the Receiver's duties under this Order, without prior authority from this Court as
27 stated in (A) above.

(C) Nothing contained in the Order of the Court shall be construed as obligating or permitting the Receiver to advance its own funds to pay any costs and expense of the Receivership Estate.

(D) The parties to this litigation shall refrain from interfering with the Receiver's taking or exercising of custody, control, or possession of the Property (including the applicable books, records, bank accounts, and financial statements), or with the Receiver's conduct of its duties as set forth in this Order.

DATED this 3rd day of September, 2009.

JENNIFER P. TOGLIATTI

DISTRICT COURT JUDGE

September 2nd, 2009.

September 2, 2009.

Submitted by:

Approved as to form and content by:

LEWIS AND ROCA LLP

DEANER, DEANER, SCANN, MALAN & LARSEN

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Attorneys for Plaintiff

Attorneys for Defendant

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OF THE ORIGINAL ON FILE

Erin A. Fink
CLERK OF THE COURT

SEP 04 2009

Exhibit 8

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Exhibit 8

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Inst #: 201005050002309

Fees: \$18.00

N/C Fee: \$0.00

05/05/2010 11:34:08 AM

Receipt #: 338842

Requestor:

PARADIGM ATTORNEY SERVICE

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Recorded By: ANI Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

124-30-311-031
 APN# PLEASE SEE ATTACHMENT A.
 11-digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>

ORDER GRANTING MOTION TO APPROVE SALE OF

RECEIVERSHIP PROPERTY

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested By:

Michael F. Lynch, Lewis and Roca LLP

Return Documents To:

Name Michael F. Lynch, Lewis and Roca LLP

Address 3993 Howard Hughes Parkway, Suite 600

City/State/Zip Las Vegas, Nevada 89169

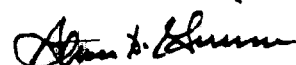
This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 ~ 06/06/2007
 Coversheet.pdf

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CLERK OF THE COURT

1 **ORDR**
 2 **MICHAEL F. LYNCH, ESQ.**
 3 Nevada Bar No. 8555
 4 MLynch@LRLaw.com
 5 **LEWIS AND ROCAL LLP**
 6 3993 Howard Hughes Parkway, Suite 600
 7 Las Vegas, Nevada 89169
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 9 Facsimile: (702) 949-8398
 10 *Attorneys for Plaintiff*

DISTRICT COURT**CLARK COUNTY, NEVADA**

11 U.S. Bank National Association as Trustee For The
 12 Registered Holders of ML-CFC Commercial
 13 Mortgage Trust 2007-7 Commercial Mortgage
 14 Pass-Through Certificates Series 2007-7, by and
 15 through Midland Loan Services, Inc., as its Special
 16 Servicer,

Plaintiff,

vs.

17 Palmilla Development Co., Inc., a Nevada
 18 corporation; and Roe Corporations X to XX,

Defendants.

Case No. A-09-595321-C

Dept. No. IX

**ORDER GRANTING MOTION TO
APPROVE SALE OF RECEIVERSHIP
PROPERTY**

Date of Hearing: 3/18/2010
 Time of Hearing: 9:00 a.m.

19 This matter came before this Court on March 18, 2010, on the unopposed Motion to
 20 Approve Sale of Receivership Property (the "Motion") filed and served on February 11, 2010, by
 21 U.S. Bank National Association as Trustee For The Registered Holders of ML-CFC Commercial
 22 Mortgage Trust 2007-7 Commercial Mortgage Pass-Through Certificates Series 2007-7, by and
 23 through Midland Loan Services, Inc., as its Special Servicer ("Lender"). Lender filed and served a
 24 Notice of Filing [the proposed Purchase and Sale Agreement] Exhibit in Support of the Motion on
 25 February 24, 2010. Lender filed and served a Notice of Non-Opposition to the Motion on March
 26 10, 2010.

...

...

1 The Court finds that Greystar Real Estate Partners, with John Rials as its agent
 2 ("Receiver"), was appointed as receiver in this action on September 3, 2009, to take possession,
 3 custody, and control of the real property identified by the Clark County Tax Assessor Parcel Nos:

- 4 a. 124-30-311-031;
- 5 b. 124-30-312-014 and 015;
- 6 c. 124-30-312-017 and 018;
- 7 d. 124-30-312-025 – 169, inclusive;
- 8 e. 124-30-312-171 and 172;
- 9 f. 124-30-312-177; and
- 10 g. 124-30-312-180 – 182, inclusive,

11 (the "Property") colloquially referred to as the Palmilla Townhomes, generally located northeast
 12 of the intersection of West Ann Road and North Decatur Boulevard in North Las Vegas.

13 Having read and considered the Motion and the Notice of Filing Proposed Purchase and
 14 Sale Agreement of the Property by and between Receiver and Pacifica Companies, LLC ("Buyer")
 15 with an execution date of February 5, 2010, (the "PSA") and the oral argument of counsel together
 16 with the pleadings and papers on file herein, and finding good cause therefor:

17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

- 18 1. The Lender has provided sufficient notice of the proposed sale and PSA to all
 19 necessary parties to this action;
- 20 2. The PSA is hereby approved as a full and final disposition of the Property;
- 21 3. The purchase price contained within the PSA is in the range of fair market value for
 22 the Property, is commercially reasonable, and is an arms' length transaction; and

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

4. The Receiver is hereby authorized to sell and to fully convey all of the interest of Palmilla Development Co., Inc., a Nevada corporation ("Borrower"), in the Property, to Buyer, and is hereby authorized to execute and deliver all documents, including without limitation a deed to convey title to the Property of Borrower, in order to consummate the sale and fully and finally convey ownership of the Property in its entirety.

Dated March 23rd, 2010.

Jennifer P. Inglett
DISTRICT COURT JUDGE

As to form
(approved / disapproved)

Respectfully submitted by:

LEWIS AND ROCA LLP

DEANER, DEANER, SCANN,
MALAN & LARSEN

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as Trustee For The Registered Holders of ML-
CFC Commercial Mortgage Trust 2007-7
Commercial Mortgage Pass-Through
Certificates Series 2007-7, by and through
Midland Loan Services, Inc., as its Special
Servicer

Attorneys for Palmilla Development Co., Inc., a
Nevada corporation

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Paul A. Smith
CLERK OF THE COURT

APR 30 2010

ATTACHMENT "A"

Order Granting Motion To Approve
Sale of Receivership Property

Parcel Numbers:

- a. 124-30-311-031;
- b. 124-30-312-014 and 015;
- c. 124-30-312-017 and 018;
- d. 124-30-312-025-169, inclusive;
- e. 124-30-312-171 and 172;
- f. 124-30-312-177; and
- g. 124-30-312-180 - 182, inclusive

Exhibit 9

Exhibit 9

LOAN NO. 010-00001895

LIMITED RECOURSE OBLIGATIONS GUARANTY

THIS LIMITED RECOURSE OBLIGATIONS GUARANTY (this "Guaranty"), is made and entered into as of March 28, 2007, by HAGAI RAPAPORT (whether one or more, "Guarantor"), to and for the benefit of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, and its successors and/or assigns ("Lender"). All initially-capitalized terms used herein without definition shall have the meanings given such terms in that certain Fixed Rate Note (together with all modifications, extensions, renewals and replacements thereof, the "Note") of even date herewith, in the amount of Twenty Million One Hundred and Fifty Thousand and 00/100 Dollars (\$20,150,000.00), made payable by PALMILLA DEVELOPMENT CO., INC., a(n) Nevada corporation ("Borrower"), to the order of Lender.

1. Guaranteed Obligations. In order to induce Lender to loan to Borrower the sum of Twenty Million One Hundred and Fifty Thousand and 00/100 Dollars (\$20,150,000.00) (the "Loan"), evidenced by the Note, the undersigned hereby unconditionally, irrevocably, jointly and severally guarantee(s) to Lender and to its successors, endorsees and/or assigns the full and prompt payment when due, by acceleration or otherwise, of all amounts owing by Borrower to Lender under the Loan Documents (as defined in the Security Instrument); subject, however, to the limitations on Lender's recourse set forth in Section 2 below.

2. Limitations on Recourse. Except with respect to the matters set forth in subsections (a) and (b) below, Lender's source of satisfaction of the indebtedness evidenced by the Note and all other covenants and obligations under the Note and any other of the Loan Documents shall be limited to the Property (as defined in the Security Instrument), and Lender shall not seek to procure payment out of other assets of Guarantor, or seek a judgment (except as hereinafter provided) for any sums which are or may be payable under the Note or any other of the Loan Documents, or claim or seek judgment for any deficiency remaining after foreclosure of the Security Instrument; provided, however, that the foregoing clause shall not prejudice the right of Lender to enforce the lien of the Security Instrument or other security given for the payment thereof or to exercise any of its remedies at law other than the entry of a personal money judgment against the Borrower. The foregoing notwithstanding:

(a) Guarantor shall be and remain personally liable for all losses, costs, damages, or expenses incurred by Lender in the following instances:

(i) failure to pay or cause to be paid Taxes (except to the extent that Borrower has deposited funds with Lender pursuant to the Security Instrument for the purpose of paying such items) or to pay or cause to be paid charges for labor or materials, or other charges which can create liens on any portion of the Property;

(ii) as a result of waste (except ordinary wear and tear), arson committed or instigated by Borrower, any Guarantor or any partner, member or shareholder in Borrower, or a violation of the provisions in the Security Instrument regarding removal, demolition or structural alteration of any portion of the Property;

(iii) breach or failure to perform or comply with any of the insurance provisions of the Loan Documents;

(iv) all court costs and reasonable attorneys' fees, costs and expenses actually incurred by Lender pursuant to the Note or any other Loan Documents;

(v) Borrower's breach or failure to perform or comply with Section 1.03 (captioned "Hazardous Waste") of the Security Instrument, or Borrower's or any Guarantor's breach or failure to perform or comply with the provisions of the Environmental Indemnification Agreement of even date herewith executed by Borrower for the benefit of Lender;

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(vi) misapplication of or failure to deliver to Lender (in accordance with the terms of the Loan Documents) the following: (1) any insurance or condemnation proceeds; (2) rents, issues or profits received by Borrower/Guarantor or its agent after Lender makes written demand therefor pursuant to any Loan Document; or (3) prepaid rents or tenant security deposits; or

(vii) violation of any of the provisions of Sections 1.29 and 1.30 (captioned "Single Purpose Entity" and "ERISA", respectively) of the Security Instrument.

(b) Guarantor shall be and remain personally liable without exculpation or limitation of liability whatsoever for the entire amount of the indebtedness evidenced by the Note (including all principal, interest, and other charges) and all other sums due or to become due under the other Loan Documents, whether at maturity or by acceleration or otherwise, in the following instances:

(i) violation of any of the provisions of Sections 1.15(c) and (d) of the Security Instrument (captioned, "No Sale/Encumbrance" and "Permitted Transfers", respectively);

(ii) fraud or intentional misrepresentation in connection with the Property, Loan Documents, or Loan Application;

(iii) the Stabilized Operating Threshold (as defined in the Reserve Agreement of even date herewith executed by Borrower in connection with the Loan) is not satisfied, provided there shall no liability under this Subsection 2(b)(iii) from and after the date such Stabilized Operating Threshold has first been satisfied; or

(iv) the Property or any part thereof becomes an asset in: (1) a voluntary bankruptcy or insolvency proceeding commenced by Borrower; or (2) an involuntary bankruptcy or insolvency proceeding in which: (A) such proceeding was commenced by any entity controlling, controlled by or under common control with Borrower (individually or collectively, "Affiliate"), including but not limited to any creditor or claimant acting in concert with Borrower or any Affiliate; or (B) any Affiliate objects to a motion by Lender for relief from any stay or injunction from the foreclosure of the Security Instrument or any other remedial action permitted under the Note, Security Instrument or other Loan Documents.

The obligations guaranteed pursuant to this Section 2 are hereinafter collectively referred to as the "Guaranteed Obligations".

3. Continuing Liability. Guarantor agrees as follows:

(a) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, agreement or stipulation between Borrower and Lender, or their respective successors and assigns, with respect to the Note or any of the other Loan Documents or the obligations encompassed thereby; (ii) Lender's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents or in any modification thereof; (iii) any release of Borrower or any other guarantor from any liability with respect to the Guaranteed Obligations or any portion thereof; (iv) any release or subordination of any real or personal property then held by Lender as security for the performance of the Guaranteed Obligations or any portion thereof; or (v) Lender's enforcement of or failure to enforce any other guaranty of all or any portion of the Guaranteed Obligations.

(b) Guarantor's liability under this Guaranty shall continue until the earlier to occur of: (i) the full and complete satisfaction of the Guaranteed Obligations; or (ii) the full and complete payment of the principal and all accrued interest due under the Note and all other amounts payable by Borrower under the Loan Documents, and shall not be reduced by virtue of any partial payment by Borrower of any

amount due under the Note or under any of the Loan Documents or by Lender's recourse to any collateral or security.

(c) The obligations of Guarantor hereunder shall be in addition to any obligations of Guarantor under any other guaranties of the Guaranteed Obligations and/or any obligations of the Borrower or any other persons or entities heretofore given or hereafter to be given to Lender, and this Guaranty shall not affect or invalidate any such other guaranties. The liability of Guarantor to Lender shall at all times be deemed to be the aggregate liability of Guarantor under the terms of this Guaranty and of any other guaranties heretofore or hereafter given by Guarantor to Lender.

4. Representations and Warranties. Guarantor hereby represents and warrants as follows:

(a) Lender's agreement to make the Loan to Borrower is of substantial and material benefit to Guarantor. Guarantor now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Loan Documents or referred to therein, the value of the assets owned or to be acquired by Borrower, Borrower's financial status and its ability to perform the Secured Obligations.

(b) Guarantor has reviewed and approved the Loan Documents and is fully informed of the remedies Lender may pursue, with or without notice to Borrower, in the event of a default under the Loan Documents.

(c) Guarantor has the requisite power and authority to own and manage its properties, to carry on its business as now being conducted, and to execute and deliver this Guaranty and to perform its obligations hereunder. Guarantor is in compliance with all laws, regulations, ordinances and orders of governmental or public authorities applicable to it.

(d) The execution, delivery and performance by Guarantor of this Guaranty are within the power and capacity of Guarantor, and will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the Loan Documents. This Guaranty, when delivered to Lender, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms.

(e) All financial statements and data that have been given to Lender by Guarantor (i) are complete and correct in all material respects as of the date given; (ii) accurately present the financial condition of Guarantor on each date as of which, and the results of Guarantor's operations for the periods for which, the same have been furnished; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby. There has been no material adverse change in the financial condition or operations of Guarantor since the date of the most recent financial statement given to Lender.

(f) Guarantor is not a party to any agreement or instrument which materially and adversely affects Guarantor's present or proposed business, properties or assets, or operations or conditions (whether financial or otherwise); and Guarantor is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions set forth in any agreement or instrument to which Guarantor is a party.

(g) There is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit or proceeding at law or in equity or by or before any

governmental or administrative agency that, if adversely determined, would materially and adversely impair or affect the financial condition or operations of Guarantor.

(h) Guarantor has filed all federal, state, county, municipal and other income tax returns required to have been filed by Guarantor and has paid all taxes that have become due pursuant to such returns or pursuant to any assessments received by Guarantor, and Guarantor does not know of any basis for any material additional assessment against it in respect of such taxes.

(i) Neither Guarantor, nor any borrower in any loan transaction in which Guarantor has been a guarantor, has received any discounted payoff(s), loan modifications(s) and/or similar matters in any previous mortgage loan transaction as a result of Guarantor's or any such borrower's failure to meet the terms and conditions of the documentation for such transaction.

5. Covenants and Agreements. Guarantor covenants and agrees that, so long as any part of the Guaranteed Obligations shall remain unsatisfied, Guarantor shall, unless Lender shall otherwise consent in advance in writing:

(a) keep itself fully informed as to all aspects of Borrower's financial condition and the performance of the Guaranteed Obligations;

(b) file all federal, state, county, municipal and other income tax returns required to be filed by it and pay before the same become delinquent all taxes that become due pursuant to such returns or pursuant to any assessments received by it;

(c) promptly and faithfully comply with all laws, ordinances, rules, regulations and requirements, both present and future, of every duly constituted governmental or public authority having jurisdiction that may be applicable to it; and

(d) maintain full and complete books of account and other records reflecting the results of its operations, in form reasonably satisfactory to Lender, and furnish to Lender such information about the financial condition of Guarantor as Lender shall reasonably request, including, but not limited to, the financial statements and documents referred to in Section 1.24 (captioned "Books, Records and Financial Statements") of the Security Instrument.

6. Unconditional Liability. The liability of Guarantor under this Guaranty is a guaranty of performance and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Loan Documents or other instruments relating to the creation or performance of the Guaranteed Obligations or the pursuit by Lender of any remedies which it now has or may hereafter have with respect thereto under the Loan Documents, at law, in equity or otherwise.

7. Waivers.

(a) Guarantor hereby waives, to the extent permitted by law: (i) all notices to Guarantor, to Borrower or to any other person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension or modification of the Guaranteed Obligations, or of default in the performance of the Guaranteed Obligations (or any portion thereof) and enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (ii) diligence and demand of performance; (iii) any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof; (iv) any rights Guarantor might otherwise have under any applicable statute or rule of law by reason of release of fewer than all guarantors, if more than one, of the Guaranteed Obligations; and (v) all principles or provisions of law which conflict with the terms of this Guaranty. Guarantor further agrees that Lender may enforce this Guaranty upon the occurrence of a default or an event of default under the Note or any of the Loan Documents (as "Event of Default" is defined therein), notwithstanding the existence of any dispute between Borrower and Lender with respect to the existence of the Event of Default or performance of the Guaranteed Obligations (or any portion thereof) or any counterclaim, set-off

or other claim which Borrower may allege against Lender with respect thereto. Moreover, Guarantor agrees that its obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

(b) Guarantor further agrees that nothing contained herein shall prevent Lender from suing on the Note or from exercising any rights available to it thereunder or under any of the Loan Documents, and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor understands that the exercise by Lender of certain rights and remedies contained in the Loan Documents may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore incur a partially or totally non-reimbursable liability hereunder; nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any right and remedies, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Notwithstanding any foreclosure of the lien of the Security Instrument with respect to any or all of any real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, and notwithstanding any enforcement of any other guaranty, Guarantor shall remain bound under this Guaranty.

(c) Guarantor agrees that it shall have no right of subrogation against Borrower or against any collateral or security provided for in the Loan Documents unless and until the Guaranteed Obligations have been fully satisfied, all obligations owed to Lender under the Loan Documents have been fully performed and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security. Guarantor further agrees that to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Borrower or against such collateral or security shall be junior and subordinate to any rights Lender may have against Borrower and to all right, title and interest Lender may have in such collateral or security. Lender may use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation rights that Guarantor may have, and upon any disposition or sale, any rights of subrogation Guarantor may have shall terminate.

(d) Guarantor's sole right with respect to any foreclosure of real or personal property collateral shall be to cure, bid at such sale or redeem from sale in accordance with applicable statutory law of the State where the Property is located. Guarantor acknowledges and agrees that Lender may also bid at any such sale and in the event such collateral is sold to Lender in whole or partial satisfaction of the obligations owed to Lender, Guarantor shall not have any further right or interest with respect thereto. Notwithstanding anything to the contrary herein, no provision of this Guaranty shall be deemed to limit, decrease, or in any way to diminish any rights of set-off Lender may have with respect to any cash, cash equivalents, certificates of deposit, notes or the like which may now or hereafter be put on deposit with Lender by Borrower or by Guarantor. Upon the occurrence and during the continuance of any Event of Default under any of the Loan Documents, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, irrespective of whether or not Lender shall have made any demand under this Guaranty and although such obligations may be contingent and unmatured. Lender agrees promptly to notify Guarantor after any set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application or this Guaranty. The rights of Lender under this Section 7(d) are in addition to other rights and remedies (including, without limitation, other rights to set-off) which Lender may have.

(e) Guarantor waives all right and defenses that Guarantor may have because Borrower's debt is secured by real property. This means, among other things:

(i) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

(ii) If Lender forecloses on any real property collateral pledged by Borrower:

I. The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

II. Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's debt is secured by real property.

8. **Direct Enforcement.** Guarantor agrees that Lender may enforce this Guaranty without the necessity of resorting to or exhausting any security or collateral securing the Guaranteed Obligations, without the necessity of proceeding against any other guarantor (whether under this Guaranty or any other guaranty), and without the necessity of proceeding against Borrower. Guarantor hereby waives the right to require Lender to proceed against Borrower, to foreclose any lien on any real or personal property securing the Guaranteed Obligations, to exercise any right or remedy under the Loan Documents, to pursue any other remedy or to enforce any other right.

9. **Not Affected by Bankruptcy.** Notwithstanding any modification, discharge or extension of the Guaranteed Obligations or any amendment, modification, stay or cure of Lender's rights which may occur in any bankruptcy or reorganization case or proceeding concerning Borrower, whether permanent or temporary, and whether assented to by Lender, Guarantor hereby agrees that it shall be obligated hereunder to pay and perform the Guaranteed Obligations and discharge its other obligations in accordance with the terms of the Guaranteed Obligations and the terms of this Guaranty in effect on the date hereof. Guarantor understands and acknowledges that by virtue of this Guaranty, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Borrower. Without in any way limiting the generality of the foregoing, any subsequent modification of the Guaranteed Obligations in any reorganization case concerning Borrower shall not affect the obligation of Guarantor to pay and perform the Guaranteed Obligations in accordance with their original terms.

10. **Security Interest**

(a) In addition to all liens upon and rights of setoff against moneys, securities or other property of Guarantor given to Lender by law, Guarantor hereby assigns to Lender, and grants a security interest to Lender in, all moneys, securities and other property owned by Guarantor now or hereafter in the constructive or actual possession of or on deposit with Lender, whether held in general or special account or deposit, or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. Lender shall have all of the rights and remedies of a "secured party" under Article 9 of the Uniform Commercial Code of the State where the Property is located with respect to such moneys, securities and other property. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

(b) Guarantor hereby grants Lender a security interest in any personal property of Borrower in which Guarantor now has or hereafter acquires any right, title or interest. Guarantor agrees that such security interest shall be additional security for the obligations hereby guaranteed. Such security interest shall be superior to any rights of Guarantor in such property or assets until the Guaranteed Obligations have been fully satisfied and performed.

11. **Written Waivers by Lender Required.** No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

12. **Notices.** Whenever Guarantor or Lender shall desire to give or serve any notice, demand, request or other communication with respect to this Guaranty, each such notice, demand, request or communication shall be given in writing at the address of the intended recipient set forth below by any of the following means: (a) personal service (including service by overnight courier service); (b) electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by personal service or by registered or certified, first class mail, return receipt requested; or (c) registered or certified, first class mail, return receipt requested:

To Lender: ARTESIA MORTGAGE CAPITAL CORPORATION
1180 NW Maple Street, Suite 202
Issaquah, Washington 98027
Attn: Servicing Department
Fax: (425) 313-1005

with a copy to: BEST & FLANAGAN LLP
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Thomas G. Garry
Fax: (612) 339-5897

To Guarantor: HAGAI RAPAPORT
2857 Paradise Road, Suite 2001
Las Vegas, Nevada 89109-9020
Fax: (702) 399-6243

with a copy to: Ronald E. Gillette, Esq.
235 West Brooks Avenue, 2nd Floor
North Las Vegas, Nevada 89030
Fax: (702) 399-6243

Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to subsection (c) shall be deemed received five (5) days following deposit in the mail.

13. **Survival of Representations and Certain Agreements.** All agreements, indemnities, representations and warranties made herein shall survive the execution and delivery of this Guaranty, the making of the Loan and the execution and delivery of the Note. All representations and warranties made in this Guaranty shall further survive any and all investigations and inquiries made by Lender, shall remain true, correct and complete in all material respects and shall remain continuing obligations so long as any portion of the Guaranteed Obligations remains outstanding or unsatisfied. Notwithstanding anything herein to the contrary, in the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, any judgment, order or decision thereunder, or any other operation of law, Lender must rescind or restore any payment, or any part thereof, received by Lender in satisfaction of the Guaranteed Obligations or the Loan, any prior release or discharge from the terms of this Guaranty given to Guarantor by Lender under the terms of this Guaranty or otherwise shall be without effect, and this Guaranty shall remain in full force and effect. It is the intention of Borrower and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Guarantor's full and complete performance of such obligations and then only to the extent of such performance.

14. **Partial Performance.** Guarantor's performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for that portion of the Guaranteed Obligations which is not performed. Without in any way limiting the generality of the foregoing, in the event that Lender is awarded a judgment in any suit brought to enforce Guarantor's covenant to perform a portion of the Guaranteed Obligations, such judgment shall in no way be deemed to release Guarantor from its covenant to perform any portion of the Guaranteed Obligations which is not the subject of such suit.

15. **Guaranty Reinstated.** Guarantor agrees that to the extent Borrower makes a payment or a payment is made for or on behalf of Borrower to Lender, which payment, or any part thereof, is subsequently invalidated, determined to be fraudulent or preferential, set aside and/or required to be repaid to any trustee, receiver, assignee or any other party whether under any bankruptcy, state or federal law, common law or equitable cause or otherwise, then, to the extent thereof, the obligation or part thereof intended to be satisfied thereby, shall be revived, reinstated and continued in full force and effect as if said payment or payments had not originally been made by or on behalf of Borrower.

16. **No Third Party Beneficiaries.** This Guaranty is solely for the benefit of Lender and its successors and assigns and is not intended to nor shall it be deemed to be for the benefit of any third party, including Borrower.

17. **Successors and Assigns. Rules of Construction.** This Guaranty shall be binding upon Guarantor and its heirs, executors, legal representatives, distributees, successors and assigns and shall inure to the benefit of and shall be enforceable by Lender and its successors, endorsees and assigns. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires. Article and Section headings in this Guaranty and the other Loan Documents are included for convenience of reference only and shall not constitute a part of this Guaranty or such other Loan Documents for any other purpose or be given any substantive effect. The recitals to this Guaranty and to each of the other Loan Documents are incorporated herein and therein and made a part hereof and thereof. Any married person who signs this Guaranty hereby expressly agrees that recourse may be had against his or her separate and community property for all of his or her obligations under this Guaranty.

18. **Attorneys' Fees and Costs.** In the event of any litigation regarding the enforcement or validity of this Guaranty (including, without limitation, any bankruptcy or appellate proceedings), Guarantor shall be obligated to pay all charges, costs and expenses (including attorneys' fees and costs) incurred by Lender, whether or not such litigation is prosecuted to judgment. The recovery of post-judgment fees, costs and expenses are separate and several and shall survive the merger of this Guaranty into any judgment. As used herein, "attorneys' fees and costs" shall have the meaning given in the Security Instrument.

19. **Jurisdiction and Venue.** Guarantor, in order to induce Lender to accept this Guaranty, agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with this Guaranty shall be litigated, at Lender's sole election, only in courts having a situs within the county and State where the Property is located, in any jurisdiction in which Borrower or Guarantor (or any individual or entity comprising Borrower or Guarantor) may reside or hold assets, or in any one or more of the foregoing jurisdictions. Guarantor hereby consents and submits to the jurisdiction of any local, state or federal court located therein. Guarantor hereby waives any right it may have to transfer or change the venue of any litigation brought against it by Lender on this Guaranty in accordance with this paragraph.

20. **Applicable Law.** This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State where the Property is located.

21. **Severability.** Every provision of this Guaranty is intended to be severable. In the event any term or provision herein, or the application thereof, is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality, invalidity or

unenforceability shall not affect the balance of the terms and provisions hereof or any other application thereof, which terms and provisions shall remain in full force and effect.

22. Counterparts. This Guaranty may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this Guaranty to physically form one document. The failure of any party hereto to execute this Guaranty, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

23. Jury Trial Waiver. IN ORDER TO AVOID DELAYS IN TIME AND ANY PREJUDICE THAT MAY ARISE FROM TRIAL BY JURY AND IN LIGHT OF THE COMPLEXITIES OF THIS TRANSACTION, IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATING TO THIS GUARANTY, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND/OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY, THE NOTE, THE OTHER LOAN DOCUMENTS AND/OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTION RELATED HERETO OR THERETO, IN EACH CASE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, GUARANTOR, WITH THE PRIOR ADVICE OF COUNSEL, KNOWINGLY, INTELLIGENTLY, AND AS A BARGAINED FOR MATTER, WAIVES ITS RIGHT TO TRIAL BY JURY AND AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN RESPECT TO SUCH LITIGATION SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY.

24. Disclosure of Information. Guarantor hereby acknowledges and agrees that upon the request of any partner, member or shareholder of Guarantor, as applicable, Lender may disclose to such party any information (including, without limitation, financial information) relating to the Loan and Guarantor's performance of its obligations hereunder. Guarantor hereby indemnifies and agrees to defend and hold harmless Lender (its officers, shareholders, directors, representatives, agents, and attorneys) from and against any and all expenses, loss, claims, damage or liability, including, without limitation, attorneys' fees and costs, arising by reason of any disclosure of information by Lender under this Section 24.

25. Joint and Several Liability. If there shall be more than one (1) Guarantor, each Guarantor agrees that: (i) the obligations of the Guarantor hereunder are joint and several; (ii) a release of any one (1) or more Guarantor, or any limitation of this Agreement in favor of or for the benefit of one (1) or more Guarantor, shall not in any way be deemed a release of or limitation in favor of or for the benefit of any other Guarantor; and (iii) a separate action hereunder may be brought and prosecuted against one (1) or more Guarantor.

26. Entire Guaranty. This Guaranty sets forth the entire understanding between Guarantor and Lender relative to the Loan and this Guaranty and the same supersedes all prior agreements and understandings relating to the subject matter hereof or thereof.

27. Time is of the Essence. Time is strictly of the essence of this Guaranty and the other Loan Documents.

28. Subordination of Borrower's Obligations to Guarantor. Any indebtedness of Borrower to any Guarantor, now or hereafter existing, together with any interest thereon, shall be and hereby is deferred, postponed and subordinated to the prior payment in full of the Loan. Further, Guarantor agrees that should such Guarantor receive any payment, satisfaction or security for any indebtedness owed by Borrower to it, the same shall be delivered to Lender in the form received (endorsed or assigned as may be appropriate) for application on account of, or as security for, the Loan and until so delivered to Lender, shall be held in trust for Lender as security for the Loan.

29. Lender Transferees; Secondary Market Activities. Guarantor acknowledges and agrees that Lender, without notice to Guarantor or any Guarantor's prior consent, may assign all or any

portion of its rights hereunder in connection with any sale or assignment of the Loan or servicing rights related to the Loan, each grant of participations in the Loan, a transfer of the Loan as part of a Securitization in which Lender assigns its rights to a securitization trustee, or a contract for the servicing of the Loan, and that each assignee, participant or servicer shall be entitled to exercise all of Lender's rights and remedies hereunder. Guarantor further acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, ownership, purchase, participation or Securitization of the Loan, including, without limitation, any Rating Agency rating the securities issued in respect of a Securitization or participation of the Loan, and any entity maintaining databases on the underwriting and performance of commercial mortgage loans, any and all information which Lender now has or may hereafter acquire relating to the Loan, the Property or with respect to Borrower or Guarantor, as Lender determines necessary or desirable. Guarantor irrevocably waives all rights it may have under applicable law, if any, to prohibit such disclosure, including, without limitation, any right of privacy.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the year and date first above written.

HAGAI RAPAPORT

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Exhibit 10

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Exhibit 10

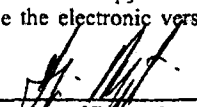
Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Ron Bender (SBN 143364) Anthony A. Friedman (SBN 201955) Levene, Neale, Bender, Rankin & Brill L.L.P. 10250 Constellation Boulevard, Ste 1700 Los Angeles, CA 90067 (310) 229-1234 Fax: (310) 229-1244	FOR COURT USE ONLY
<input checked="" type="checkbox"/> Attorney for: Debtor	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: Palmilla Development Company, Inc. <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 1:09-bk-11504-MT CHAPTER: 11

**ELECTRONIC FILING DECLARATION
(CORPORATION/PARTNERSHIP)**

<input checked="" type="checkbox"/>	Petition, statement of affairs, schedules or lists	Date Filed: <u>3/16/2009</u>
<input type="checkbox"/>	Amendments to the petition, statement of affairs, schedules or lists	Date Filed: _____
<input type="checkbox"/>	Other: _____	Date Filed: _____

PART I - DECLARATION OF AUTHORIZED SIGNATORY OF DEBTOR OR OTHER PARTY

I, the undersigned, hereby declare under penalty of perjury that: (1) I have been authorized by the Debtor or other party on whose behalf the above referenced document is being filed (Filing Party) to sign and to file, on behalf of the Filing Party, the above-referenced document being filed electronically (Filed Document); (2) I have read and understand the Filed Document; (3) the information provided in the Filed Document is true, correct and complete. (4) he "/s/," followed by my name, on the signature lines for the Filing Party in the Filed Document serves as my signature on behalf of the Filing Party and denotes the making of such declarations, requests, statements, verifications and certifications by me and by the Filing Party to the same extent and effect as my actual signature on such signature lines; (5) I have actually signed a true and correct hard copy of the Filed Document in such places on behalf of the Filing Party and provided the executed hard copy of the Filed Document to the Filing Party's attorney; and (6) I, on behalf of the Filing Party, have authorized the Filing Party's attorney to file the electronic version of the Filed Document and this Declaration with the United States Bankruptcy Court for the Central District of California.


 Signature of Authorized Signatory of Filing Party

3-16-09
 Date

Hagal Rapaport

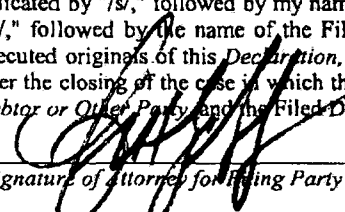
Printed Name of Authorized Signatory of Filing Party

President

Title of Authorized Signatory of Filing Party

PART II - DECLARATION OF ATTORNEY FOR FILING PARTY

I, the undersigned Attorney for the Filing Party, hereby declare under penalty of perjury that: (1) the "/s/," followed by my name, on the signature lines for the Attorney for the Filing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature lines; (2) an authorized signatory of the Filing Party signed the Declaration of Authorized Signatory of Debtor or Other Party before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (3) I have actually signed a true and correct hard copy of the Filed Document in the locations that are indicated by "/s/," followed by my name, and have obtained the signature of the authorized signatory of the Filing Party in the locations that are indicated by "/s/," followed by the name of the Filing Party's authorized signatory, on the true and correct hard copy of the Filed Document; (4) I shall maintain the executed originals of this Declaration, the Declaration of Authorized Signatory of Debtor or Other Party, and the Filed Document for a period of five years after the closing of the case in which they are filed; and (5) I shall make the executed originals of this Declaration, the Declaration of Authorized Signatory of Debtor or Other Party and the Filed Document available for review upon request of the Court or other parties.


 Signature of Attorney for Filing Party

3-16-09
 Date

Anthony A. Friedman

Printed Name of Attorney for Filing Party

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

November 2006

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Best Case Bankruptcy

**RESOLUTION AUTHORIZING CHAPTER 11 BANKRUPTCY FILING BY
PALMILLA DEVELOPMENT COMPANY, INC.**

The undersigned, being the managing member of Palmilla Development Company, Inc. (the "Company"), hereby certifies that the following resolutions were adopted at a duly constituted emergency meeting on February 4, 2009, and the same remain in full force and effect, without modification, unless and until the Company adopts a further resolution to the contrary:

RESOLVED, that a Petition under the provisions of Chapter 11 of Title 11 of the United States Code shall be filed by the Company with the United States Bankruptcy Court, Central District of California;

FURTHER RESOLVED, that the filing of a Chapter 11 bankruptcy proceeding on behalf of the Company is in the best interests of the Company and the Company's creditors;

FURTHER RESOLVED, that the law firm of Levene, Neale, Bender, Rankin & Brill L.L.P. ("LNBRB") has been and continues to be retained for purposes of filing the Chapter 11 bankruptcy case for the Company and representing the Company in its Chapter 11 bankruptcy case as bankruptcy counsel. The pre-bankruptcy retention agreement between the Company and LNBRB is hereby adopted, ratified and approved. Hagai Rapaport ("Rapaport") is hereby authorized and directed to execute an application for the Company to employ LNBRB as bankruptcy counsel to the Company in connection with the Company's Chapter 11 bankruptcy case;

FURTHER RESOLVED, that as the president of the Company, Rapaport is hereby authorized and directed on behalf of and in the name of the Company to execute a Chapter 11 bankruptcy petition and all related documents and papers on behalf of the Company in order to enable the Company to commence its Chapter 11 bankruptcy case;

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FURTHER RESOLVED, that as the managing member of the Company, Rapaport is hereby authorized and directed on behalf of and in the name of the Company to execute and file and to cause counsel to the Company to prepare with the assistance of the Company as appropriate all petitions, schedules, lists and other papers, documents and pleadings in connection with the Company's bankruptcy case, and to take any and all action which Rapaport deems necessary and proper in connection with the Company's bankruptcy case without further approval provided such action is within the ordinary course of the Company's business and bankruptcy case. Such ordinary course actions shall include, but not be limited to, employing and compensating counsel and other professionals (both prior to and after the Company's bankruptcy filing), seeking Bankruptcy Court approval for the Company to use cash collateral and/or post-bankruptcy financing, compensating employees, purchasing materials, selling product, collecting accounts receivable, negotiating with creditors, lenders, vendors, suppliers and landlords, and commencing litigation as deemed appropriate to assist the Company with respect to any of the foregoing.

FURTHER RESOLVED, that Rapaport shall be additionally authorized without further approval before causing the Company to engage in an action which is outside the ordinary course of the Company's business, including, but not limited to, the sale of all or substantially all of the Company's assets or the filing of a plan of reorganization.

Dated: February 4, 2009

Agreed:


HAGAI RAPAPORT, President

STATEMENT OF RELATED CASES
INFORMATION REQUIRED BY LOCAL BANKRUPTCY RULE 1015-2
UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA

1. A petition under the Bankruptcy Act of 1898 or the Bankruptcy Reform Act of 1978 has previously been filed by or against the debtor, his/her spouse, an affiliate of the debtor, any copartnership or joint venture of which debtor is or formerly was a general or limited partner, or member, or any corporation of which the debtor is a director, officer, or person in control, as follows: (Set forth the complete number and title of each such of prior proceeding, date filed, nature thereof, the Bankruptcy Judge and court to whom assigned, whether still pending and, if not, the disposition thereof. If none, so indicate. Also, list any real property included in Schedule A that was filed with any such prior proceeding(s).)

See attached

2. (If petitioner is a partnership or joint venture) A petition under the Bankruptcy Act of 1898 or the Bankruptcy Reform Act of 1978 has previously been filed by or against the debtor or an affiliate of the debtor, or a general partner in the debtor, a relative of the general partner, general partner of, or person in control of the debtor, partnership in which the debtor is a general partner, general partner of the debtor, or person in control of the debtor as follows: (Set forth the complete number and title of each such prior proceeding, date filed, nature of the proceeding, the Bankruptcy Judge and court to whom assigned, whether still pending and, if not, the disposition thereof. If none, so indicate. Also, list any real property included in Schedule A that was filed with any such prior proceeding(s).)

See attached

3. (If petitioner is a corporation) A petition under the Bankruptcy Act of 1898 or the Bankruptcy Reform Act of 1978 has previously been filed by or against the debtor, or any of its affiliates or subsidiaries, a director of the debtor, an officer of the debtor, a person in control of the debtor, a partnership in which the debtor is general partner, a general partner of the debtor, a relative of the general partner, director, officer, or person in control of the debtor, or any persons, firms or corporations owning 20% or more of its voting stock as follows: (Set forth the complete number and title of each such prior proceeding, date filed, nature of proceeding, the Bankruptcy Judge and court to whom assigned, whether still pending, and if not, the disposition thereof. If none, so indicate. Also, list any real property included in Schedule A that was filed with any such prior proceeding(s).)

n/a

4. (If petitioner is an individual) A petition under the Bankruptcy Reform Act of 1978, including amendments thereof, has been filed by or against the debtor within the last 180 days: (Set forth the complete number and title of each such prior proceeding, date filed, nature of proceeding, the Bankruptcy Judge and court to whom assigned, whether still pending, and if not, the disposition thereof. If none, so indicate. Also, list any real property included in Schedule A that was filed with any such prior proceeding(s).)

n/a

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed at Los Angeles, California, California.

/s/ Hagai Rapaport

Hagai Rapaport
Debtor

Dated 3/16/09

Joint Debtor

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

Revised May 2004

F 1015-2.1

Lancaster Palms, LLC, an affiliate of the Debtor, filed a voluntary Chapter 11 Petition on January 15, 2009 with the Central District of California (San Fernando Valley Division), Case No. 09-10398-MT. The case is pending before the Honorable Maureen A. Tighe.

NV American Premiere Austin, LP, an affiliate of the Debtor, filed a voluntary Chapter 11 Petition on January 29, 2009 with the Central District of California (San Fernando Valley Division), Case No. 09-10945-MT. The case is pending before the Honorable Maureen A. Tighe.

NV Am Premiere Mason Creek, LP, an affiliate of the Debtor, filed a voluntary Chapter 11 Petition on January 29, 2009 with the Central District of California (San Fernando Valley Division), Case No. 09-10948-MT. The case is pending before the Honorable Maureen A. Tighe.

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United States Bankruptcy Court
Central District of California

In re Palmilla Development Company, Inc.
Debtor

Case No. 1:09-bk-11504-MT

Chapter 11

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	10,874,088.00		
B - Personal Property	Yes	3	88,780.84		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	1		20,613,787.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	2		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	6		233,874.27	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		15			
Total Assets			10,962,868.84		
Total Liabilities				20,847,661.27	

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
See attachment		-	10,874,088.00	20,573,787.00

Sub-Total > **10,874,088.00** (Total of this page)

Total > **10,874,088.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

Palmilla Development Co. Inc
Summary of Schedules
Schedule A - Real Property

DESCRIPTION AND LOCATION OF PROPERTY				NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
DESCRIPTION	ADDRESS	CITY, STATE	LA COUNTY ASSESSOR'S #				
03-07	5945 Palmilla St 07	North Las Vegas, NV	12430311031	DEED OF TRUST	N/A	\$	82,734
06-03	5925 Palmilla St 03	North Las Vegas, NV	12430312022	DEED OF TRUST	N/A	\$	64,809
06-07	5925 Palmilla St 07	North Las Vegas, NV	12430312018	DEED OF TRUST	N/A	\$	82,734
06-08	5925 Palmilla St 08	North Las Vegas, NV	12430312017	DEED OF TRUST	N/A	\$	82,734
06-10	5925 Palmilla St 10	North Las Vegas, NV	12430312015	DEED OF TRUST	N/A	\$	64,809
08-11	5925 Palmilla St 11	North Las Vegas, NV	12430312014	DEED OF TRUST	N/A	\$	64,809
07-01	5865 Palmilla St 01	North Las Vegas, NV	12430312038	DEED OF TRUST	N/A	\$	64,809
07-02	5865 Palmilla St 02	North Las Vegas, NV	12430312035	DEED OF TRUST	N/A	\$	64,809
07-03	5865 Palmilla St 03	North Las Vegas, NV	12430312034	DEED OF TRUST	N/A	\$	64,809
07-04	5865 Palmilla St 04	North Las Vegas, NV	12430312033	DEED OF TRUST	N/A	\$	64,809
07-05	5865 Palmilla St 05	North Las Vegas, NV	12430312032	DEED OF TRUST	N/A	\$	82,734
07-06	5865 Palmilla St 06	North Las Vegas, NV	12430312031	DEED OF TRUST	N/A	\$	82,734
07-07	5865 Palmilla St 07	North Las Vegas, NV	12430312030	DEED OF TRUST	N/A	\$	82,734
07-08	5865 Palmilla St 08	North Las Vegas, NV	12430312029	DEED OF TRUST	N/A	\$	82,734
07-09	5865 Palmilla St 09	North Las Vegas, NV	12430312028	DEED OF TRUST	N/A	\$	64,809
07-10	5865 Palmilla St 10	North Las Vegas, NV	12430312027	DEED OF TRUST	N/A	\$	64,809
07-11	5865 Palmilla St 11	North Las Vegas, NV	12430312026	DEED OF TRUST	N/A	\$	64,809
07-12	5865 Palmilla St 12	North Las Vegas, NV	12430312025	DEED OF TRUST	N/A	\$	64,809
08-01	5870 Barbosa Dr 01	North Las Vegas, NV	12430312048	DEED OF TRUST	N/A	\$	84,809
08-02	5870 Barbosa Dr 02	North Las Vegas, NV	12430312047	DEED OF TRUST	N/A	\$	84,809
08-03	5870 Barbosa Dr 03	North Las Vegas, NV	12430312046	DEED OF TRUST	N/A	\$	84,809
08-04	5870 Barbosa Dr 04	North Las Vegas, NV	12430312045	DEED OF TRUST	N/A	\$	84,809
08-05	5870 Barbosa Dr 05	North Las Vegas, NV	12430312044	DEED OF TRUST	N/A	\$	84,809
08-06	5870 Barbosa Dr 06	North Las Vegas, NV	12430312043	DEED OF TRUST	N/A	\$	82,734
08-07	5870 Barbosa Dr 07	North Las Vegas, NV	12430312042	DEED OF TRUST	N/A	\$	82,734
08-08	5870 Barbosa Dr 08	North Las Vegas, NV	12430312041	DEED OF TRUST	N/A	\$	64,809
08-09	5870 Barbosa Dr 09	North Las Vegas, NV	12430312040	DEED OF TRUST	N/A	\$	64,809
08-10	5870 Barbosa Dr 10	North Las Vegas, NV	12430312039	DEED OF TRUST	N/A	\$	64,809
08-11	5870 Barbosa Dr 11	North Las Vegas, NV	12430312038	DEED OF TRUST	N/A	\$	64,809
08-12	5870 Barbosa Dr 12	North Las Vegas, NV	12430312037	DEED OF TRUST	N/A	\$	64,809
09-01	5840 Barbosa Dr 01	North Las Vegas, NV	12430312060	DEED OF TRUST	N/A	\$	64,809
09-02	5840 Barbosa Dr 02	North Las Vegas, NV	12430312059	DEED OF TRUST	N/A	\$	64,809
09-03	5840 Barbosa Dr 03	North Las Vegas, NV	12430312058	DEED OF TRUST	N/A	\$	64,809
09-04	5840 Barbosa Dr 04	North Las Vegas, NV	12430312057	DEED OF TRUST	N/A	\$	84,809
09-05	5840 Barbosa Dr 05	North Las Vegas, NV	12430312056	DEED OF TRUST	N/A	\$	82,734
09-06	5840 Barbosa Dr 06	North Las Vegas, NV	12430312055	DEED OF TRUST	N/A	\$	82,734
09-07	5840 Barbosa Dr 07	North Las Vegas, NV	12430312054	DEED OF TRUST	N/A	\$	82,734
09-08	5840 Barbosa Dr 08	North Las Vegas, NV	12430312053	DEED OF TRUST	N/A	\$	82,734
09-09	5840 Barbosa Dr 09	North Las Vegas, NV	12430312052	DEED OF TRUST	N/A	\$	64,809
09-10	5840 Barbosa Dr 10	North Las Vegas, NV	12430312051	DEED OF TRUST	N/A	\$	64,809
09-11	5840 Barbosa Dr 11	North Las Vegas, NV	12430312050	DEED OF TRUST	N/A	\$	64,809
09-12	5840 Barbosa Dr 12	North Las Vegas, NV	12430312049	DEED OF TRUST	N/A	\$	64,809
10-01	5835 Palmilla St 01	North Las Vegas, NV	12430312072	DEED OF TRUST	N/A	\$	84,809
10-02	5835 Palmilla St 02	North Las Vegas, NV	12430312071	DEED OF TRUST	N/A	\$	84,809
10-03	5835 Palmilla St 03	North Las Vegas, NV	12430312070	DEED OF TRUST	N/A	\$	84,809
10-04	5835 Palmilla St 04	North Las Vegas, NV	12430312069	DEED OF TRUST	N/A	\$	64,809
10-05	5835 Palmilla St 05	North Las Vegas, NV	12430312068	DEED OF TRUST	N/A	\$	64,809
10-06	5835 Palmilla St 06	North Las Vegas, NV	12430312067	DEED OF TRUST	N/A	\$	82,734
10-07	5835 Palmilla St 07	North Las Vegas, NV	12430312066	DEED OF TRUST	N/A	\$	82,734
10-08	5835 Palmilla St 08	North Las Vegas, NV	12430312065	DEED OF TRUST	N/A	\$	64,809
10-09	5835 Palmilla St 09	North Las Vegas, NV	12430312064	DEED OF TRUST	N/A	\$	84,809
10-10	5835 Palmilla St 10	North Las Vegas, NV	12430312063	DEED OF TRUST	N/A	\$	64,809
10-11	5835 Palmilla St 11	North Las Vegas, NV	12430312062	DEED OF TRUST	N/A	\$	64,809
10-12	5835 Palmilla St 12	North Las Vegas, NV	12430312061	DEED OF TRUST	N/A	\$	64,809
11-01	5825 Palmilla St 01	North Las Vegas, NV	12430312084	DEED OF TRUST	N/A	\$	84,809
11-02	5825 Palmilla St 02	North Las Vegas, NV	12430312083	DEED OF TRUST	N/A	\$	64,809
11-03	5825 Palmilla St 03	North Las Vegas, NV	12430312082	DEED OF TRUST	N/A	\$	64,809
11-04	5825 Palmilla St 04	North Las Vegas, NV	12430312081	DEED OF TRUST	N/A	\$	84,809
11-05	5825 Palmilla St 05	North Las Vegas, NV	12430312080	DEED OF TRUST	N/A	\$	82,734
11-06	5825 Palmilla St 06	North Las Vegas, NV	12430312079	DEED OF TRUST	N/A	\$	82,734
11-07	5825 Palmilla St 07	North Las Vegas, NV	12430312078	DEED OF TRUST	N/A	\$	82,734
11-08	5825 Palmilla St 08	North Las Vegas, NV	12430312077	DEED OF TRUST	N/A	\$	82,734
11-09	5825 Palmilla St 09	North Las Vegas, NV	12430312076	DEED OF TRUST	N/A	\$	64,809
11-10	5825 Palmilla St 10	North Las Vegas, NV	12430312075	DEED OF TRUST	N/A	\$	64,809
11-11	5825 Palmilla St 11	North Las Vegas, NV	12430312074	DEED OF TRUST	N/A	\$	64,809
11-12	5825 Palmilla St 12	North Las Vegas, NV	12430312073	DEED OF TRUST	N/A	\$	64,809
12-01	5830 Barbosa Dr 01	North Las Vegas, NV	12430312085	DEED OF TRUST	N/A	\$	64,809
12-02	5830 Barbosa Dr 02	North Las Vegas, NV	12430312084	DEED OF TRUST	N/A	\$	64,809
12-03	5830 Barbosa Dr 03	North Las Vegas, NV	12430312083	DEED OF TRUST	N/A	\$	64,809
12-04	5830 Barbosa Dr 04	North Las Vegas, NV	12430312082	DEED OF TRUST	N/A	\$	84,809
12-05	5830 Barbosa Dr 05	North Las Vegas, NV	12430312081	DEED OF TRUST	N/A	\$	84,809
12-06	5830 Barbosa Dr 06	North Las Vegas, NV	12430312080	DEED OF TRUST	N/A	\$	82,734
12-07	5830 Barbosa Dr 07	North Las Vegas, NV	12430312079	DEED OF TRUST	N/A	\$	82,734
12-08	5830 Barbosa Dr 08	North Las Vegas, NV	12430312078	DEED OF TRUST	N/A	\$	64,809
12-09	5830 Barbosa Dr 09	North Las Vegas, NV	12430312077	DEED OF TRUST	N/A	\$	64,809

Palmille Development Co. Inc.
Summary of Schedules
Schedule A - Real Property

DESCRIPTION AND LOCATION OF PROPERTY				NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
DESCRIPTION	ADDRESS	CITY, STATE	LA COUNTY ASSESSOR'S #				
12-10	5830 Barbosa Dr. 10	North Las Vegas, NV	12430312087	DEED OF TRUST	N/A	\$ 84,809	\$ 20,084,087
12-11	5830 Barbosa Dr. 11	North Las Vegas, NV	12430312088	DEED OF TRUST	N/A	\$ 64,809	
12-12	5830 Barbosa Dr. 12	North Las Vegas, NV	12430312085	DEED OF TRUST	N/A	\$ 64,809	
13-01	5820 Palmilla St 01	North Las Vegas, NV	12430312108	DEED OF TRUST	N/A	\$ 64,809	
13-02	5820 Palmilla St 02	North Las Vegas, NV	12430312107	DEED OF TRUST	N/A	\$ 64,809	
13-03	5820 Palmilla St 03	North Las Vegas, NV	12430312108	DEED OF TRUST	N/A	\$ 64,809	
13-04	5820 Palmilla St 04	North Las Vegas, NV	12430312105	DEED OF TRUST	N/A	\$ 64,809	
13-05	5820 Palmilla St 05	North Las Vegas, NV	12430312104	DEED OF TRUST	N/A	\$ 64,809	
13-06	5820 Palmilla St 06	North Las Vegas, NV	12430312103	DEED OF TRUST	N/A	\$ 82,734	
13-07	5820 Palmilla St 07	North Las Vegas, NV	12430312102	DEED OF TRUST	N/A	\$ 82,734	
13-08	5820 Palmilla St 08	North Las Vegas, NV	12430312101	DEED OF TRUST	N/A	\$ 64,809	
13-09	5820 Palmilla St 09	North Las Vegas, NV	12430312100	DEED OF TRUST	N/A	\$ 64,809	
13-10	5820 Palmilla St 10	North Las Vegas, NV	12430312099	DEED OF TRUST	N/A	\$ 64,809	
13-11	5820 Palmilla St 11	North Las Vegas, NV	12430312098	DEED OF TRUST	N/A	\$ 64,809	
13-12	5820 Palmilla St 12	North Las Vegas, NV	12430312097	DEED OF TRUST	N/A	\$ 64,809	
14-01	5815 Nuevo Leon St 01	North Las Vegas, NV	12430312120	DEED OF TRUST	N/A	\$ 64,809	
14-02	5815 Nuevo Leon St 02	North Las Vegas, NV	12430312119	DEED OF TRUST	N/A	\$ 64,809	
14-03	5815 Nuevo Leon St 03	North Las Vegas, NV	12430312118	DEED OF TRUST	N/A	\$ 64,809	
14-04	5815 Nuevo Leon St 04	North Las Vegas, NV	12430312117	DEED OF TRUST	N/A	\$ 64,809	
14-05	5815 Nuevo Leon St 05	North Las Vegas, NV	12430312116	DEED OF TRUST	N/A	\$ 82,734	
14-06	5815 Nuevo Leon St 06	North Las Vegas, NV	12430312115	DEED OF TRUST	N/A	\$ 82,734	
14-07	5815 Nuevo Leon St 07	North Las Vegas, NV	12430312114	DEED OF TRUST	N/A	\$ 82,734	
14-08	5815 Nuevo Leon St 08	North Las Vegas, NV	12430312113	DEED OF TRUST	N/A	\$ 82,734	
14-09	5815 Nuevo Leon St 09	North Las Vegas, NV	12430312112	DEED OF TRUST	N/A	\$ 64,809	
14-10	5815 Nuevo Leon St 10	North Las Vegas, NV	12430312111	DEED OF TRUST	N/A	\$ 64,809	
14-11	5815 Nuevo Leon St 11	North Las Vegas, NV	12430312110	DEED OF TRUST	N/A	\$ 64,809	
14-12	5815 Nuevo Leon St 12	North Las Vegas, NV	12430312109	DEED OF TRUST	N/A	\$ 64,809	
15-01	5845 Nuevo Leon St 01	North Las Vegas, NV	12430312132	DEED OF TRUST	N/A	\$ 64,809	
15-02	5845 Nuevo Leon St 02	North Las Vegas, NV	12430312131	DEED OF TRUST	N/A	\$ 64,809	
15-03	5845 Nuevo Leon St 03	North Las Vegas, NV	12430312130	DEED OF TRUST	N/A	\$ 64,809	
15-04	5845 Nuevo Leon St 04	North Las Vegas, NV	12430312129	DEED OF TRUST	N/A	\$ 64,809	
15-05	5845 Nuevo Leon St 05	North Las Vegas, NV	12430312128	DEED OF TRUST	N/A	\$ 64,809	
15-06	5845 Nuevo Leon St 06	North Las Vegas, NV	12430312127	DEED OF TRUST	N/A	\$ 82,734	
15-07	5845 Nuevo Leon St 07	North Las Vegas, NV	12430312126	DEED OF TRUST	N/A	\$ 82,734	
15-08	5845 Nuevo Leon St 08	North Las Vegas, NV	12430312125	DEED OF TRUST	N/A	\$ 64,809	
15-09	5845 Nuevo Leon St 09	North Las Vegas, NV	12430312124	DEED OF TRUST	N/A	\$ 64,809	
15-10	5845 Nuevo Leon St 10	North Las Vegas, NV	12430312123	DEED OF TRUST	N/A	\$ 64,809	
15-11	5845 Nuevo Leon St 11	North Las Vegas, NV	12430312122	DEED OF TRUST	N/A	\$ 64,809	
15-12	5845 Nuevo Leon St 12	North Las Vegas, NV	12430312121	DEED OF TRUST	N/A	\$ 64,809	
16-01	5850 Pamilla St 01	North Las Vegas, NV	12430312144	DEED OF TRUST	N/A	\$ 64,809	
16-02	5850 Pamilla St 02	North Las Vegas, NV	12430312143	DEED OF TRUST	N/A	\$ 64,809	
16-03	5850 Pamilla St 03	North Las Vegas, NV	12430312142	DEED OF TRUST	N/A	\$ 64,809	
16-04	5850 Pamilla St 04	North Las Vegas, NV	12430312141	DEED OF TRUST	N/A	\$ 64,809	
16-05	5850 Pamilla St 05	North Las Vegas, NV	12430312140	DEED OF TRUST	N/A	\$ 82,734	
16-06	5850 Pamilla St 06	North Las Vegas, NV	12430312139	DEED OF TRUST	N/A	\$ 82,734	
16-07	5850 Pamilla St 07	North Las Vegas, NV	12430312138	DEED OF TRUST	N/A	\$ 82,734	
16-08	5850 Pamilla St 08	North Las Vegas, NV	12430312137	DEED OF TRUST	N/A	\$ 82,734	
16-09	5850 Pamilla St 09	North Las Vegas, NV	12430312136	DEED OF TRUST	N/A	\$ 64,809	
16-10	5850 Pamilla St 10	North Las Vegas, NV	12430312135	DEED OF TRUST	N/A	\$ 64,809	
16-11	5850 Pamilla St 11	North Las Vegas, NV	12430312134	DEED OF TRUST	N/A	\$ 64,809	
16-12	5850 Pamilla St 12	North Las Vegas, NV	12430312133	DEED OF TRUST	N/A	\$ 64,809	
17-01	5860 Pamilla St 01	North Las Vegas, NV	12430312158	DEED OF TRUST	N/A	\$ 84,809	
17-02	5860 Pamilla St 02	North Las Vegas, NV	12430312155	DEED OF TRUST	N/A	\$ 84,809	
17-03	5860 Pamilla St 03	North Las Vegas, NV	12430312154	DEED OF TRUST	N/A	\$ 64,809	
17-04	5860 Pamilla St 04	North Las Vegas, NV	12430312153	DEED OF TRUST	N/A	\$ 64,809	
17-05	5860 Pamilla St 05	North Las Vegas, NV	12430312152	DEED OF TRUST	N/A	\$ 64,809	
17-06	5860 Pamilla St 06	North Las Vegas, NV	12430312151	DEED OF TRUST	N/A	\$ 82,734	
17-07	5860 Pamilla St 07	North Las Vegas, NV	12430312150	DEED OF TRUST	N/A	\$ 82,734	
17-08	5860 Pamilla St 08	North Las Vegas, NV	12430312149	DEED OF TRUST	N/A	\$ 64,809	
17-09	5860 Pamilla St 09	North Las Vegas, NV	12430312148	DEED OF TRUST	N/A	\$ 64,809	
17-10	5860 Pamilla St 10	North Las Vegas, NV	12430312147	DEED OF TRUST	N/A	\$ 64,809	
17-11	5860 Pamilla St 11	North Las Vegas, NV	12430312146	DEED OF TRUST	N/A	\$ 64,809	
17-12	5860 Pamilla St 12	North Las Vegas, NV	12430312145	DEED OF TRUST	N/A	\$ 64,809	
18-01	5855 Nuevo Leon St 01	North Las Vegas, NV	12430312188	DEED OF TRUST	N/A	\$ 64,809	
18-02	5855 Nuevo Leon St 02	North Las Vegas, NV	12430312167	DEED OF TRUST	N/A	\$ 64,809	
18-03	5855 Nuevo Leon St 03	North Las Vegas, NV	12430312166	DEED OF TRUST	N/A	\$ 64,809	
18-04	5855 Nuevo Leon St 04	North Las Vegas, NV	12430312165	DEED OF TRUST	N/A	\$ 64,809	
18-05	5855 Nuevo Leon St 05	North Las Vegas, NV	12430312164	DEED OF TRUST	N/A	\$ 82,734	
18-06	5855 Nuevo Leon St 06	North Las Vegas, NV	12430312163	DEED OF TRUST	N/A	\$ 82,734	
18-07	5855 Nuevo Leon St 07	North Las Vegas, NV	12430312162	DEED OF TRUST	N/A	\$ 82,734	
18-08	5855 Nuevo Leon St 08	North Las Vegas, NV	12430312161	DEED OF TRUST	N/A	\$ 82,734	
18-09	5855 Nuevo Leon St 09	North Las Vegas, NV	12430312160	DEED OF TRUST	N/A	\$ 64,809	
18-10	5855 Nuevo Leon St 10	North Las Vegas, NV	12430312159	DEED OF TRUST	N/A	\$ 64,809	
18-11	5855 Nuevo Leon St 11	North Las Vegas, NV	12430312158	DEED OF TRUST	N/A	\$ 64,809	
18-12	5855 Nuevo Leon St 12	North Las Vegas, NV	12430312157	DEED OF TRUST	N/A	\$ 64,809	

000847

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Palmilla Development Co., Inc.
Summary of Schedules
Schedule A - Real Property

DESCRIPTION AND LOCATION OF PROPERTY				NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
DESCRIPTION	ADDRESS	CITY, STATE	LA COUNTY ASSESSOR'S #				
19-01	5915 Nuevo Leon St 01	North Las Vegas, NV	12430312180	DEED OF TRUST	N/A	\$ 64,809	
19-04	5915 Nuevo Leon St 04	North Las Vegas, NV	12430312177	DEED OF TRUST	N/A	\$ 64,809	
19-09	5915 Nuevo Leon St 09	North Las Vegas, NV	12430312172	DEED OF TRUST	N/A	\$ 64,809	
19-10	5915 Nuevo Leon St 10	North Las Vegas, NV	12430312171	DEED OF TRUST	N/A	\$ 64,809	
19-12	5915 Nuevo Leon St 12	North Las Vegas, NV	12430312169	DEED OF TRUST	N/A	\$ 64,809	
20-11	5920 Palmilla St 11	North Las Vegas, NV	12430312182	DEED OF TRUST	N/A	\$ 64,809	
20-12	5920 Palmilla St 12	North Las Vegas, NV	12430312181	DEED OF TRUST	N/A	\$ 64,809	

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking account at US Bank, Acct No. 1-534-9224-9708	-	423.40
		Checking account at US Bank, Acct No. 1-534-9503-2150	-	8,910.44
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Appliances	-	78,299.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > **87,632.84**
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > 0.00
(Total of this page)

Sheet 1 of 2 continuation sheets attached
to the Schedule of Personal Property

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		Golf cart	-	1,148.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > 1,148.00
(Total of this page)
Total > 88,780.84

(Report also on Summary of Schedules)

Sheet 2 of 2 continuation sheets attached
to the Schedule of Personal Property

B6D (Official Form 6D) (12/07)

In re **Palmilla Development Company, Inc.**Case No. **1:09-bk-11504-MT**

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		H W J C					
Account No.							
American Asphalt & Grading 2690 North Decatur Blvd Las Vegas, NV 89108	-						
		Value \$	0.00			40,000.00	0.00
Account No.							
LaSalle Bank NA, Trustee c/o McKenna, Long & Aldridge 444 S. Flower St., 8th Floor Los Angeles, CA 90071	-						
		Value \$	10,874,088.00			20,573,787.00	0.00
Account No.							
Wachovia 1525 West WT Harris Blvd Bldg 2C2 Charlotte, NC 28262	-	Notice purposes only					
		Value \$	0.00			0.00	0.00
Account No.							
		Value \$					
Subtotal (Total of this page)						20,613,787.00	0.00
Total (Report on Summary of Schedules)						20,613,787.00	0.00

0 continuation sheets attached

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☒ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6E (Official Form 6E) (12/07) - Cont.

In re **Palmilla Development Company, Inc.**

Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Taxes and Certain Other Debts Owed to Governmental Units

TYPE OF PRIORITY

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
									AMOUNT ENTITLED TO PRIORITY
Account No.				Notice purposes only					
Clark County Treasurer Bankruptcy Clerk 500 So. Grand Central Parkway Las Vegas, NV 89155		-						0.00	0.00
Account No.				Notice purposes only					
Franchise Tax Board Attention: Bankruptcy P.O. Box 2952 Sacramento, CA 95812-2952		-						0.00	0.00
Account No.				Notice purposes only					
Internal Revenue Service P.O. Box 21126 Philadelphia, PA 19114		-						0.00	0.00
Account No.									
Account No.									
Account No.									
Account No.									
Subtotal (Total of this page)								0.00	0.00
Total (Report on Summary of Schedules)								0.00	0.00

B6F (Official Form 6F) (12/07)

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community			C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H	W	J				
Account No.								
A-1 Security, LTD. 917 S. First St. Las Vegas, NV 89101		-						627.00
Account No.								
American Premiere, Inc. 235 W. Brooks Ave. North Las Vegas, NV 89030		-						77,574.94
Account No.								
Appliance Repair Experts, Inc 6512 N. Decatur Blvd #13-133 Las Vegas, NV 89131		-						146.49
Account No.								
Carpets N More 3185 E. Tropicana Las Vegas, NV 89121		-						3,300.00
Subtotal (Total of this page)								81,648.43

5 continuation sheets attached

In re **Palmilla Development Company, Inc.**Case No. **1:09-bk-11504-MT**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N D I S P U T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.							
Challenge Electric 1427 S Commerce St Las Vegas, NV 89102		-					8,802.50
Account No.							
Cherokee Blind & Door, Inc 4530 S. Arville, C-21 Las Vegas, NV 89103		-					436.97
Account No.							
Clark County Treasurer 500 S. Grand Central Pkwy, 1st Floor Las Vegas, NV 89155-1220		-					2,924.22
Account No.							
Consolidated Reprographics 345 Clinton St Costa Mesa, CA 92626		-					54.04
Account No.							
Cox Communications P. O. Box 79175 Phoenix, AZ 85062-9175		-					146.45
Sheet no. 1 of 5 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							12,364.18

B6F (Official Form 6F) (12/07) - Cont.

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N D I S P U T E D	A M O U N T O F C L A I M
		H W J C	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M. I F C L A I M I S S U B J E C T T O S E T O F F, S O S T A T E.			
Account No.						
Desert Plastering, LLC 2602 Losee Rd. N. Las Vegas, NV 89030		-				635.00
Account No.						
Estaban C Vasquez dba Klean Masters Inc 7258 Desert Ranch Ave Las Vegas, NV 89113		-				236.00
Account No.						
First Advantage Safe Rent PO Box 31462 Tampa, FL 33631-3462		-				118.00
Account No.						
First Advantage SafeRent, Inc. P.O. Box 120512 Dept. 0512 Dallas, TX 75312-0512		-				329.31
Account No.						
For Rent Magazine 75 Remittance Dr., #1705 Chicago, IL 60675-1705		-				1,020.00
Sheet no. <u>2</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						
Subtotal (Total of this page)						2,338.31

In re **Palmilla Development Company, Inc.**Case No. **1:09-bk-11504-MT**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B I T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H	W				
Account No.							
HomeTronic 2480 North Decatur Blvd #180 Las Vegas, NV 89108		-					150.00
Account No.							
HUB International (Scheer's) 601 Oakmont Lane, Suite 400 Westmont, IL 60559		-					17,800.00
Account No.							
Infinity Building Products 6967 Speedway Blvd #AA-101 Las Vegas, NV 89115		-					1,219.40
Account No.							
Lamb Asphalt 2516 Losee Road N Las Vegas, NV 89030		-					8,140.00
Account No.							
Mountain Pointe Enterprises Corp dba Gen 2010 W. Parkside Lane #140 Phoenix, AZ 85027-1212		-					1,215.00
Sheet no. 3 of 5 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							28,524.40

B6F (Official Form 6F) (12/07) - Cont.

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N D I S P U T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.							
Network Communications, Inc. dba Apartme P. O. Box 402168 Atlanta, GA 30384-2168		-					1,290.00
Account No.							
Nevada Power Co. P.O. Box 30086 Reno, NV 89520		-					8.55
Account No.							
Palmilla Homeowners Association/PWJames 8010 W. Sahara, Ste 160 Las Vegas, NV 89117		-					53,458.50
Account No.							
Red Rock Mechanical, LLC 6311 Dean Martin Dr. Las Vegas, NV 89118-3842		-					89.00
Account No.							
S & J Ventures dba JSI Carpet 4354 E. Alexander Rd. Las Vegas, NV 89115		-					1,685.00
Sheet no. <u>4</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							56,531.05

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.							
SBS Construction Services of Nevada, LLC 5795 Rogers Street Las Vegas, NV 89118		-					75.00
Account No.							
Sunworld Landscape 3020 Builders Ave Las Vegas, NV 89101		-					35,206.00
Account No.							
T & R Painting & Drywall 235 W. Brooks Ave. North Las Vegas, NV 89030		-					16,700.00
Account No.							
United Plumbing 1220 Commerce, Suite C Las Vegas, NV 89102		-					261.90
Account No.							
Western Sign & Flag 3060 Business Lane Las Vegas, NV 89103		-					225.00
Sheet no. <u>5</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							52,467.90
Total (Report on Summary of Schedules)							233,874.27

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MTDebtor**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

See attachment

PALMILLA DEV COMPANY, INC.
EXECUTIVE LIVING DIVISION
RENT ROLL
AT MARCH 4, 2009

UNITS	TENANT	LEASE START DATE	MONTHLY RENTAL RATE	ASKING RENT	LEASE EXPIRE DATE	SECURITY DEPOSITS	Current & Asking Rents
03-07	Douglas & Sandy Jessiman	5/13/2006	\$ 1,375.00		6/30/2009	\$ 315.00	\$ 1,375.00
06-03	VACANT			\$ 1,200.00			\$ 1,200.00
06-07	VACANT			\$ 1,425.00			\$ 1,425.00
06-08	Michael & Elizabeth Zagajeski	12/27/2006	\$ 1,300.00		6/30/2009	\$ 550.00	\$ 1,300.00
06-10	Devin W Taber	10/13/2007	\$ 1,150.00		12/31/2009	\$ 475.00	\$ 1,150.00
06-11	Kenneth Lake	4/13/2008	\$ 1,025.00		11/30/2009	\$ 500.00	\$ 1,025.00
07-01	Alja & Lakeisha Taylor	2/14/2007	\$ 1,195.00		3/31/2009	\$ 550.00	\$ 1,195.00
07-02	Dennis Jeantet & Jacyln Piastro	6/1/2008	\$ 1,025.00		6/30/2009	\$ 525.00	\$ 1,025.00
07-03	James & Sheila Mann	4/10/2006	\$ 1,225.00		5/31/2009	\$ 315.00	\$ 1,225.00
07-04	Robert & Tamara Gorsuch	8/3/2008	\$ 1,275.00		8/31/2009	\$ 825.00	\$ 1,275.00
07-05	Shamir Westbrooks	4/11/2008	\$ 1,425.00		4/30/2009	\$ 625.00	\$ 1,425.00
07-06	VACANT			\$ 1,475.00			\$ 1,475.00
07-07	Ryan & Kimberly Crohen	4/14/2006	\$ 1,295.00		5/31/2009	\$ 315.00	\$ 1,295.00
07-08	VACANT			\$ 1,425.00			\$ 1,425.00
07-09	Javier Torres De Leon & Rachel Pina	3/1/2008	\$ 1,425.00		3/31/2009	\$ 775.00	\$ 1,425.00
07-10	Trina Harvey De La Huerta	2/15/2007	\$ 1,300.00		9/30/2009	\$ 725.00	\$ 1,300.00
07-11	Vallarie Williams	3/3/2006	\$ 1,075.00		5/31/2009	\$ 315.00	\$ 1,075.00
07-12	VACANT			\$ 1,325.00			\$ 1,325.00
08-01	VACANT			\$ 1,200.00			\$ 1,200.00
08-02	Jeffrey & Ruth Filozof	6/22/2007	\$ 1,165.00		7/31/2009	\$ 450.00	\$ 1,165.00
08-03	Greene & Felicia Evans	12/15/2008	\$ 1,225.00		1/31/2010	\$ -	\$ 1,225.00
08-04	Kurt M Deaton	8/12/2007	\$ 1,775.00		Monthly	\$ 450.00	\$ 1,775.00
08-05	James A Molloy	3/1/2008	\$ 1,095.00		3/31/2009	\$ 525.00	\$ 1,095.00
08-06	James Maxwell, Andrea Wallace & Joshua	11/2/2007	\$ 1,275.00		12/31/2009	\$ 450.00	\$ 1,275.00
08-07	Poonam Chand	1/2/2006	\$ 1,400.00		7/31/2009	\$ 415.00	\$ 1,400.00
08-08	Walter J Desmond	8/30/2008	\$ 1,100.00		9/30/2009	\$ 525.00	\$ 1,100.00
08-09	VACANT			\$ 1,325.00			\$ 1,325.00
08-10	Anthony & Marc Piccirilli	3/12/2006	\$ 1,250.00		3/31/2009	\$ 315.00	\$ 1,250.00
08-11	Tamisha Jones	11/30/2007	\$ 1,000.00		1/31/2010	\$ 450.00	\$ 1,000.00
08-12	Don W Turner & Linda Dawson	9/22/2007	\$ 1,070.00		11/30/2009	\$ 1,065.00	\$ 1,070.00
09-01	Michael & Yvette Castro	1/17/2008	\$ 1,200.00		2/28/2009	\$ 1,225.00	\$ 1,200.00
09-02	Scott & Laurie Kuhl	6/1/2006	\$ 1,075.00		6/30/2009	\$ 475.00	\$ 1,075.00
09-03	VACANT			\$ 1,275.00			\$ 1,275.00
09-04	Christopher Degraw	7/26/2006	\$ 1,325.00		8/31/2009	\$ 375.00	\$ 1,325.00
09-05	Jacqueline Harris & Shaletta Maloy	8/7/2008	\$ 1,350.00		8/31/2009	\$ 525.00	\$ 1,350.00
09-06	Jason Swazer	6/22/2007	\$ 1,270.00		6/30/2009	\$ 725.00	\$ 1,270.00
09-07	Kimberly Myers	2/12/2009	\$ 1,200.00		3/31/2010	\$ 600.00	\$ 1,200.00
09-08	Angela Slinger & Eve Tomsyck	8/1/2008	\$ 1,350.00		8/31/2009	\$ 725.00	\$ 1,350.00
09-09	Joshua Smith & Krysta Johnson	7/18/2008	\$ 1,275.00		7/31/2009	\$ 525.00	\$ 1,275.00
09-10	James S Kreigh	3/14/2007	\$ 1,225.00		4/30/2009	\$ 825.00	\$ 1,225.00
09-11	Levy and Noemi Avila	10/1/2008	\$ 1,000.00		10/31/2009	\$ 525.00	\$ 1,000.00
09-12	Jamie Caroon	8/15/2007	\$ 1,075.00		8/31/2009	\$ 650.00	\$ 1,075.00
10-01	VACANT			\$ 1,200.00			\$ 1,200.00
10-02	VACANT			\$ 1,125.00			\$ 1,125.00
10-03	Tikecia Hicman	12/15/2007	\$ 1,200.00		2/28/2010	\$ 725.00	\$ 1,200.00
10-04	VACANT			\$ 1,450.00			\$ 1,450.00
10-05	McLanie M Foronda	2/10/2009	\$ 1,050.00		3/31/2010	\$ -	\$ 1,050.00
10-06	VACANT			\$ 1,450.00			\$ 1,450.00
10-07	Grace & Isaiah Bizzell	5/1/2007	\$ 1,270.00		6/30/2009	\$ 550.00	\$ 1,270.00
10-08	Mary Michelle Lindsay	7/29/2006	\$ 1,125.00		Monthly	\$ 375.00	\$ 1,125.00
10-09	Gregory and Colche Bregan	1/6/2009	\$ 1,275.00		2/28/2010	\$ -	\$ 1,275.00
10-10	Richard Pitts	11/13/2007	\$ 1,200.00		1/31/2010	\$ 1,225.00	\$ 1,200.00
10-11	Lilia Enriquez & David Torres	9/22/2007	\$ 1,000.00		11/30/2009	\$ 725.00	\$ 1,000.00
10-12	Laura Palmer	12/1/2008	\$ 1,250.00		11/30/2009	\$ 825.00	\$ 1,250.00
11-01	Robert Bernard & Brandy Wright	8/9/2007	\$ 1,065.00		9/30/2009	\$ 450.00	\$ 1,065.00
11-02	Michael Manalo	11/20/2007	\$ 1,000.00		12/31/2009	\$ 450.00	\$ 1,000.00
11-03	Gordon Hill	11/2/2007	\$ 1,120.00		12/31/2009	\$ 625.00	\$ 1,120.00
11-04	Prentiss Spight Jr & Andrew Jackson	8/1/2008	\$ 1,275.00		8/31/2009	\$ 825.00	\$ 1,275.00
11-05	Brenda Shelley	11/30/2007	\$ 1,300.00		Monthly	\$ 625.00	\$ 1,300.00
11-06	Robert & Cathrine Medina	9/9/2008	\$ 1,300.00		10/31/2009	\$ 825.00	\$ 1,300.00
11-07	Tyrone & Tonya Scott	3/1/2009	\$ 1,200.00		3/31/2010	\$ 500.00	\$ 1,200.00
11-08	VACANT			\$ 1,270.00			\$ 1,270.00
11-09	Jacklyn Trotter	1/30/2009	\$ 1,200.00		2/28/2010	\$ -	\$ 1,200.00

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11-10	Xavier & Stacy Warren	11/4/2007	\$	1,185.00		Monthly	\$	650.00	\$	1,185.00	
11-11	Sara Lainez	11/2/2007	\$	1,050.00		Monthly	\$	450.00	\$	1,050.00	
11-12	VACANT				\$	1,200.00				\$	1,200.00
12-01	Rana & Bashar Mona	10/1/2007	\$	1,065.00		12/31/2009	\$	450.00	\$	1,065.00	
12-02	Alexis Prince and Walter Loyd	12/20/2008	\$	950.00		1/31/2010	\$	-	\$	950.00	
12-03	Gordon & April Sanderson	11/15/2007	\$	1,150.00		12/31/2009	\$	450.00	\$	1,150.00	
12-04	Rudolph Earl Butler III	2/1/2007	\$	1,270.00		3/31/2009	\$	450.00	\$	1,270.00	
12-05	VACANT				\$	1,070.00				\$	1,070.00
12-06	Marty Hankins & Lakeisha Baker	10/13/2007	\$	1,275.00		11/30/2009	\$	725.00	\$	1,275.00	
12-07	Shawnette Alberson	3/27/2007	\$	1,250.00		3/31/2009	\$	550.00	\$	1,250.00	
12-08	Takeysa Stone	7/25/2008	\$	1,100.00		9/30/2009	\$	725.00	\$	1,100.00	
12-09	Michael Downton & Kim Irvin	1/31/2009	\$	1,275.00		2/28/2010	\$	-	\$	1,275.00	
12-10	Robert Eason II & Shannon Holmes	8/1/2007	\$	1,125.00		5/31/2009	\$	625.00	\$	1,125.00	
12-11	Stephen A Alvarez	11/30/2008	\$	946.16		12/31/2009	\$	825.00	\$	946.16	
12-12	Melanie Adkins and Andrea Frazier	1/1/2009	\$	1,150.00		2/28/2010	\$	500.00	\$	1,150.00	
13-01	Dave & Sylvia Adams	10/1/2007	\$	1,090.00		4/30/2009	\$	725.00	\$	1,090.00	
13-02	Lisa Randle	4/1/2007	\$	1,245.00		Monthly	\$	450.00	\$	1,245.00	
13-03	Norma L Zuniga	6/1/2008	\$	1,250.00		5/31/2009	\$	726.00	\$	1,250.00	
13-04	Crystal Scott	4/1/2007	\$	975.00		5/31/2009	\$	225.00	\$	975.00	
13-05	Jose V Peterson II	11/15/2007	\$	1,095.00		12/31/2009	\$	625.00	\$	1,095.00	
13-06	Thomas & Aida Abilez	9/5/2008	\$	1,325.00		10/31/2009	\$	1,025.00	\$	1,325.00	
13-07	Thomas Paulson & Sarah Daniels	7/1/2007	\$	1,270.00		7/31/2009	\$	450.00	\$	1,270.00	
13-08	VACANT				\$	1,070.00				\$	1,070.00
13-09	Curtis Green	9/27/2008	\$	1,325.00		10/31/2009	\$	525.00	\$	1,325.00	
13-10	Carrie Braun and Nicole Musshorn	11/20/2007	\$	1,150.00		12/31/2009	\$	450.00	\$	1,150.00	
13-11	Jose L Aguayo	10/27/2007	\$	1,025.00		5/31/2009	\$	625.00	\$	1,025.00	
13-12	Trinia Jones-Blair, Brittanee R Dawson	3/1/2009	\$	1,050.00		3/31/2010	\$	-	\$	1,050.00	
14-01	Steve Brascia	1/8/2009	\$	1,150.00		2/10/2010	\$	200.00	\$	1,150.00	
14-02	Jason M Koss	10/1/2008	\$	1,000.00		10/31/2009	\$	525.00	\$	1,000.00	
14-03	VACANT				\$	1,125.00				\$	1,125.00
14-04	Shannon and Guy Floyd	12/22/2008	\$	1,275.00		6/30/2009	\$	525.00	\$	1,275.00	
14-05	Christen Roark	1/24/2009	\$	1,200.00		3/31/2010	\$	-	\$	1,200.00	
14-06	Raimi Hamlet	12/22/2008	\$	1,300.00		2/28/2010	\$	-	\$	1,300.00	
14-07	Gerald & Marcheryl Evans	7/21/2007	\$	1,200.00		9/30/2009	\$	1,400.00	\$	1,200.00	
14-08	Chanda Sprague & Latiesha McDaniels	12/1/2008	\$	1,400.00		1/31/2010	\$	875.00	\$	1,400.00	
14-09	Thomas & Dawn Ruscetta	7/28/2007	\$	1,285.00		9/30/2009	\$	925.00	\$	1,285.00	
14-10	Thomas & Sarah McPhail	9/24/2007	\$	1,185.00		11/30/2009	\$	650.00	\$	1,185.00	
14-11	Nestor & Sierra Zavatsky	2/1/2009	\$	950.00		1/31/2010	\$	1,225.00	\$	950.00	
14-12	Derrick C Grays	3/1/2009	\$	1,050.00		3/31/2010	\$	600.00	\$	1,050.00	
15-01	Cesar Caicedo & Aida Corona	6/22/2008	\$	1,100.00		6/30/2009	\$	525.00	\$	1,100.00	
15-02	Richard Rosenstrach	1/15/2007	\$	1,075.00		8/31/2009	\$	500.00	\$	1,075.00	
15-03	Alejandro Villar	6/5/2007	\$	1,275.00		Monthly	\$	550.00	\$	1,275.00	
15-04	Nollee Ciballos	10/16/2008	\$	1,350.00		10/31/2009	\$	575.00	\$	1,350.00	
15-05	Jesse & Lori Simmons	1/19/2008	\$	1,125.00		2/28/2009	\$	525.00	\$	1,125.00	
15-06	Anthony Mariland & Liricia Johnson	3/15/2007	\$	1,300.00		3/31/2009	\$	725.00	\$	1,300.00	
15-07	Sean Urshot & Josh Tully	1/29/2007	\$	1,250.00		4/30/2009	\$	450.00	\$	1,250.00	
15-08	John & Cynthia Keenan	12/4/2007	\$	1,070.00		Monthly	\$	1,125.00	\$	1,070.00	
15-09	Carol A Adelman	6/1/2008	\$	900.00		6/30/2009	\$	25.00	\$	900.00	
15-10	Cedric Wright & Deidre Barrett	12/1/2007	\$	1,170.00		Monthly	\$	725.00	\$	1,170.00	
15-11	Allison L Bolton	9/1/2008	\$	1,025.00		9/30/2009	\$	600.00	\$	1,025.00	
15-12	Stanley & Carmine Yelonek	3/29/2008	\$	1,200.00		4/30/2009	\$	525.00	\$	1,200.00	
16-01	Costin Malageanu & Elena Anghel	10/30/2007	\$	1,065.00		12/31/2009	\$	450.00	\$	1,065.00	
16-02	Joseph Sewell Jr	1/4/2008	\$	1,075.00		Monthly	\$	525.00	\$	1,075.00	
16-03	VACANT				\$	1,350.00				\$	1,350.00
16-04	VACANT				\$	1,250.00				\$	1,250.00
16-05	Mary Song, Rickiya Hall, Craig Smith, Rc	8/1/2007	\$	1,200.00		9/30/2009	\$	500.00	\$	1,200.00	
16-06	Yedda Johnson	10/4/2008	\$	1,375.00		11/30/2009	\$	1,025.00	\$	1,375.00	
16-07	VACANT				\$	1,325.00				\$	1,325.00
16-08	VACANT				\$	1,275.00				\$	1,275.00
16-09	Christopher Carter & Roosevelt Ruggs III	10/1/2008	\$	1,237.50		10/31/2009	\$	525.00	\$	1,237.50	
16-10	Fanuel Gebreyes & Zewdinsh Zufan	10/17/2008	\$	1,250.00		11/30/2009	\$	575.00	\$	1,250.00	
16-11	David McGuire	12/26/2006	\$	1,000.00		Monthly	\$	550.00	\$	1,000.00	
16-12	Shan'est Morgan & Brian Davis	12/1/2007	\$	1,125.00		Monthly	\$	1,425.00	\$	1,125.00	
17-01	Deborah Wilson	8/10/2007	\$	1,100.00		9/30/2009	\$	450.00	\$	1,100.00	
17-02	Kristopher Pockell	4/20/2008	\$	1,025.00		12/31/2009	\$	500.00	\$	1,025.00	
17-03	VACANT				\$	1,450.00				\$	1,450.00
17-04	Rosie Tucker	3/1/2009	\$	1,275.00		3/31/2010	\$	600.00	\$	1,275.00	
17-05	Jon A Binder	11/1/2008	\$	1,100.00		11/30/2009	\$	525.00	\$	1,100.00	
17-06	VACANT				\$	1,400.00				\$	1,400.00
17-07	Brittney McBride, Burgett McBride	9/12/2008	\$	1,325.00		10/31/2009	\$	775.00	\$	1,325.00	

17-08	Chris and Ruth Saenz	1/8/2009	\$	1,025.00		2/28/2010	\$	-	\$ 1,025.00
17-09	Dwight & Vicki Stewart	11/26/2007	\$	1,300.00		1/1/2010	\$	1,225.00	\$ 1,300.00
17-10	Arland & Donna Stalker	11/27/2007	\$	1,130.77		Monthly	\$	625.00	\$ 1,130.77
17-11	Adam Garcia & Sean Duckworth	8/27/2007	\$	1,000.00		9/30/2009	\$	450.00	\$ 1,000.00
17-12	VACANT				\$	1,225.00			\$ 1,225.00
18-01	Elsie Marie Spell	7/9/2007	\$	1,065.00		7/31/2009	\$	725.00	\$ 1,065.00
18-02	Nathan & Brittany Newbold	7/5/2007	\$	1,095.00		7/31/2009	\$	650.00	\$ 1,095.00
18-03	Stephen Defress	5/22/2006	\$	1,225.00		6/30/2009	\$	315.00	\$ 1,225.00
18-04	VACANT				\$	1,300.00			\$ 1,300.00
18-05	Craig McDowell & Lynn McDowell-Gartr	1/1/2008	\$	1,300.00		Monthly	\$	925.00	\$ 1,300.00
18-06	Valerie Hence Snow	9/28/2007	\$	1,400.00		Monthly	\$	450.00	\$ 1,400.00
18-07	Caesar Contreras & Sheila Flenniken	2/15/2008	\$	1,395.00		3/31/2009	\$	725.00	\$ 1,395.00
18-08	Peter & Tiffany Lowther	8/1/2007	\$	1,200.00		9/30/2009	\$	725.00	\$ 1,200.00
18-09	Chad Likins & Christine Ratasezyk	5/2/2008	\$	1,350.00		5/31/2009	\$	1,825.00	\$ 1,350.00
18-10	Jerome and Florina Cantas	8/16/2008	\$	1,100.00		8/31/2009	\$	525.00	\$ 1,100.00
18-11	Maria Rentana	6/22/2008	\$	1,000.00		6/30/2009	\$	525.00	\$ 1,000.00
18-12	Christopher & Malinda Magee	7/30/2007	\$	1,090.00		2/28/2009	\$	675.00	\$ 1,090.00
19-01	Colleen Lanctot	7/1/2008	\$	1,150.00		7/31/2009	\$	525.00	\$ 1,150.00
19-04	VACANT				\$	1,300.00			\$ 1,300.00
19-09	VACANT				\$	1,450.00			\$ 1,450.00
19-10	VACANT				\$	1,350.00			\$ 1,350.00
19-12	Erik McKissick	8/1/2008	\$	900.00		9/30/2009	\$	825.00	\$ 900.00
20-11	Rebecca Parry	9/26/2007	\$	1,000.00		11/30/2009	\$	1,000.00	\$ 1,000.00
20-12	John Isles	12/20/2008	\$	1,000.00		8/31/2009	\$	825.00	\$ 1,000.00
157	TOTALS	129	\$	151,924.43	28				

B6H (Official Form 6H) (12/07)

In re Palmilla Development Company, Inc.Case No. 1:09-bk-11504-MT

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. Sec. 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☒ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0

continuation sheets attached to Schedule of Codebtors

United States Bankruptcy Court
Central District of CaliforniaIn re Palmilla Development Company, Inc.

Debtor(s)

Case No. 1:09-bk-11504-MTChapter 11**DECLARATION CONCERNING DEBTOR'S SCHEDULES****DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the President of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date 3/16/09Signature /s/ Hagai Rapaport**Hagai Rapaport**
President

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

B7 (Official Form 7) (12/07)

**United States Bankruptcy Court
Central District of California**

In re Palmilla Development Company, Inc.

Debtor(s)

Case No. 1:09-bk-11504-MTChapter 11

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$282,908.00	2009 - Condo sales and rental income
\$2,019,404.00	2008 - Condo sales and rental income
\$1,615,402.00	2007 - Condo sales and rental income

2. Income other than from employment or operation of business

None ☒ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None ☒ **Complete a. or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF CREDITORDATES OF
PAYMENTS

AMOUNT PAID

AMOUNT STILL
OWING

None ☐ b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
See attachedDATES OF
PAYMENTS/
TRANSFERSAMOUNT
PAID OR
VALUE OF
TRANSFERS
\$0.00AMOUNT STILL
OWING
\$0.00

None ☒ c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND
RELATIONSHIP TO DEBTOR

DATE OF PAYMENT

AMOUNT PAID

AMOUNT STILL
OWING**4. Suits and administrative proceedings, executions, garnishments and attachments**

None ☒ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT
AND CASE NUMBER

NATURE OF PROCEEDING

COURT OR AGENCY
AND LOCATIONSTATUS OR
DISPOSITION

None ☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE
BENEFIT PROPERTY WAS SEIZED

DATE OF SEIZURE

DESCRIPTION AND VALUE OF
PROPERTY

Database:

Report ID: 112



Account Payable Check Register

User: DCAROLZA

Date: 03/13/2009

Time: 12:03:06

Page: 1

11/11/2008 - 02/11/2009

PAD 102-08 Palmilla Dev

Check	Date	Payee	Amount	Balance
363505	11/21/2008	6	T & R Paint and Drywall, Inc.	1,301.60
363506	11/21/2008	22	American Asphalt & Grading Co.	30,000.00
363507	11/21/2008	1052	Lamb Asphalt Maintenance	1,000.00
363508	12/19/2008	22	American Asphalt & Grading Co.	30,000.00
363509	12/19/2008	1052	Lamb Asphalt Maintenance	1,000.00
363510	12/28/2008	892	State Of Nevada - Business Lic	100.00
363511	01/08/2009	1289	Pete Crenshaw	0.00
363512	12/31/2008	56	Badger Construction Corp.	0.00
363513	12/31/2008	71	Norpac Construction	0.00
363514	12/31/2008	120	Broadbent & Associates Inc.	0.00
363515	12/31/2008	135	D&L Framing, LLC	0.00
363516	01/14/2009	253	NV Energy	0.00
363517	01/14/2009	253	NV Energy	0.00
363518	01/14/2009	728	Alco Landscape	0.00
363519	12/31/2008	763	Metro Electric	0.00
363520	12/31/2008	776	Mestas Roofing Inc	0.00
363521	12/31/2008	789	Deck Systems Nevada	0.00
363522	12/31/2008	1102	New Crete LLC	0.00
363523	12/31/2008	1628	Harrison Door Company	0.00
363524	12/31/2008	273	Nevada Fire Protection, Inc	0.00
363525	01/23/2009	22	American Asphalt & Grading Co.	30,000.00
363526	01/30/2009	1052	Lamb Asphalt Maintenance	1,000.00
363527	02/11/2009	3	Cabinetec, Inc.	0.00
363528	02/11/2009	6	T & R Paint and Drywall, Inc.	0.00
363529	02/11/2009	6	T & R Paint and Drywall, Inc.	0.00
363530	02/11/2009	6	T & R Paint and Drywall, Inc.	0.00
363531	02/11/2009	813	Harrison, Kemp, Jones & Coulthar	0.00
Bank Account Total			94,401.60	
Report Total			94,401.60	

** End of Report **

Check Register

Palmilla Dev Co Inc. Executive Living Division [EXECUTIVE]

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R]	Check#	Chk Date	P/M	Payee	Payee Name	Amount	Memo
R	341763	11/14/2008	11/2008	KLEEN	Esteban C Vasquez dba Kleen Masters	\$600.00	clean carpet 14-8 (apt turn)
R	341764	11/14/2008	11/2008	CHEROKEE	Cherokee Blind & Door	\$75.21	Apt Turnover - Replace screen
VOID	341765	11/14/2008	11/2008	JSI	S & J Ventures dba JSI Carpet	\$255.00	Apt Turnover - carpet clean L
R	341766	11/14/2008	11/2008	MACWIND	MAC Window Factory, Inc	\$480.00	replace vandalized window 11-
R	341768	11/14/2008	11/2008	FOR-RENT	For Rent Magazine	\$1,530.00	Full color ad 10/08/08
R	341769	11/14/2008	11/2008	HAAS	Consumer Source Inc.	\$1,085.00	Full page Ad for November
R	341770	11/14/2008	11/2008	QUALITY	Quality Wood Products, Ltd.	\$71.08	replacement parts for apt turns
R	341771	11/14/2008	11/2008	PWJAMES	Palmilla Homeowners Association	\$12,717.00	Management Fees HOA 157 x
R	341772	11/14/2008	11/2008	8A	8A Advertising	\$1,800.00	Advertising - Settlement on pa
R	341773	11/14/2008	11/2008	POWER	Nevada Power Co.	\$16.33	Acct#30001000247205920501
R	341780	11/14/2008	11/2008	JSI	S & J Ventures dba JSI Carpet	\$170.00	Apt Turnover - clean carpet lot
R	341781	11/21/2008	11/2008	FIRST	First Advantage SafeRent, Inc.	\$335.94	Credit Reports for October 200
R	341782	11/21/2008	11/2008	SOUTHERN	Southern Nevada Eviction Services	\$669.00	5 day pay or quit notice Lot 16
R	341783	11/21/2008	11/2008	COX	Cox Communications, Inc.	\$49.99	Acct#001 8610 106657501 Of
R	341784	11/21/2008	11/2008	EMBARQ	Embarq	\$250.74	Acct#702-649-2512-369 Offic
R	341785	11/21/2008	11/2008	COXTENAN	Cox Communications	\$145.48	Acct#001 8610 101102803 De
R	341786	11/21/2008	11/2008	IKONOFFIC	Ikon Office Solutions	\$76.50	Contract# 1879670 Copier se
R	341787	11/21/2008	11/2008	APPLIANCE	Appliance Repair Experts, Inc	\$613.77	repaired refrigerator 8-10
R	341788	11/21/2008	11/2008	ODOR	Odor Masters	\$330.00	Refridgerator treatment Lot 16
R	341789	11/21/2008	11/2008	JSI	S & J Ventures dba JSI Carpet	\$160.00	Apt Turnover-clean carpet & r
R	341790	11/21/2008	11/2008	BRADLEY	Dan Bradley Glass Shop, Inc	\$1,219.00	replace broken slider 11-10 28
R	341792	11/28/2008	11/2008	KLEEN	Esteban C Vasquez dba Kleen Masters	\$429.00	cleaned carpets (unit turn) 16-
R	341793	11/28/2008	11/2008	HAAS	Consumer Source Inc.	\$1,085.00	Full page ad for December 200
R	341794	11/28/2008	11/2008	SOUTHWES	Southwest Gas Corporation	\$82.97	Acct#211-6940228-003 Lot 1
R	341795	11/28/2008	11/2008	JSI	S & J Ventures dba JSI Carpet	\$570.00	Apt Turnover - Clean Lot 14-5
R	341797	12/5/2008	12/2008	POWER	Nevada Power Co.	\$913.14	Acct#3000100024721328587 I
R	341798	12/5/2008	12/2008	PWJAMES	Palmilla Homeowners Association	\$12,717.00	HOA 157 units X \$81 for Fe
R	341800	12/12/2008	12/2008	POWER	Nevada Power Co.	\$16.18	Acct#3000100024720784863 I
R	341801	12/12/2008	12/2008	SOUTHWES	Southwest Gas Corporation	\$20.91	Acct#211-6940228-003 Lot 1
R	341802	12/12/2008	12/2008	TRAVELER	Travelers	\$130.00	Acct#4514R2128 Lot 1-3 Pnin
R	341803	12/12/2008	12/2008	KLEEN	Esteban C Vasquez dba Kleen Masters	\$586.00	Apt Turnover Lot 17-12 Apart
R	341804	12/19/2008	12/2008	TR	T & R Painting & Drywall	\$12,331.37	touch-up paint 7-6
R	341805	12/19/2008	12/2008	SOUTHERN	Southern Nevada Eviction Services	\$1,168.00	5 day eviction notice Lot 19-9
R	341806	12/19/2008	12/2008	COX	Cox Communications, Inc.	\$43.99	Acct#001 8610 106657501 Of
R	341807	12/19/2008	12/2008	POWER	Nevada Power Co.	\$8.41	Acct#3000100024721335608 I
R	341808	12/19/2008	12/2008	FOR-RENT	For Rent Magazine	\$510.00	Full color Ad 12/03/08
R	341809	12/19/2008	12/2008	FIRST	First Advantage SafeRent, Inc.	\$156.69	Acct#1012844 Credit reports f
R	341810	12/19/2008	12/2008	COXTENAN	Cox Communications	\$145.48	Acct#001 8610 101102803 De
R	341812	12/19/2008	12/2008	TR	T & R Painting & Drywall	\$3,495.00	Apt Turnover touch up paint
R	341813	12/26/2008	12/2008	EMBARQ	Embarq	\$237.12	Acct#702-649-2512-369 Offic
R	341816	1/2/2009	01/2009	SOUTHWES	Southwest Gas Corporation	\$102.98	Acct#211-6938899-005 Deato
R	341817	1/2/2009	01/2009	POWER	Nevada Power Co.	\$32.29	Acct#3000100024720680814 I
R	341818	1/9/2009	01/2009	POWER	Nevada Power Co.	\$798.91	Acct#3000100024720350590 I
R	341820	1/9/2009	01/2009	IKONOFFIC	Ikon Office Solutions	\$153.00	Contract No 1879670 Copier s
R	341826	1/16/2009	01/2009	POWER	Nevada Power Co.	\$41.23	Acct#3000100024721328686 I
R	341827	1/16/2009	01/2009	EMBARQ	Embarq	\$279.38	Acct#702-649-2512-369 Offic

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