

except that an Owner or other Resident of a Dwelling may conduct a business activity within a Dwelling so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Community; (iii) the business activity does not involve persons coming on to the Unit or the door-to-door solicitation of Owners or other Residents in the Community and; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Community, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a provider's Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Dwelling by the Unit's Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.13 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Unit, except that two (2) dogs, cats, parakeets (or similar household birds) or common domestic pets may be kept on a Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Unit except that a dog or cat may be permitted to leave an Owner's Unit if such dog or cat is at all times kept on a leash not to exceed six (6) feet in length and is not permitted to enter upon any other Unit. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Unit's Owner, Resident or other person who brings or permits an animal to be on the Common Elements or any Unit shall be responsible for immediately removing any solid waste deposited by said animal.

4.14 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Community.

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4.15 Signs No signs whatsoever (including commercial, political, "for sale," "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Unit except

- (i) Signs required by legal proceedings;
- (ii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee, and
- (iii) One (1) "For Sale" sign provided, the size, color, design, message content, location and type has been approved in writing by the Architectural Committee

4.16 Restriction on Further Subdivision, Property Restrictions and Rezoning No Unit shall be further subdivided or separated into smaller units or parcels by any Unit's Owner other than the Declarant, and no portion less than all of any such Unit shall be conveyed or transferred by any Unit's Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be Recorded by any Unit's Owner or other Person other than the Declarant against any Unit without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Unit shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration

4.17 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; and (ii) boats and vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair.

4.18 Motor Vehicles.

4.18.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Unit or other property in the Community, and no inoperable vehicle may be stored or parked on any such Unit so as to be Visible From Neighboring Property or to be visible from any Common Element or any street.

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4.18.2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Community except in garages of Units.

4.18.3 The parking of any motor vehicle on streets and within the Limited Private Utility and Access Easement is prohibited.

4.19 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit's Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

4.20 Drainage. No Dwelling, structure, building, landscaping, fence, wall or other improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Community, or any part thereof, or for any Unit as shown on the drainage plans on file with the county or municipality in which the Community is located.

4.21 Garages and Driveways. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

4.22 Roof-top Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other building so as to be Visible From Neighboring Property without the prior written consent of the Architectural Committee.

4.23 Leasing.

4.23.1 Subject to the terms of this Section, an entire Unit may be leased to a lessee from time to time by a Unit's Owner provided that each of the following conditions is satisfied:

- (1) The lease or rental agreement must be in writing.

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(ii) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration and the other Governing Documents and that any violation of any of the foregoing shall be a default under the lease or rental agreement.

(iii) Before commencement of the lease term or rental agreement, the Unit's Owner shall provide the Association with the names of the lessees and each person who will reside in the Dwelling and the address and telephone number of the Unit's Owner.

4.23.2 Any Unit's Owner that leases or rents such Unit's Owner's Unit shall keep the Association informed at all times of the Unit's Owner's address and telephone number. Any lease or rental agreement shall be subject to the Governing Documents, and any breach of the Governing Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any lessee breaches any restriction contained in the Governing Documents, the Unit's Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the lessee. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and the Governing Documents.

4.24 Restrictions on Landscaping within Dewatering Easement. Underground pipes have been installed on certain Units within areas designated on the Plat as "10' Dewatering Easement". No trees shall be planted or maintained within the 10' Dewatering Easement area, and only ground cover, grass and small shrubs will be permitted within such easement areas. If any landscaping within the 10' Dewatering Easement is damaged or destroyed in the course of maintaining the underground pipes, each Unit Owner, at its sole cost and expense, shall be responsible for the repair of such damage.

4.25 Variances; Diminution of Restrictions. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit's Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Unit's Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. If any restriction set forth in this Article 4 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

4.26 Change of Use. Upon (i) adoption of a resolution by the Board of Directors stating that in the Board of Directors' opinion the then present use of a designated part of the Common

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Elements is no longer in the best interests of the Units' Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such part of the Common Elements under the terms of this Declaration, the Board of Directors shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board of Directors to accommodate the new use), provided such new use shall be for the benefit of the Units' Owners and shall be consistent with any zoning regulations restricting or limiting the use of that part of the Common Elements.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association

5.1.1 The Association shall maintain, repair and replace all Common Elements. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Common Elements, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Section.

5.1.2 The Association shall maintain, repair and replace (i) all paving and curbing Improvements lying within the Limited Private Utility and Access Easements (specifically excluding any portion thereof which constitutes a driveway located between such curbing and the Dwelling), (ii) all portions all private sewer and water lines and appurtenant facilities and all other utility Improvements lying within the Limited Private Utility and Access Easements and not maintained by a utility company (the Improvements in (i) and (ii) being collectively referred to herein as the "Easement Improvements"), and (iii) those portions of Dewatering System lying within the Community. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Easement Improvements and those portions of the Dewatering System lying within the Community, and all Units' Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Subsection.

5.2 Duties of Unit's Owners

5.2.1 Each Unit's Owner shall maintain, repair and replace, at such Unit's Owner's expense, all portions of such Unit's Owner's Unit and all Improvements situated thereon

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not required to be maintained, repaired and replaced by the Association pursuant to Section 5.1 in good condition and repair, including grass, hedges, shrubs, vines, plants and other landscaping. No yard equipment, wood piles or storage areas may be maintained so as to be visible from Neighboring Property. All Units upon which no Dwelling has been constructed shall be maintained in a weed free and attractive manner.

5.2.2 Each Unit's Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon and the Easement Improvements which results from the negligence or willful conduct of the Unit's Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit's Owner shall be paid by the Unit's Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 Unit's Owner's Failure to Maintain. If a Unit's Owner fails to maintain the Unit's Owner's Unit in good condition and repair as required by this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit's Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit's Owner pursuant to Subsection 7.2.4 of this Declaration.

5.4 Common Walls. The rights and duties of Unit's Owners of Units with respect to common walls shall be as follows:

5.4.1 The Units' Owners of contiguous Units who have a common wall shall both equally have the right to use such wall provided that such use by one Unit's Owner does not interfere with the use and enjoyment of same by the other Unit's Owner.

5.4.2 If any common wall is damaged or destroyed through the act of a Unit's Owner, it shall be the obligation of such Unit's Owner to rebuild and repair the common wall without cost to the other Unit's Owner or Units' Owners.

5.4.3 If a common wall is damaged or destroyed by some cause other than the act of one of the adjoining Units' Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, all adjoining Units' Owners shall rebuild or repair the common wall at their joint and equal expense.

5.4.4 The right of any Unit's Owner to contribution from any other Unit's Owner under this Section shall be appurtenant to the land and shall pass to such Unit's Owner's successors in title.

5.4.5 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit's Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Units' Owners; and

5.4.6 If any common wall encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Units' Owners of the Units which share such common wall.

5.5 Maintenance of Walls other than Common Walls.

5.5.1 Walls (other than common walls) located on a Unit shall be maintained, repaired and replaced by the Unit's Owner.

5.5.2 Any wall which is placed on the boundary line between a Unit and the Common Elements shall be maintained, repaired and replaced by the Unit's Owner, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Elements.

5.5.3 Any wall which is placed on the boundary line between a Unit and public right-of-way, the outside of which is decorative (i.e., patterned block or stuccoed and or painted) as installed by Declarant to promote the identity of the Community, shall be maintained, repaired and replaced by the Unit's Owner except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way. Any such wall, the outside of which is not decorative, shall be maintained, repaired and replaced by the Unit's Owner.

ARTICLE 6

THE ASSOCIATION

6.1 **Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a Nevada nonprofit corporation. The Association shall be the entity through which the Units' Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital improvements in the Community by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit's Owners representing more than fifty percent (50%) of the votes in the Association.

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6.2 Directors and Officers.

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, whom do not have to be Units' Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Units' Owners shall elect the Board of Directors which must consist of at least three (3) members, at least a majority of whom must be Units' Owners. The Board of Directors elected by the Units' Owners shall then elect the officers of the Association.

6.2.3 The Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.2.4 No later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created to Units' Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created to Units' Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Units' Owners other than the Declarant.

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given and taken by the Board of Directors. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, shall have the power to levy reasonable fines against a Unit's Owner for a violation of the Governing Documents by the Unit's Owner, a guest of the Unit's Owner, a lessee of the Unit's Owner or by any Resident of the Unit's Owner's Unit.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations (collectively, the "Rules"). Except as otherwise provided in this Declaration or under the Act, the Rules may, among other things, restrict and govern the use of any area by any Unit's Owner, by the family of such Unit's Owner, or by any invitee, licensee or lessee of such Unit's Owner.

6.4 Composition of Members. Each Unit's Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the

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Units' Owners. A Unit's Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit's Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit's Owner's ownership ceases for any reason, at which time, such Unit's Owner's membership in the Association shall automatically cease.

6.5 Personal Liability. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

6.7 Voting Rights. Subject to Section 6.8 below, each Unit's Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit's Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and or Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit's Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit's Owner was acting with the authority and consent of all other Unit's Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as

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may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit's Owner thereof. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit's Owner of a Unit.

6.10 Suspension of Voting Rights. If any Unit's Owner fails to pay any Assessments or other amounts due to the Association under the Governing Documents within fifteen (15) days after such payment is due or if any Unit's Owner violates any other provision of the Governing Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit's Owner of the violation, the Board of Directors shall have the right to suspend such Unit's Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Governing Documents are corrected.

6.11 Architectural Committee. The Association may, in the discretion of the Board of Directors from time to time, have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. In the event no Architectural Committee is formed, the Board of Directors shall perform all functions of the Architectural Committee except as provided herein to the contrary or as waived in writing by the Board of Directors. The Architectural Committee shall be a Committee of the Board of Directors. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Unit, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Unit, the members of the Architectural Committee shall be appointed by the Board of Directors. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Unit, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

6.12 Conveyance or Encumbrance of Common Element. The Common Elements shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Units' Owners representing at least two-thirds (2/3) of the votes allocated to Units' Owners other than the Declarant.

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6.13 Commencement of Civil Action. The Association may not commence a civil action without the prior written consent or affirmative vote of Units' Owners to which at least a majority of the votes of the Members of the Association are allocated. At least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Units' Owners that includes a reasonable estimate of the costs of the civil action, including reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced (i) to enforce the payment of an Assessment, (ii) to enforce the Governing Documents, (iii) to proceed with a counterclaim, or (iv) to protect the health, safety and welfare of the Members of the Association.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budgets.

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including contributions to be made to the reserve fund, and (ii) a budget to maintain a reserve fund for the repair, replacement and restoration of the major components of the Common Elements prepared in accordance with applicable law. The budget described in (i) above shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to **Subsection 7.2.4 or 7.2.5** of this Declaration.

7.1.2 Within thirty (30) days after the adoption of the budgets, the Board of Directors shall send to each Unit's Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit's Owner in accordance with **Section 7.2** of this Declaration and shall set a date for the meeting of the Units' Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Units' Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Units' Owners must be continued until such time as the Units' Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit's Owner's obligation to pay such Unit's Owner's

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allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit's Owner shall continue to pay the Common Expense Assessment against such Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration, for the purpose of providing funds for the Association to pay Common Expenses. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The maximum Common Expense Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum annual Common Expense Assessment for each Unit shall be eight hundred forty dollars (\$840.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Board of Directors may, without a vote of the Members, increase the maximum Common Expense Assessment during each fiscal year of the Association by the greater of (a) fifteen percent (15%) of the maximum Common Expense Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X Consumer Price Index for September of the calendar year immediately preceding the year in which the Common Expense Assessments commenced.

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Y Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Common Expense Assessment is to be determined

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X multiplied by the maximum Common Expense Assessment for the then current fiscal year equals the amount by which the maximum Common Expense Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index that shall be used for computing the increase in the maximum Common Expense Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board of Directors.

(iii) From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum Common Expense Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common expenses shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration

7.2.4 If any Common Expense is caused by the misconduct of any Unit's Owner, the Association shall assess that Common Expense exclusively against such Unit's Owner's Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

7.2.6 All Assessments, fines and other fees and charges levied against a Unit shall be the personal obligation of the Unit's Owner of the Unit at the time the Assessments, fines or other fees and charges became due. The personal obligation of a Unit's Owner for Assessments, fines and other fees and charges levied against such Unit shall not pass to the Unit's Owner's successors in title unless expressly assumed by them

7.3 Uniform Rate of Assessment. The amount of the Common Expense Assessment levied against each Unit shall be equal and at the uniform rate established by the Board of Directors, and shall be determined by dividing the budgeted Association funds by the number of

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Units then subject to assessment. Accordingly, the Common Expense Assessment shall be allocated to each Unit based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then subject to assessment.

7.4 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Units' Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Units' Owners.

7.5 Assessment Period. The period for which the Common Expense Assessment is to be levied (the "Assessment Period") shall be the calendar year. The first Assessment Period, and the obligation of the Units' Owners to pay Common Expense Assessments, shall commence upon the first day of the month following the conveyance of the first Unit to a Purchaser and shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors, in its sole discretion from time to time, may change the Assessment Period.

7.6 Commencement Date of Assessment Obligation. All Units described on Exhibit A to this Declaration shall be subject to Assessments upon the first day of the month following the conveyance of the first Unit to a Purchaser. Units annexed pursuant to Section 2.8 of this Declaration shall be subject to Assessments on the first day of the month following the date which the amendment annexing the additional Units is Recorded. Upon the annexation of any portion of the Additional Property, the amount of the Common Expense Assessment levied against each Unit shall be recalculated based upon a fraction, the numerator of which is one (1) and the denominator of which is the new number of Units then subject to Assessments.

7.7 Rules Regarding Billing and Collection Procedures. Common Expense Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board of Directors. Special Assessments may be collected as specified by the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed as set forth in Section 7.10 below until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after

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delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment Period, but successor Units' Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Units' Owners.

7.8 Effect of Nonpayment of Assessments; Remedies of the Association.

7.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the maximum rate allowable under Nevada law. In addition, the Board of Directors may establish a late fee to be charged to any Unit's Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

7.8.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit's Owner of the Unit; (iii) all fines levied against the Unit's Owner of the Unit, (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit's Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Unit's Owner of a Unit; and (v) any amounts payable to the Association pursuant to Section 5.2 or 5.3 of this Declaration. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Unit's Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit's Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Unit.

7.8.3 The Assessment Lien shall have priority over all liens and encumbrances except for (i) liens and encumbrances recorded prior to the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any bona fide First Mortgage Recorded prior to the date the delinquent Assessment(s) first accrued, provided, however, that the Assessment Lien is also prior to any such First Mortgage to the extent of Common Expense Assessments which became due during the six (6) months immediately preceding the date of filing the Notice of Lien described in Section 7.9 below. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit

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through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person except for Common Expense Assessments which became due during the six (6) months immediately prior to the date of filing of the Notice of Default described in Section 7.10 below. Any Assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit's Owner of the Unit. Any delinquent Assessments, fines and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense

7.8.4 Except as otherwise provided in Section 7.9 or in the Act, the Association shall not be obligated to release the Assessment Lien as to any portion of Assessments due until all such delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Unit's Owner of the Unit have been paid in full

7.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including (i) bringing an action at law against the Unit's Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided under the Act. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.9 **Notice of Lien.** No action shall be brought to enforce any Assessment Lien herein unless a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, to the Unit's Owner of the Unit and a copy thereof has been Recorded by the Association. Such Notice of Lien must state (i) the amount of the Assessment and interest, costs (including attorneys' fees) and penalties, (ii) a description of the Unit against which the assessment was made, and (iii) the name of the record Unit's Owner of the Unit. The Notice of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied. However, a lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if a Unit's Owner subject to the lien under this Article files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled under thirty (30) days after the automatic stay of proceedings under Section 562 of the Bankruptcy Code is lifted

7.10 **Foreclosure Sale.** In the event that a Unit's Owner has failed to comply with the thirty (30) days written notice provided for in Section 7.7 above, the Association may enforce the

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lien by sale of the applicable Unit. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens. Unless otherwise permitted by law, no sale to foreclose an Assessment Lien may be conducted until (i) the Association, its agent or attorney has first executed and recorded a notice of default and election to sell the Unit or cause its sale to satisfy the Assessment Lien ("Notice of Default"), and (ii) the delinquent Unit's Owner or such Unit's Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of sixty (60) days. Such sixty (60) day period shall commence on the later of (a) the day on which the Notice of Default is recorded, or (b) the day upon which a copy of the Notice of Default is mailed by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Unit. The Notice of Default must describe the deficiency in payment, the name of the Unit's Owner and a legal description of the Unit. The Association, its agent or attorney shall, after the expiration of such (60) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the Unit's Owner or such Unit's Owner's successor in interest at his address if known, and otherwise to the address of the Lot.

7.11 Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Association shall record an appropriate Release of Lien, upon payment by the defaulting Unit's Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of preparing and recording such release.

7.12 Cumulative Remedies. The Assessment Liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.13 Exemption of Unit Owner. No Unit's Owner may claim an exemption from liability for payment of Assessments, fines and other fees and charges levied pursuant to the Governing Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

7.14 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit's Owner or person designated by a Unit's Owner a Recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit's Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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7.15 **No Offsets.** All Assessments, fines and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, fines, other fees and charges shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or the Act.

7.16 **Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Unit's Owner of the Unit, a sum equal to one-sixth (1/6) of the current annual Common Expense Assessment for the Unit. Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.17 **Surplus Funds.** Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Units' Owners pro rata in accordance with each Unit's Owner's Common Expense Liability or be credited on a pro rata basis to the Units' Owners to reduce each Unit's Owner's future Common Expense Assessments.

7.18 **Transfer Fee.** Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Unit's Owner a transfer fee in such amount as is established from time to time by the Board of Directors.

7.19 **Payments Pursuant to Easement and Maintenance Agreement.** Each Unit Owner acknowledges that certain portions of the Common Elements and Units are subject to the Easement and Maintenance Agreement, and the Association is obligated to pay fees and charges imposed or levied pursuant to the Easement and Maintenance Agreement (the "Easement Payments"). Each Unit Owner authorizes the Association to collect all Easement Payments attributable to the Association and agrees that all Easement Payments shall be a Common Expense of the Association and secured by the Assessment Lien.

ARTICLE 8

INSURANCE

8.1 **Scope of Coverage.**

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(1) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement

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cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy

(ii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$1,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use or ownership of the Common Elements or arising out of or incident to the performance by the Association of its maintenance and other obligations under the Governing Documents, whether on the Common Elements, any Unit or any public or private right-of-way. Such policy shall include (a) a cross liability clause to cover liabilities of the Units' Owners as a group to a Unit's Owner, (b) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles, and (c) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Nevada.

(iv) Directors' and officers' liability insurance covering all the directors, officers and committee members of the Association in such limits as the Board of Directors may determine from time to time.

(v) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the officers, the members of any committee or the Units' Owners.

(vi) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) Each Unit's Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association

(b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit's Owners and members of their household.

(c) No act or omission by any Unit's Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

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(d) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit's Owners or their mortgagees or beneficiaries under deeds of trust.

(e) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit's Owner because of the negligent acts of the Association or other Unit's Owners.

(f) The Association shall be the insured for use and benefit of the individual Unit's Owners (designated by name if required by the insurer).

(g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any insurance trust agreement will be recognized by the insurer.

(i) "Agreed Amount" and "Inflation Guard" endorsements.

8.1.2 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit's Owner, the Association's policy shall provide primary coverage.

8.2 **Payment of Premiums.** Premiums for all insurance and fidelity bonds obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.3 **Insurance Obtained by Unit Owners.** The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit's Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

8.4 **Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit's Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in N.R.S. 116.31135.

8.5 **Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on

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written request, to any Unit's Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit's Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Elements which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Units' Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Elements are not repaired or replaced, insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

RIGHTS OF FIRST MORTGAGEES

9.1 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will be entitled, upon written request, to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.2 Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.

9.3 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or Units' Owners (other than the Declarant or other sponsor, developer or builder of the Community) of the Units have given their prior written approval, the Association shall not be entitled to:

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9.3.1 Seek to abandon, partition, subdivide, sell or transfer the Common Elements owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this Subsection.

9.3.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit's Owner.

9.3.3 Change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units or the maintenance of the Common Elements.

9.3.4 Fail to maintain fire and extended coverage insurance for all Common Elements on a current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value, or

9.3.5 Use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

9.4 **No Priority over First Mortgagees.** No provision of this Declaration gives or shall be construed as giving any Unit's Owner or other Person priority over any rights of a First Mortgagee of a Unit in the case of the distribution to such Unit's Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Elements.

9.5 **Failure of First Mortgagees to Respond.** Any First Mortgagee who receives a written request from the Board of Directors to respond or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.6 **Liens Prior to First Mortgage.** All taxes, assessment and charge which may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Community as a whole.

9.7 **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Governing Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Governing Documents with respect to the number or percentage of Units' Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Community or (iii) certain actions of the Association as specified in Section 9.3 of this Declaration, the provision requiring the consent of the greatest

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number or percentage of Units' Owners or First Mortgagees shall prevail. Notwithstanding the foregoing or anything herein to the contrary, so long as Declarant retains effective control of the Association, the Declarant, and thereafter the Board of Directors, without the consent of any Unit's Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association (the "FNMA"), the Federal Home Loan Mortgage Corporation (the "FHLMC"), the Federal Housing Administration (the "FHA"), the Veterans Administration (the "VA") or any federal, state or local governmental agency whose approval of the Community, the Plat or the Governing Documents is required or requested by the Declarant or the Board of Directors.

ARTICLE 10

RESERVATION OF DEVELOPMENTAL AND SPECIAL DECLARANT'S RIGHTS

Pursuant to N.R.S. 116.2105(1)(h), Declarant reserves all of the developmental and special declarant's rights in the Community including any Additional Property annexed hereafter, afforded under N.R.S. 116.11034 and N.R.S. 116.11035, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

10.1 Developmental Rights. Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration, all developmental rights under N.R.S. 116.11034.

10.2 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right, for a period of seven (7) years following the recordation of this Declaration, to complete the construction of Improvements in the Community and an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

10.3 Exercise of Developmental Rights. Declarant reserves the right to exercise all developmental rights reserved pursuant to Section 10.1 above, until the seventh (7th) anniversary of the recordation of this Declaration.

10.4 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in Section 3.4 above, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Community.

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10.5 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property.

10.6 Master Association. Declarant reserves the right to make the Community subject to any additional master homeowners association.

10.7 Merger or Consolidation. Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

10.8 Appointment and Removal of Directors and Officers. Declarant reserves the right to appoint and remove a majority of the Board of Directors and the officers of the Association or any master association or any member of the Board of Directors as set forth in Section 6.2 above, for the time period set forth therein.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement The Association, or any Unit's Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Unit's Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

11.2 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.3 Duration. Unless amended in accordance with the provisions of Section 11.5 below, the covenants and restrictions of this Declaration shall run with and bind the Community, for a term of twenty (20) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

11.4 Termination of Community The Community may be terminated only in the manner provided for in the Act.

11.5 Amendment.

11.5.1 Except in cases of amendments that may be executed by a Declarant under N.R.S. 116.2109 or 116.2110, by the Association under N.R.S. 116.1107, 116.2106, Subsection 3 of N.R.S. 116.2108 or N.R.S. 116.2113 or by certain Units' Owners under Subsection 2 of N.R.S. 116.2108, 116.2112 or 116.2118 and except as limited by Section 11.5.2 of this Declaration, this

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Declaration, including the Plat and Plans, may be amended only by a vote of the Units' Owners to which more than seventy-five percent (75%) of the votes in the Association are allocated

11.5.2 Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not create or increase Special Declarant's Rights, increase the number of Units, change the boundaries of any Unit, change the allocated Interests of a Unit, or change the use as to which any Unit is restricted, in the absence of unanimous consent of the Units' Owners affected and the consent of a majority of the Units' Owners of the remaining Units in the Community.

11.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant's Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

11.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit's Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit's Owner, (iii) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including the VA, the FHA, the FNMA or the FHLMC, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Community, the Plat or the Governing Documents is required by law or requested by Declarant

11.5.5 To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of amendment, and to the extent that it is required by any regulations governing FHA/VA mortgages, during the Period of Declarant Control, any amendment to the Declaration or the Plat must be approved by the VA or the FHA.

11.5.6 Any amendment adopted by the Units' Owners pursuant to Subsection 11.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 11.5.4 of this Declaration or the Act shall be executed by the Declarant and shall be Recorded with the County Recorder of each County in which any portion of the Community is located. Any amendment shall be effective only upon Recordation.

11.5.7 No amendment or modification to this Declaration shall have the effect of modifying or amending the obligations of the Association pursuant to the Easement and

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Maintenance Agreement unless the Easement and Maintenance Agreement is modified concurrently therewith.

11.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive

11.7 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit's Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit's Owner, at the address which the Unit's Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit's Owner. A Unit's Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) of the Unit's Owners shall constitute notice to all Unit's Owners of the same Unit. Each Unit's Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address

11.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Community, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Units' Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Units' Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit

11.9 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the

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provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

11.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit's Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Unit's Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

11.12 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, the Rules or the Architectural Committee Rules, the provisions of this Declaration shall prevail.

11.13 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit's Owners set forth in, or imposed by, the Governing Documents shall be joint and several.

11.14 Guests and Tenants. Each Unit's Owner shall be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Governing Documents. A Unit's Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit's Owner by reason of such Unit's Owner's own noncompliance.

11.15 Attorneys' Fees. In the event the Declarant, the Association or any Unit's Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit's Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action.

11.16 Number of Days. In computing the number of days for purposes of any provision of the Governing Documents, all days shall be counted including Saturdays, Sundays and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.17 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Unit's Owner of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain

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substantially the following information: (i) the name of the Unit's Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit's Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit's Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Unit against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

11.18 FHA/VA Approval. To the extent that any First Mortgages insured by the FHA or guaranteed by the VA are held on any of the Units at the time of the following described actions, and to the extent that it is required by any regulations governing FHA/VA mortgages, until the expiration of the Period of Declarant Control, the following actions will require the prior approval of the FHA or the VA: (i) annexation of additional properties; (ii) mergers and consolidations; (iii) mortgaging or dedication of Common Elements; (iv) amendment of this Declaration; and (v) termination of the Community.

11.19 References to VA and FHA. In various places throughout the Governing Documents, references are made to the VA and the FHA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Governing Documents to meet certain requirements of such agencies should Declarant request approval of the Community by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Community by either or both of such agencies. Unless and until the VA or the FHA have approved the Community as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

11.20 No Absolute Liability. No provision of the Governing Documents shall be interpreted or construed as imposing on any Unit's Owner absolute liability for damage to the Common Elements or the Units. A Unit's Owner shall only be responsible for damage to the Common Elements or Units caused by the Unit's Owner's negligence or intentional acts.

11.21 Governing Law. The provisions of this Declaration shall be liberally construed to promote and effectuate the purpose of the Association as set forth in this Declaration. The provisions of this Declaration shall be construed and governed by the laws of the State of Nevada.

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This Declaration is intended to comply with the provisions of the Act. In the event any provision of this Declaration is held to be in violation of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

11.22 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control except to the extent the Declaration is inconsistent with the Act. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

11.23 References to this Declaration in Deeds. Deeds to and instruments affecting any Unit or any other part of the Community may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee, Unit's Owner or other Person claiming through any instrument and such grantee's, Unit's Owner's or other Person's heirs, executors, administrators, successors and assigns.

11.24 Construction Defect Dispute Notification and Resolution Procedure. All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Community, including but not limited to, the Declaration or any other Governing Documents, the use or condition of the Community or the design or construction of or any condition on or affecting the Community, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Community or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 11.24. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 11.24 shall be binding upon current and future Unit Owners of the Community and upon the Association, whether acting for itself or on behalf of any Unit Owner(s)."

11.24.1 Claim Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing within sixty (60) days after becoming aware of the Dispute by certified mail, return receipt requested, of the claim, which writing shall include (i) in reasonable detail, the defects or any damages or injuries to each Improvement that is the subject of the Dispute, (ii) in reasonable detail, the cause of the defects if the cause is known, the

Section 11.24.1 of the Declaration

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nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each Improvement, and (iii) an expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects based on a representative sample of the components of the Improvements involved in the Dispute (the "Claim Notice")

11.24.2 Right to Inspect. Within forty-five (45) days after receipt of the Claim Notice, the Declarant and the Declarant's representatives, upon written request to the claimant, shall be entitled to inspect the property that is the subject of the Dispute to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. After reasonable notice to the claimant and at reasonable times, Declarant shall have the right to conduct inspections, testing and/or destructive or invasive testing (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing unless such repairs are covered by a policy of insurance) provided that all such activities are reasonably necessary to establish the existence of the defect, which right shall continue until such time as the Dispute is resolved as provided in Subsection 11.24.3.

11.24.3 Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Community or some other mutually acceptable place to discuss the Dispute. The parties shall negotiate in good faith in an attempt to resolve the Dispute. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Community and the property which is the subject of the Dispute at reasonable times and upon reasonable notice to the claimant to take and complete corrective action.

11.24.4 No Additional Obligations, Irrevocability and Waiver of Right. Nothing set forth in Subsections 11.24.2 and 11.24.3 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Community for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Community and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of Clark County, Nevada.

11.24.5 Mediation. If the parties to the Dispute cannot resolve the Dispute pursuant to the procedures described in Subsection 11.24.3 above, the parties must select a mediator and submit the matter to the mediator. The mediator shall be selected by the claimant and agreed to by Declarant. If the Declarant and the claimant fail to agree upon a mediator within forty-five (45) days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service and acceptable to the parties for the

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appointment of a mediator qualified in the area pertaining to the Dispute. No person shall serve as a mediator in the Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Declarant without complying with the procedures described in this Subsection 11.24.5.

(i) Position Memoranda, Dispute Materials, Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within fifteen (15) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers or compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not

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limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorney's fees and costs in connection with such mediation.

11.24.6 Arbitration. Should mediation pursuant to **Subsection 11.24.5** above not be successful in resolving the Dispute, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules as modified or as otherwise provided in this **Subsection 11.24.6**. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this **Subsection 11.24.6**, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) **Place.** The proceedings shall be heard in the county in which the Community is located.

(ii) **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Community. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein or in the manner prescribed by the American Arbitration Association.

(iii) **Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) **Pre-hearing Conferences.** The arbitrator may require one or more pre-hearing conferences.

(v) **Discovery.** The parties shall be entitled only to limited discovery consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in **Subsection 11.24.2** above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** The arbitrator shall not have the power to award punitive damages or other damages on account of any damage, loss or injury which does not result directly and immediately from the

defect or action, including, without limitation, the reduction in market value of a Dwelling ("Consequential Damages"). As further provided below, the right to punitive and Consequential Damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

(vii) Motions The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(viii) Arbitration Award The arbitrator's award may be enforced as provided for in N.R.S. § 38.105 and Nevada Arbitration Rule 19, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

11.24.7 WAIVERS

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 11.24 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 11.24. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 11.24, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

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11.24.8 Statutes of Limitation. Nothing in this Section 11.24 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

11.24.9 Required Consent of Declarant to Modify. This Section 11.24 shall not be amended except in accordance with Subsection 11.5.1 of this Declaration and with the express written consent of the Declarant.

11.25 Gated Entrances; Release of Claims. The Declarant intends to construct gated entrances leading into the Community from Tropicana Avenue and Broadhent Boulevard in order to limit vehicular access and to provide some privacy for the Units' Owners and Residents. Each Unit's Owner and Resident for itself and its family, invitees and licensees, acknowledges and agrees as follows

(i) **Declarant Parties make no representations or warranties that gated entrances will provide security and safety to the Units' Owners, Residents and their family, invitees and licensees.**

(ii) **The gated entrances may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles or personnel.**

Each Unit's Owner and Resident, for itself and its family, invitees and licensees, assumes the risk that any such gated entrances may not provide security and safety and may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit's Owner, Resident or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrances. Each Unit's Owner and Resident, for itself and its family, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 11.25.

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11.26 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board of Directors who are living at the time the period of perpetuities starts to run on the challenged interest.

BEAZER HOMES HOLDINGS CORP., a Delaware corporation

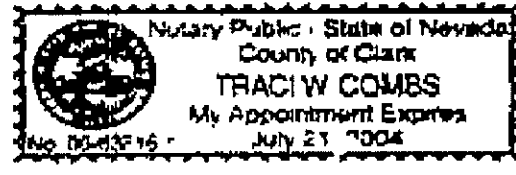
By: Patrick J. Helfrich
Patrick J. Helfrich
Its: Vice President

STATE OF NEVADA)
) ss.
County of Clark)

The foregoing instrument was acknowledged before me this 15 day of September, 2001, by Patrick Helfrich, the Vice President of Beazer Homes Holdings Corp., a Delaware corporation, on behalf of the corporation.

[Signature]
Notary Public

My Commission Expires:
July 21, 2004



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EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

Lots 44 through 59, inclusive; Lots 74 through 79, inclusive; and Common Element Lots A through F, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

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EXHIBIT B

ADDITIONAL PROPERTY

Lots 1 through 43, inclusive; Lots 60 through 73, inclusive; and Lots 80 through 238, inclusive, SILVER SPRINGS - UNIT A, recorded in Book 91, page 36 of Plats, Official Records of Clark County, Nevada.

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CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LAWYERS TITLE OF NEVADA
09-17-2001 13:24 GWC 61
BOOK: 20010917 INST: 01331
FEE: 67.00 RPTT: .00

EXHIBIT M

EXHIBIT M

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability)
company,)
)
Plaintiff,)
)
vs.)
)
FIRST HORIZON HOME LOANS, A)
DIVISION OF FIRST TENNESSEE)
BANK, N.A., a national)
association; ANA TORRES, an)
individual; DOES I through X;)
and ROE CORPORATIONS I through)
X, inclusive,)
)
Defendants.)
_____)

CASE NO. A-13-679329-C
DEPT. NO. XXVI

**CONDENSED
TRANSCRIPT**

DEPOSITION OF DAVID ALESSI

30(b)(6) REPRESENTATIVE FOR ALESSI & KOENIG, LLC

Taken on Monday, January 11, 2016

At 3:20 p.m.

At All-American Court Reporters

1160 North Town Center Drive, Suite 300

Las Vegas, Nevada

Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706

David Alessi January 11, 2016
30(b)(6) Representative for Alessi & Koenig, LLC

2 (Pages 2 to 5)

Page 2

1 DEPOSITION OF DAVID ALESSI, taken at
2 All-American Court Reporters, 1160 North Town Center
3 Drive, Suite 300, Las Vegas, Nevada, on Monday,
4 January 11, 2016, at 3:20 p.m., before Cindy K.
5 Johnson, Certified Court Reporter on behalf of
6 All-American Court Reporters.

7 APPEARANCES:

8 For the Plaintiff: DIANA CLINE EBRON, ESQ.
9 KIM GILBERT EBRON
10 7625 Dean Martin Drive
11 Suite 110
12 Las Vegas, Nevada 89139
13 (702) 485-3300

14 For the Defendant FIRST HORIZON HOME LOANS:
15 MELANIE D. MORGAN, ESQ.
16 AKERMAN LLP
17 1160 Town Center Drive
18 Suite 330
19 Las Vegas, Nevada 89144
20 (702) 634-5000

21 For ALESSI & KOENIG, LLC & SQUIRE VILLAGE AT SILVER
22 SPRINGS COMMUNITY ASSOCIATION:
23 STEVEN T. LOZZI, ESQ.
24 ALESSI & KOENIG
25 9500 West Flamingo
Suite 205
Las Vegas, Nevada 89147
(702) 222-4033

Page 4

1 Whereupon --
2 DAVID ALESSI,
3 having been first duly sworn to tell the truth, the
4 whole truth, and nothing but the truth, was examined and
5 testified as follows:
6 EXAMINATION
7 BY MS. MORGAN:
8 Q. Please state your name?
9 A. David Alessi.
10 Q. Are you employed?
11 A. Yes.
12 Q. Where are you employed?
13 A. Alessi & Koenig.
14 Q. What is your title at Alessi & Koenig?
15 A. I'm a manager. The LLC. It is an LLC.
16 Q. Okay. And you have had your deposition taken
17 before; is that correct?
18 A. Yes.
19 Q. And you have had it taken within the past few
20 months by me and others, correct?
21 A. Yes.
22 Q. Are you comfortable waiving the standard
23 admonitions?
24 A. Yes.
25 Q. All right. I'll just remind you that your

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1 INDEX
2 WITNESS PAGE
3 DAVID ALESSI
4 Examination by Ms. Morgan 4
5 Examination by Ms. Ebron 51
6
7 EXHIBITS
8 NUMBER DESCRIPTION PAGE
9 A First Amended Notice of Subpoena for 5
10 Rule 30(b)(6) Deposition to Alessi &
11 Koenig, LLC
12 B Records produced 6
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1 testimony here is under oath and you are under the same
2 penalties of perjury, if you don't tell the truth, as
3 though we were in a court of law. Do you understand
4 that?
5 A. Yes.
6 Q. Are you familiar with Squire Village HOA?
7 A. Yes.
8 Q. Okay. And how are you familiar with that HOA?
9 A. It is an HOA that we had done business with
10 for a number of years. It was actually one of Alessi &
11 Koenig's first clients, if I remember correctly.
12 Q. Does Alessi represent Squire Village in
13 capacity as its collection agent and in capacity as its
14 counsel?
15 A. It did. I don't believe it does any longer.
16 Q. Okay. And which one does it not?
17 A. Both. I don't think we represent Squire
18 Village in any capacity currently.
19 Q. I'm going to hand you what we'll mark as
20 Exhibit A, the Notice -- First Amended Notice of Rule
21 30(b)(6) Deposition.
22 A. Thank you.
23 (Exhibit A marked for identification.)
24 MS. LOZZI: Thank you.
25 /////

David Alessi January 11, 2016
30(b)(6) Representative for Alessi & Koenig, LLC

3 (Pages 6 to 9)

Page 6

1 BY MS. MORGAN:
2 Q. Have you reviewed this document before?
3 A. Just briefly today.
4 Q. And are you the individual designated as the
5 30(b)(6) deponent?
6 A. Yes.
7 Q. For today's deposition, when I refer to the
8 HOA, I'll be referring to Squire Village HOA and, when I
9 speak about the property, I'll be referring to the
10 property located at 5069 Midnight Oil Drive, Las Vegas,
11 Nevada 89122. Is that okay?
12 A. Yes.
13 Q. What did you do to prepare for your deposition
14 today?
15 A. I reviewed the foreclosure documents briefly.
16 I briefly reviewed the ledger and a couple of demands.
17 Q. I'm going to hand you what we'll mark as
18 Exhibit B.
19 (Exhibit B marked for identification.)
20 BY MS. MORGAN:
21 Q. These are documents that have been produced to
22 my office in response to a subpoena, and they are Bates
23 Stamp A&K 000001 through -261. Let me know when you
24 have had a chance just to flip through those.
25 A. Okay. I have.

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1 Q. Did you have any part in compiling these
2 documents in response to the subpoena?
3 A. Minor. I reviewed them prior to them going
4 out, I believe. A great portion of this is the CC&Rs.
5 Q. Right. The CC&Rs stop at page -62.
6 A. Mine go to -83.
7 Q. There are a few recorded documents after -62.
8 A. They are part of the governing docu- -- oh, I
9 see. Deed of trust.
10 Q. Yeah. On page -62 there is a grant, bargain,
11 sale deed. On -64 there is a notice of trustee's sale.
12 On -66 there is a special warranty deed and on -71 is a
13 deed of trust.
14 A. Yes.
15 Q. Okay. Do you know who was responsible for
16 compiling the documents responsive to the subpoena?
17 A. I believe it was one of the paralegals in our
18 office. I am not sure who, though.
19 Q. Are the documents in your office maintained by
20 property address? HOA? Homeowner? How is that
21 organized?
22 A. You can search for the documents with any one
23 of those search engines. We also have an internal
24 fingerprint, as it were, which we call the "HO number,"
25 the homeowner number. It is usually a four-digit or

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1 five-digit number that we assigned to the property.
2 Q. Okay. Is there a contact between Squire
3 Village HOA and Alessi & Koenig?
4 A. I am not sure. There may be -- there -- there
5 no longer is. I believe at one time there was a
6 retainer, but I'm not sure about that.
7 Q. Do you know when this particular account was
8 first referred to Alessi for collection?
9 A. No. I could find that out for you, but not
10 off the top of my head.
11 Q. Okay. Let's look to page -96.
12 A. Yes.
13 Q. Are you familiar with this document?
14 A. Yes. This is a notice of delinquent
15 assessment lien recorded by Alessi & Koenig on behalf of
16 Squire Village on February 6, 2012.
17 Q. All right. So would -- the file then would
18 have been referred to Alessi prior to February 22, 2012;
19 is that accurate?
20 A. Right. This document has a signature date of
21 February 6th and recording date of February 22nd, so I
22 would say it was referred to us sometime prior to
23 February 6th.
24 Q. The middle of that notice of delinquent
25 assessment lien states, "The owner of record is

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1 reflected on the public record as of today's date is Ana
2 Torres." Do you see that?
3 A. Yes.
4 Q. How does Alessi identify which individual
5 should be listed as the owner of record in the notice of
6 delinquent assessment lien?
7 A. One of the ways is by pulling the real
8 property parcel record, which is AK -- Bates AK-90, and
9 on that document it shows the owner to be Ana Torres,
10 and it gives her mailing address and also the property
11 address.
12 We also -- that is our primary reference.
13 Oftentimes, the owner name will be on the account ledger
14 that is sent to us by management.
15 Q. Okay. And so the primary way is the
16 assessor's website?
17 A. Yes.
18 Q. And the notice of delinquent assessment lien
19 states that the amount due was \$1,055 -- I'm sorry.
20 That is page -96.
21 A. Yes.
22 Q. And how would -- where would Alessi look to
23 determine the amount to place on the notice of
24 delinquent assessment lien?
25 A. We would start with the amount shown on the

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4 (Pages 10 to 13)

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1 account ledger. I don't know if this was the account
2 ledger that we were actually sent at the time the file
3 was opened, but I'm looking at page -97, and it shows a
4 February -- a balance, as of February 16, 2012, of \$515.
5 We would then add the management company audit fee, if
6 any, which approximates -- well, now it's statutorily
7 set at \$200. We would add our lien fee, which, I
8 believe, at this time was between \$295 and \$325. There
9 would also be the addition of the intent-to-lien fee,
10 which is a document that management sends certified and
11 regular mail to the delinquent owner. That charge is
12 approximately 150. And then the costs for recording the
13 notice of delinquent assessment, as well as the release
14 and then cost for mailings.
15 Q. All right. Do you know, as you sit here
16 today, whether Alessi, the person who prepared the
17 notice of delinquent assessment lien, referred to the
18 account history report reflected on Bates No. -97?
19 A. I don't.
20 Q. Can you tell by looking at the notice of
21 delinquent assessment lien how many months of
22 assessments were due and owing at the time it was
23 recorded?
24 A. No.
25 Q. Can you tell, by looking at the notice of

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1 delinquent assessment lien, which portion of the lien
2 amount represents assessments only?
3 A. No.
4 Q. In February of 2012, what was Alessi's
5 understanding of what amounts comprise an HOA
6 super-priority lien?
7 MS. LOZZI: Objection. Calls for a legal
8 conclusion. But to the extent that you have an opinion
9 or an answer, you can answer.
10 THE WITNESS: We didn't have a formal opinion
11 as to what -- what that meant. We were aware of the
12 cases being litigated through the district courts so
13 that it -- to that extent, we understood the way the
14 courts were interpreting the provision, but we didn't
15 have, ourselves, an opinion about it.
16 BY MS. MORGAN:
17 Q. And in 2012, what was Alessi's understanding
18 of how the courts were interpreting the provision?
19 A. That some courts were interpreting it to mean
20 nine months of assessments, that some courts were
21 interpreting super-priority language to mean a variety
22 of different things. There were many issues dealing
23 with the language, super priority, at this time.
24 MS. EBRON: Can you be more specific on when
25 in 2012?

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1 MS. MORGAN: February.
2 THE WITNESS: Yeah. I mean, at this time, it
3 was -- my recollection is still fairly new -- a fairly
4 new issue, but I don't have any specific recollection as
5 to what our opinion about the litigation at this time
6 was.
7 BY MS. MORGAN:
8 Q. Did Alessi -- well, let me back up.
9 Does the notice of delinquent assessment lien
10 specify whether the lien encompasses the HOA
11 super-priority lien?
12 MS. EBRON: Form.
13 THE WITNESS: Other than a general reference
14 to Nevada Revised Statutes and the association's
15 governing documents and the inferences contained there
16 with regard to a super-priority lien, there is no
17 specific language in this -- in the notice of delinquent
18 assessment referencing a super-priority lien.
19 BY MS. MORGAN:
20 Q. And the notice of delinquent assessment also
21 does not specify an amount for the super-priority lien;
22 is that accurate?
23 A. Yes.
24 MS. EBRON: Form.
25 THE WITNESS: There are no words

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1 "super-priority lien" on this document.
2 BY MS. MORGAN:
3 Q. Did Alessi provide a copy of this document to
4 First Horizon Home Loans?
5 A. No.
6 Q. Did Alessi provide a copy of this document to
7 Mortgage Electronic Registration Systems?
8 A. Not that I'm aware of.
9 Q. To whom did Alessi provide a copy of this
10 notice of delinquent assessment lien?
11 A. To the delinquent homeowner via regular and
12 certified mail at the property address and, if
13 different, their mailing address.
14 Q. And how did -- well, did Alessi also determine
15 who the homeowner was or who they should -- let me back
16 up.
17 In determining who should receive a copy of
18 the notice of delinquent assessment lien, did Alessi
19 also rely on the information on the assessor's website?
20 MS. EBRON: Form.
21 THE WITNESS: Yes.
22 BY MS. MORGAN:
23 Q. And how would Alessi determine whether there
24 was another address, other than the property address, to
25 send the notice of delinquent assessment lien?

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5 (Pages 14 to 17)

Page 14

1 A. Generally, we would determine that by
2 reviewing the assessor's page.
3 Q. Okay. Turning to page -109 --
4 A. Yes.
5 Q. -- are you familiar with this document?
6 A. Yes. This is a notice of default and election
7 to sale recorded by Alessi & Koenig on behalf of Squire
8 Village on 4-20-2012. It was signed on March 28, 2012.
9 Q. And what is the lien amount as reflected in
10 this notice of default?
11 A. \$2,089.
12 Q. And does the notice of default specify which
13 portion of that is for assessments?
14 A. No. It just gives one lump sum total.
15 Q. Does the notice of default specify how many
16 months the homeowner was delinquent?
17 A. No.
18 Q. Does the notice of default state whether the
19 HOA super-priority lien is being foreclosed on?
20 A. There are no references on this notice of
21 default to a super-priority lien.
22 Q. So then does -- would you agree that the
23 notice of default does not specify the amount of the HOA
24 super-priority lien?
25 A. Yes.

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1 A. Do you know the date of the sale?
2 Q. The HOA sale was March 6, 2013.
3 A. Oh. No, there was no reference made to a
4 super-priority interest on this document.
5 Q. Okay. Can you tell which portion of the lien
6 amount is for assessments?
7 A. No, not just for assessments. The document
8 just gives one total amount due which includes
9 assessments.
10 Q. And there is no way to tell by looking at this
11 document how many months the homeowner is in arrears?
12 Would you agree with that?
13 MS. EBRON: Form.
14 THE WITNESS: Well, you could, by looking at
15 the document, see the phone number of the office and
16 call and find out. But in the document itself, there is
17 no reference to how many months the homeowner is in
18 arrears.
19 BY MS. MORGAN:
20 Q. And the dollar amount for the HOA
21 super-priority lien is not specified in the August 15,
22 2012 notice of default; is that correct?
23 MS. EBRON: Form. Calls for a legal
24 conclusion.
25 MS. LOIZZI: Join.

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1 Q. How did Alessi identify which party should
2 receive a copy of the notice of default?
3 A. We would order -- we order a report from a
4 title company. In this case, it was First American
5 Title. We also have an in-house research person that
6 confirms all of the addresses for accuracy.
7 Q. Okay. Let's turn to page -112.
8 A. Yes.
9 Q. Are you familiar with this document?
10 A. Yes.
11 Q. Oh, wait. Not -112 --
12 A. I'm very familiar with this document.
13 Q. -- because we just talked about it. -119.
14 A. Yes. Okay. I'm looking at a second notice of
15 default that was recorded on August 13, 2012.
16 Q. And do you know why Alessi would have recorded
17 a second notice of default?
18 A. No.
19 Q. And the amount due under this second notice of
20 default is 2,699; is that accurate?
21 A. Yes.
22 Q. Does the August 13, 2012 notice of default
23 specify which portion of that amount is assessments?
24 A. Just give me a second.
25 Q. Yep.

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1 THE WITNESS: Correct.
2 BY MS. MORGAN:
3 Q. Turning to page -122.
4 A. Yes.
5 Q. What is this document?
6 A. This is a copy of the parties that were mailed
7 the notice of default that got recorded in August of
8 2012.
9 Q. Okay. And then starting on page -124 through
10 page -128 there are a series of copies of what appear to
11 be envelopes.
12 A. Yes.
13 Q. What are those copies of?
14 A. Those are copies of the envelopes that the
15 notice of default was mailed in to the parties listed on
16 page -122, so the envelope should correspond with the
17 mailing list on -122.
18 Q. And on -122 there is a certified mail receipt
19 to Ana Torres. Do you see that?
20 A. Yes.
21 Q. Were the other mailings mailed certified mail?
22 A. I don't know. It appears to me that they were
23 mailed regular mail. I did not see any copies of the
24 NODs having been mailed certified.
25 Q. On page -129 there is another account history

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6 (Pages 18 to 21)

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1 report. Is this a document that was created by the HOA,
2 its management company, or Alessi & Koenig?
3 A. By the management company for the HOA.
4 Q. Okay. How would Alessi receive access to the
5 account history report?
6 A. Usually, e-mail. It looks like this one may
7 have been faxed on November 29, 2012.
8 MS. EBRON: Sorry, Counsel. What page was
9 that?
10 MS. MORGAN: It was on -129.
11 MS. EBRON: All right. Thank you.
12 BY MS. MORGAN:
13 Q. Okay. And turning to page -150.
14 A. Yes.
15 Q. Okay. Are you familiar with this document?
16 A. This is a notice of -- copy of the notice of
17 trustee's sale recorded February 5, 2013 by Alessi &
18 Koenig on behalf of Squire Village.
19 Q. And what is the amount due as listed in the
20 notice of trustee's sale?
21 A. \$4,109.
22 Q. Does the notice of trustee's sale specify
23 which portion of that is for assessments?
24 A. No, not -- it just gives one lump-sum total
25 which includes assessments.

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1 Q. Does the notice of trustee's sale state
2 whether the foreclosure sale is going to be of the HOA
3 super-priority lien?
4 A. No.
5 Q. Does the notice of trustee's sale specify the
6 amount of the HOA super-priority lien?
7 MS. EBRON: Form. Calls for a legal
8 conclusion.
9 MR. LOIZZI: Join, but you can answer.
10 THE WITNESS: It makes no reference to a
11 super-priority lien in this document.
12 BY MS. MORGAN:
13 Q. In its collection efforts with respect to this
14 account, did Alessi ever look at the recorder's website?
15 A. Yes.
16 Q. Did Alessi have an understanding as to whether
17 there was a deed of trust recorded against this
18 property?
19 A. Yes.
20 Q. And what was the understanding?
21 A. I believe there was -- I believe there was a
22 deed of trust recorded on the property, and, in which
23 case, Alessi, trustee, would have an understanding of
24 that.
25 Q. Okay. Did Alessi have an understanding as to

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1 whether the -- well, I'll just say the bank -- the bank
2 was attempting to foreclose under that deed of trust at
3 the same time that Alessi was undertaking its collection
4 efforts?
5 A. I don't know. I don't know if we had an
6 understanding that it was at the same time. I did not
7 see where -- the bank's notice of default yet, so I
8 don't know when that was recorded, so I don't know if we
9 had an understanding that the bank was foreclosing at
10 approximately the same time.
11 Q. Has Alessi ever had the situation where,
12 during its collection efforts, the bank did complete a
13 foreclosure?
14 MS. EBRON: Form.
15 THE WITNESS: I don't -- I don't recall. I
16 don't know. I don't have any specific recollection of a
17 file where that occurred.
18 BY MS. MORGAN:
19 Q. All right.
20 MS. EBRON: Are you talking about besides this
21 one?
22 MS. MORGAN: Yeah.
23 BY MS. MORGAN:
24 Q. Just in general, you know, while the HOA is
25 attempting to foreclose on its lien, the bank is also

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1 attempting to foreclose under its deed of trust and the
2 bank just happens to foreclose first. Is that a
3 situation that Alessi has encountered?
4 A. I don't have any specific -- I don't have a
5 specific recollection, but I would be surprised if it is
6 not a scenario that was encountered by us over the
7 years.
8 Q. Yeah. Is it Alessi's experience that, when
9 the bank does foreclose, it satisfies the HOA's lien?
10 MR. LOIZZI: Objection. Calls for a legal
11 conclusion, but you can answer to the extent you have an
12 answer.
13 THE WITNESS: I don't -- we don't have a
14 formal opinion on that. We would just defer to the
15 courts.
16 MS. EBRON: And can you repeat your question?
17 I'm not sure I understood it.
18 MS. MORGAN: I'm just -- I was just asking if
19 it was Alessi's experience that, when a bank forecloses,
20 if the HOA's lien would be paid shortly thereafter?
21 MR. LOIZZI: If it would be paid shortly
22 thereafter?
23 THE WITNESS: Oh, I thought you said it was
24 wiped out.
25 MR. LOIZZI: That's what I thought you said,

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7 (Pages 22 to 25)

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1 too.
2 MS. MORGAN: Huh-uh. Let's repeat the
3 question so we're clear.
4 (The following record was read by the court
5 reporter: "Question: Is it Alessi's
6 experience that, when the bank does foreclose,
7 it satisfies the HOA's lien?)
8 MS. EBRON: That's not clear --
9 MS. MORGAN: Yeah.
10 BY MS. MORGAN:
11 Q. And by "satisfy," I mean, when the bank
12 forecloses, the HOA's lien gets paid shortly thereafter.
13 Is that Alessi's experience?
14 MS. EBRON: Incomplete hypothetical.
15 THE WITNESS: Yeah. And I don't have any
16 specific recollection.
17 MR. LOIZZI: I'm going to withdraw my
18 objection while he's thinking -- my previous objection.
19 THE WITNESS: If we were to get paid
20 subsequent to a bank foreclosure, in the past, my
21 recollection is, it would have been by the purchaser of
22 the property at that foreclosure, but I -- like I said,
23 I don't have any specific recollection of any files
24 having transpired in that way.
25 /////

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1 BY MS. MORGAN:
2 Q. What documentation did Alessi review in order
3 to determine which party should be sent a copy of the
4 notice of trustee's sale?
5 A. The report we ascertained from title, as well
6 as the public records in Clark County.
7 Q. Okay. So let's look at the report that was
8 obtained from the title company in this case.
9 A. -105?
10 Q. -105?
11 A. I think so, yeah. I think there were two,
12 actually. Let me see.
13 Q. Is it generally the practice to obtain a title
14 report at the time the notice of default is recorded and
15 then a date down at the time the notice of sale is
16 recorded?
17 A. Yes.
18 MS. MORGAN: Let's go off the record real
19 quick.
20 (Discussion held off the record.)
21 THE WITNESS: I don't think -- my
22 understanding of this file, though, is that I don't
23 think a pub date down or a sale date down would have
24 shown a deed having -- a trustee's deed having been
25 recorded by your client, but that is just my

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1 understanding of the file, though, that the trustee's
2 deed recorded on behalf of the bank was recorded after
3 the HOA sale.
4 COURT REPORTER: Is that supposed to be on the
5 record or off?
6 MS. MORGAN: It could be on.
7 MR. LOIZZI: It doesn't matter.
8 MS. MORGAN: Yeah, it can be on.
9 MS. LOIZZI: Yeah. I'm okay with it being on
10 it, as well.
11 BY MS. MORGAN:
12 Q. All right. So let's just break it down. So
13 the notice of trustee's sale on Bates -150 is dated
14 January 16, 2013, recorded February 5, 2013; is that
15 accurate?
16 A. Yes.
17 Q. And it lists a sale date of March 6, 2013?
18 A. Yes.
19 Q. At what point would Alessi have obtained the
20 date-down report in order to determine which party
21 should be sent a copy of the notice of trustee's sale?
22 A. The day on or before the date of the first
23 publication. The date of the first publication, I
24 believe, was -- I see one here for January 16, so on or
25 before January 16, 2013.

Page 25

1 Q. Did anyone from Alessi attend the HOA
2 foreclosure auction?
3 A. We would have had a representative there
4 crying the sale.
5 Q. Is there any document that would reflect what
6 was said by the individual who cried the sale for this
7 property?
8 A. Well, no. We don't record our auctions.
9 Q. Was there a script that the individual crying
10 the sale would go off of back in March of 2013?
11 A. Generally, yes. We would -- as we do now, we
12 would give the APN of the property, as well as the
13 common address, the amount of the opening bid and then
14 we would open the bidding to the floor.
15 Q. Do you know what the opening bid was in this
16 case?
17 A. It was \$4,109 plus any -- let me see -- fees
18 or costs or assessments that accrued after the date of
19 the document; that is, the notice of trustee's sale.
20 And I'm looking at the trustee's deed upon sale now,
21 AK-179, and it appears that the opening bid was \$5,342,
22 and I'm getting that from the trustee's deed upon sale.
23 Q. And the trustee's deed upon sale, at the last
24 paragraph that -- the last sentence -- I'm sorry, second
25 to last sentence of the last paragraph that starts with

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8 (Pages 26 to 29)

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1 "all requirements of law" --
2 Do you see that sentence?
3 A. Yes.
4 Q. What did Alessi do -- or did Alessi do
5 anything at the time this trustee's deed upon sale was
6 prepared to verify that that sentence was accurate?
7 MS. EBRON: Form.
8 THE WITNESS: We -- we have several different
9 departments or employees, attorneys, paralegals, legal
10 assistants reviewing the file at all stages of the
11 process, specifically a Nevada licensed attorney --
12 (Interruption by cell phone).
13 THE WITNESS: I'm sorry.
14 MS. MORGAN: That's okay.
15 THE WITNESS: -- to, to the best of our
16 ability, help us ensure that that sentence is true.
17 BY MS. MORGAN:
18 Q. Is it important to Alessi that all of the
19 information reflected on the trustee's deed upon sale is
20 true and accurate?
21 A. We would certainly prefer that, so in that
22 regard, I would say it's important.
23 Q. Did Alessi do anything to verify that the
24 identity of the trustor is accurate at the time the
25 trustee's deed upon sale was prepared?

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1 A. Well, we review the public records to confirm
2 that the owner of record is the same as the trustor
3 former owner that is shown on the trustee's deed upon
4 sale. So, yes.
5 Q. And the individual that was foreclosed on in
6 this case, as reflected on the trustee's deed upon sale,
7 was Ana Torres?
8 A. I believe that's what the public record showed
9 at the time.
10 Q. All right. And that's what the trustee's deed
11 states; is that accurate?
12 A. Yes.
13 Q. So it was her interest in the property that
14 was foreclosed upon by way of the March 6, 2013
15 foreclosure?
16 MS. EBRON: Form.
17 THE WITNESS: That would be something for the
18 court to decide, not me.
19 BY MS. MORGAN:
20 Q. All right. But you would agree that that is
21 what the trustee's deed upon sale states?
22 MS. EBRON: Form.
23 THE WITNESS: No, it doesn't say anything
24 about that. I wouldn't agree.
25 /////

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1 BY MS. MORGAN:
2 Q. Okay. Would you agree that it states that the
3 former owner who was foreclosed on was Ana Torres?
4 A. Yes.
5 Q. Does the trustee's deed upon sale anywhere
6 state that First Horizon was foreclosed on?
7 MS. EBRON: Form.
8 THE WITNESS: No.
9 BY MS. MORGAN:
10 Q. Does the trustee's deed upon sale identify
11 First Horizon as a former owner?
12 MS. EBRON: Form.
13 THE WITNESS: No. The trustee's deed upon
14 sale makes no reference to First Horizon.
15 BY MS. MORGAN:
16 Q. Let's turn to page -170.
17 A. Yes.
18 Q. Okay. Let me know when you've had a second to
19 look at that document.
20 A. Yes. This is a trustee's deed upon sale. It
21 was recorded by National Default Servicing on behalf of
22 First Horizon on March 7, 2013.
23 Q. All right. And this document reflects that
24 there was a public auction on February 26, 2013 on
25 page -171. Do you see that?

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1 A. Yes.
2 Q. And on page -172 do you see where about
3 two-thirds of the way down it says "buyer/grantee
4 information, First Horizon Home Loans"?
5 A. Yes.
6 Q. Following the HOA's March 6, 2013 foreclosure,
7 did Alessi still continue to act as the HOA's collection
8 agent?
9 MS. EBRON: Form.
10 THE WITNESS: You mean in general did we still
11 collect assessments for Squire Village or --
12 BY MS. MORGAN:
13 Q. Yes, just in general.
14 A. -- on this specific property?
15 Q. Start in general.
16 A. Yes. Yes.
17 Q. And did Alessi continue collection efforts at
18 some point in time after the HOA foreclosure sale for
19 this specific property?
20 A. It is my understanding that we did.
21 Q. Going back real quick, I forgot to ask you a
22 few questions about the sale itself. There is a series
23 of documents entitled "Bidder Qualification and Purchase
24 Sheet" starting at -155 and ending at -169.
25 A. Bear with me.

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9 (Pages 30 to 33)

Page 30

1 Q. Uh-huh.
2 A. Okay.
3 Q. What are these sheets?
4 A. This is Alessi & Koenig bidder qualification
5 and purchase sheets. These sheets show the bidder
6 purchaser -- bidder's names who attended the auction and
7 the units that they purchased.
8 Q. Okay. So --
9 A. If any.
10 Q. -- because the auction --
11 More than one property was sold at the
12 auction; is that accurate?
13 A. Yes. The first thing these documents do is
14 they qualify each bidder up to a certain amount, and
15 then, if the bidder ends up purchasing a property at the
16 trustee's sales on calendar for that day, that
17 information would be put in the spaces below.
18 Q. Okay. How does Alessi determine -- well, let
19 me back up. Does Alessi determine the qualification
20 amount for each bidder?
21 A. Yes, we qualify bidders. They can show us a
22 line of credit, I believe, at a bank or a cashier's
23 check, money orders, cash, or letters of deposit.
24 Q. Who was the buyer for this particular property
25 on March 6th?

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1 A. My understanding is it was SFR.
2 Q. All right. Is there a bidder qualification
3 and purchase sheet for SFR contained within Bates -155
4 to -169?
5 A. I don't see one. It may be that -- I don't
6 know. Yeah. I don't see a bidder qualification sheet
7 for an entity named SFR. A couple of these aren't 100
8 percent legible, so I don't know if one of them could
9 have been a representative of SFR, so I'm not sure.
10 Q. Okay. It has been represented to us during
11 SFR's deposition that the auction would have been
12 attended by a gentleman named Christopher Harden.
13 A. March 2013. I believe that's right.
14 Q. All right. Does that help you determine
15 whether there is a bidder qualification purchase sheet
16 for SFR within here?
17 A. Well, there is a couple of bidder purchaser
18 names that are something-something real estate and are
19 just -- one looks to be "TAG," but I don't see any that
20 say "Chris Harden" or "SFR" on them.
21 Q. Have you ever seen a bidder qualification and
22 purchase sheet with either SFR or Mr. Harden's name on
23 it?
24 A. I believe this is only, out of the dozens of
25 depositions I've done, the second time that I've

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1 actually seen that we retained the bidder qualification
2 sheets, so I have not, not to my recollection. It is my
3 recollection that SFR was qualified by way of a letter
4 from, I believe, the bank that SFR banked at confirming
5 that SFR had a certain amount of funds on deposit. I
6 don't know what that specific amount was, but I believe
7 that that is the way we qualified SFR.
8 AK-169 has a "C" something-something for
9 20,000. I don't know who that was.
10 Q. Okay.
11 A. But it does start with a C.
12 I can see on page -173 that there was an
13 e-mail that -- to Chris Harden from George Bates showing
14 that they had purchased five properties at the sale, so
15 that would lead me to believe that there is not a bidder
16 qualification sheet since none of them list five
17 properties.
18 Q. Okay. Do you know whether -- well, let me
19 strike that.
20 In March 2013 did Alessi --
21 (Discussion held off the record.)
22 MR. LOIZZI: Sorry.
23 BY MS. MORGAN:
24 Q. In March 2013 did Alessi have an understanding
25 of the effect the HOA's foreclosure sale had on the

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1 ledger's deed of trust?
2 A. We did not have a formal opinion about that.
3 Q. Okay. Did Alessi have an informal opinion
4 about that?
5 A. No.
6 Q. How did Alessi determine which party to look
7 to for payment of HOA assessments following an HOA
8 foreclosure sale?
9 A. Well, if the property was purchased by an
10 investor at the HOA foreclosure sale, that would be one
11 way of us determining.
12 THE WITNESS: Could you repeat the question?
13 (The following record was read by the court
14 reporter: "Question: How did Alessi
15 determine which party to look to for payment
16 of HOA assessments following an HOA
17 foreclosure sale?")
18 THE WITNESS: So that would be one way of
19 determining which party to look to. Another would be
20 the public records and a third would be the management
21 company.
22 BY MS. MORGAN:
23 Q. When Alessi resumed its collection efforts
24 following the March 6, 2013 HOA foreclosure, which party
25 did it look to for payment of assessments?

David Alessi January 11, 2016
30(b)(6) Representative for Alessi & Koenig, LLC

10 (Pages 34 to 37)

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1 A. I don't know. I think I saw a document that
2 showed First Horizon as the recipient. Let me just
3 double-check.
4 Q. Okay. We are going to go through them, so --
5 A. Okay.
6 Q. -- turn to page -187.
7 A. Yes.
8 Q. Okay. What is this document?
9 A. This is a lien letter that was sent to First
10 Horizon Home Loans on July 15, 2013, and attached to it
11 would have been the lien shown on page -190 that was
12 recorded July 23, 2013.
13 Q. And that lien lists the owner of record as
14 First Horizon Home Loans; is that accurate?
15 A. Yes.
16 Q. Is it accurate, then, that in July 15, 2013,
17 it was Alessi's opinion that First Horizon was a party
18 responsible for payment of the HOA foreclosure -- or the
19 HOA assessments?
20 A. No. I would say it was Alessi & Koenig's
21 opinion that First Horizon Home Loans was the party that
22 most likely showed up on title, but we would have had no
23 opinion as to who was inevitably responsible for the
24 assessments.
25 Q. In July 2013 was it Alessi's practice to send

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1 sent to First Horizon by referencing the printout from
2 the assessor's web page on page -185?
3 A. Correct.
4 Q. Did Alessi ever look at the recorder's website
5 to determine which party should receive -- I don't know
6 what you call this -- a demand letter -- lien letter?
7 A. Yes. We just discussed that. That would have
8 been the July 11th document printout.
9 Q. Well, that is from the assessor's website.
10 Did Alessi ever look to the recorder's website?
11 A. I don't know.
12 Q. When Alessi recorded the notice of delinquent
13 assessment lien in July of 2013, that was just a few
14 months after it had sold the property to SFR on the
15 HOA's behalf; is that accurate?
16 A. I believe it was four months later. Yes.
17 Q. Did Alessi undertake any investigation to
18 determine whether the notice of delinquent assessment
19 lien should list SFR as the owner of record?
20 A. We did not take a position. We obviously did
21 not list them. I'm looking at AK page -184. This would
22 have been the account ledger that came over from the
23 management company on July 3rd which states First
24 Horizon Home Loans. So we would have taken that
25 information and cross-referenced it to AK-185 and seen

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1 collection letters to parties that weren't responsible
2 for payment of assessments?
3 A. It was our practice to send the letter -- the
4 lien letters to the owner of record per the Clark County
5 recorder's office and assessor's page. I mean, there
6 are scenarios where the party could fraudulently deed a
7 unit into their own name and they would show up as the
8 owner of record. It would not necessarily mean they
9 were the proper party.
10 Q. Okay. Do you know whether First Horizon
11 appeared as the owner of record in the public record on
12 July 15, 2013?
13 A. I am assuming they did, since this lien letter
14 was mailed to them. I haven't seen the recorder's
15 parcel -- let me see here. But, yes, I'm assuming they
16 were. And I'm looking -- well. . .
17 So, yes. On -- AK-185 shows that on July 11,
18 2013, First Horizon Home Loans showed up on the real
19 property parcel record for Clark County as the owner of
20 record.
21 Q. All right.
22 A. And we have -- we mailed out the lien within a
23 couple of days of this printout.
24 Q. Okay. So the July 15, 2013 lien letter on
25 page -187, the party -- Alessi determined it should be

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1 that they were the same, and we would have mailed the
2 lien letter out accordingly.
3 I don't think that -- that at that time
4 anybody would have formed an opinion as to whether or
5 not that was the correct owner.
6 Q. So page -194 is an account history report that
7 Alessi received from the management company?
8 A. Yes.
9 Q. And do you know whose handwriting that is that
10 lists the Louisville, Texas address?
11 A. I saw that and I don't.
12 Q. Does page -184 indicate to you that -- well,
13 do you see at the top it says "05" and then it says
14 "First Horizon Home Loans"?
15 A. Yes.
16 Q. Does this account history report indicate to
17 you that the HOA's management company was considering
18 First Horizon Home Loans to be the owner of the
19 property?
20 MS. EBRON: Calls for speculation.
21 MS. LOIZZI: Join.
22 THE WITNESS: I would say that it infers that
23 the management company saw the same thing that we saw
24 when -- on the assessor's website, that First Horizon
25 was listed as the owner. I don't think that the

David Alessi January 11, 2016
30(b)(6) Representative for Alessi & Koenig, LLC

11 (Pages 38 to 41)

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1 management company would have formed a legal opinion as
2 to whether or not they actually were.
3 BY MS. MORGAN:
4 Q. Okay. But to know for sure, I would need to
5 ask a representative from the management company?
6 A. Yeah.
7 Q. But regardless, we know that, at least in July
8 of 2013, the management company was looking to First
9 Horizon for payment of monthly assessments?
10 A. Yes.
11 Q. Okay. Starting on page -191 there is a
12 document called "Real Estate Listing Report." It
13 appears to go through page -200.
14 A. Yes.
15 Q. Do you know what this document is?
16 A. Well, I mean, it is a real estate listing
17 report that we apparently purchased from Stewart Title.
18 I'm not too clear on what it is beyond that. If I had a
19 date to cross-reference.
20 Q. Yeah.
21 A. So this is September 2013. This would have
22 been part of our processes in determining who to mail
23 the notice of default to.
24 Q. And that notice of default you are referring
25 to, is that document -207?

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1 A. -207, yes. So this report was purchased on or
2 around September 20 of 2013, and the notice of default
3 was dated and recorded approximately a month after that,
4 so I believe these -- this was a report that was
5 purchased in relation to the subsequent notice of
6 default.
7 Q. And the notice of default was First Horizon
8 Home Loans as the owner?
9 A. It is.
10 Q. And on page -208 and -209 --
11 A. Yes.
12 Q. -- what are those documents?
13 A. These are proofs of mailing for the notice of
14 default that was recorded October 21, 2013, NOD 10-day
15 mailings. It shows that the NOD was mailed certified
16 mail to: First Horizon at the Irving, Texas address;
17 Howard Kim & Associations at their Henderson address;
18 National Default Servicing at their Phoenix, Arizona
19 address; First Horizon at the property address, 5069
20 Midnight Oil.
21 Q. Do you know why Howard Kim's office would have
22 been mailed a copy of the notice of default?
23 A. I was just wondering that. I'm assuming that
24 it was because there was a lis pendens, maybe, recorded
25 on the property at that time, but I don't know that. I

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1 haven't -- I don't know why.
2 Q. And these notices of default were mailed via
3 certified mail?
4 A. Yes.
5 Q. And the notices of default we referenced
6 earlier in the deposition that were recorded in 2012, do
7 you recall that those were just noticed via regular mail
8 with the exception of the mailing to the homeowner, Ana
9 Torres?
10 A. Correct.
11 Q. Was there a change in Alessi & Koenig's policy
12 with respect to mailings of notices of default between
13 the one we were discussing earlier and the October 2013
14 notice of default?
15 A. Well, there was with -- at least with regard
16 to this file, but I am not sure. I don't have any
17 specific recollection of a policy change at this time.
18 Our position would be that both notices of default were
19 mailed correctly.
20 Q. Is it accurate that in October of 2013,
21 approximately six months after the HOA foreclosure,
22 Alessi was looking to First Horizon for payment of the
23 HOA assessments?
24 MS. EBRON: Form.
25 THE WITNESS: Yes, that is correct.

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1 BY MS. MORGAN:
2 Q. Okay. Turning to page -217, what is this
3 document?
4 A. What is that?
5 Q. Yes.
6 A. What was that? What was the --
7 Q. Oh. -217.
8 A. Yes. I'm there.
9 Q. Uh-huh. What is this document?
10 A. Oh. This is a demand that was sent on behalf
11 of Squire Village to First Horizon Home Loans. Well,
12 the First Horizon Home Loans field says "to." That
13 would have been pulled over from the program. It
14 doesn't necessarily mean it went to First Horizon Home
15 Loans. There is no fax number or e-mail, so I'm not
16 really sure if this was just an internal document that
17 was generated in May of 2014 or whether this was a
18 document that was provided to First Horizon.
19 It could have been provided to SFR. It still
20 would have put First Horizon's name in the "to" field,
21 because the way our program works is, if the owner is
22 listed as First Horizon and somebody such as SFR or the
23 association or just internally, if we were to generate
24 this document, that data field would pull over to the
25 "to" column even if it wasn't going to that entity.

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12 (Pages 42 to 45)

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1 And the fact that there is no e-mail or fax
2 number would lead me to believe that it just maybe
3 wasn't intended for First Horizon.
4 Q. Okay. That was a lot of information that
5 didn't answer my question, but I appreciate that.
6 A. Okay.
7 Q. Regardless, is it accurate that, at least
8 looking at this document, as of May 13, 2014, Alessi &
9 Koenig was looking to First Horizon for payment of HOA
10 assessments and other related costs?
11 A. So I would just apply my previous answer to
12 that question.
13 Q. Okay.
14 A. I'm not sure.
15 Q. We know this letter was generated. We just
16 don't know whether it was sent; is that accurate?
17 A. Whether it was sent or to whom it was sent,
18 yeah.
19 Q. Okay. And turning to page -222.
20 A. And I'm not trying to be clever on that. That
21 is just the way the program works, so . . .
22 Q. Okay. Page -222 appears to be some kind of a
23 ledger. Is this a document generated by Alessi &
24 Koenig?
25 A. Yes. -222. No, this would have been

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1 A. I think this would have been sent to Alessi &
2 Koenig. So as of May of 2013, I would -- I think it
3 would be more accurate to say that the management
4 company wasn't looking -- what didn't -- didn't send
5 this to Alessi & Koenig because they were looking to
6 First Horizon for payment. They just sent it to Alessi
7 & Koenig. It happens that First Horizon's name is
8 listed on it because they were -- or I believe they were
9 the record owner at the time. But you would have to ask
10 Mesa Management what their intent was.
11 Q. Sure. So --
12 A. But from our stand- -- for Alessi & Koenig, we
13 were actually looking at this time, I think, to SFR for
14 payment. We had sent SFR a breakdown.
15 Q. Right. There is no question pending right
16 now. I'll get to that in a second.
17 A. Okay.
18 Q. Let's stay on page -222, if we can, for now,
19 and then we'll turn to that other document that I know
20 you're talking about.
21 A. Okay.
22 Q. So is this a ledger that Mesa Management would
23 have provided to Alessi?
24 A. Yes.
25 Q. Okay. And does this document on -222

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1 generated by the management company --
2 Q. Okay.
3 A. -- Mesa Management.
4 Q. And the -- it doesn't appear that this
5 ledger's date -- well, there is a date at the bottom
6 that says May 13, 2014. Do you see that?
7 A. Yeah.
8 Q. And it appears that the last entry on the
9 ledger is from May of 2014.
10 A. Yes.
11 Q. Okay. So is it accurate by, at least, looking
12 at this document that as of May of 2014, Mesa Management
13 was looking to First Horizon Home Loans for payment of
14 the assessments?
15 MS. EBRON: Calls for speculation. Form.
16 MR. LOZZI: Join.
17 THE WITNESS: Oh, I would say actually no. As
18 of May of 2014 -- and I'm just going through
19 documents -- you can see that -- well, on May 22, 2014
20 there was a demand sent to SFR by our office.
21 BY MS. MORGAN:
22 Q. Right. But I'm just talking about --
23 A. On page -222?
24 Q. But I'm talking about this one document that I
25 am looking at, page -222.

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1 reference SFR anywhere?
2 A. No.
3 Q. And then you were referring to, I believe,
4 Bates No. -220 and -221, which appears to be a demand
5 much like the one we saw on Bates -217, and that one
6 says "to SFR"; is that accurate?
7 A. Yeah. And I am also referring to the e-mail
8 on -219 addressed to Chris Harden.
9 Q. Who is on the "from" line, Sara Aslinger? Do
10 you know who that is?
11 A. She is a legal assistant with Alessi & Koenig.
12 Q. Okay.
13 A. Was a legal assistant with Alessi & Koenig.
14 Q. Were there any communications between Mesa
15 Management and Alessi & Koenig regarding First Horizon's
16 connection to this property compared with SFR's
17 connection to this property?
18 A. Not that I'm aware of.
19 Q. Would you agree that there seemed to be some
20 confusion as to who the record owner was following the
21 HOA foreclosure sale with Mesa Management?
22 MS. EBRON: Form. Calls for a legal
23 conclusion.
24 MR. LOZZI: Join.
25 MS. EBRON: Calls for speculation.

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13 (Pages 46 to 49)

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1 MR. LOIZZI: Join.
2 THE WITNESS: I'm not sure.
3 BY MS. MORGAN:
4 Q. Okay. Was there some -- was there some
5 confusion as to the identity of the record owner
6 following the HOA foreclosure sale on Alessi's behalf?
7 MS. EBRON: Form. Calls for a legal
8 conclusion.
9 MS. LOIZZI: Join.
10 THE WITNESS: Well, I think that the record
11 owner, as far as Alessi was concerned, was who the
12 record owner was. I don't know that there was any
13 confusion in that regard. The assessor's site, from
14 what I just reviewed, showed the record owner to be
15 First Horizon Home Loans. I don't think there were any
16 documents -- yeah, that is all.
17 BY MS. MORGAN:
18 Q. Okay. So if we take a point in time, such as
19 when the notice of default was recorded, that is just --
20 take that date, October 21, 2013, Alessi knew that it
21 had sold the property to SFR a few months earlier; is
22 that accurate?
23 A. I -- we certainly had the -- I don't -- I
24 don't know if the employee of Alessi & Koenig at the
25 time they recorded the subsequent notice of default --

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1 can say from the date of the notice of delinquent
2 assessment lien in 2012 through the litigation.
3 THE WITNESS: I haven't seen any
4 communications with First Horizon. I'm not aware of any
5 other than the ones we -- the possible ones we
6 discussed.
7 MS. EBRON: And we are excluding the subpoena?
8 MS. MORGAN: Yeah.
9 BY MS. MORGAN:
10 Q. Did Alessi know, when it held the auction for
11 this property, that the property had been foreclosed on
12 and purchased by First Horizon?
13 THE WITNESS: Could you repeat that?
14 (The following record was read by the court
15 reporter: "Question: Did Alessi know when
16 it -- they would (sic) auction for this
17 property that the property had been foreclosed
18 on and purchased by First Horizon?")
19 MS. EBRON: Form.
20 THE WITNESS: I don't have any specific
21 knowledge as to whether or not Alessi knew. My guess is
22 that Alessi did not know.
23 BY MS. MORGAN:
24 Q. Why is that your guess?
25 A. My understanding is that the trustee's deed

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1 that is, the notice of default that was recorded after
2 the trustee's sale -- was this same employee that
3 handled the -- the first foreclosure or had any direct
4 knowledge that there had been a foreclosure.
5 Q. Okay.
6 A. Certainly, the documents were in the public
7 record to show that a trustee's deed had been recorded
8 into SFR's name. Subsequently, a trustee's deed
9 recorded the ownership, I believe, into either the bank
10 or a third party's name, the bank's names. So I don't
11 know what the employee of Alessi & Koenig was aware of
12 at the time that they recorded the notice of default.
13 Q. Did Alessi have any communications with anyone
14 at First Horizon at any point in time about the specific
15 account?
16 A. I'm not sure. There was the one great demand
17 that had First Horizon listed as the -- in the
18 two-line -- I'm not sure if that is the same --
19 Q. Yeah. I'm not talking about any of the
20 written documents we've looked at already. I mean like
21 any e-mails, any phone calls.
22 A. Not that I'm aware of.
23 MS. EBRON: Are you talking about before
24 litigation began or just anytime?
25 MS. MORGAN: From the date of the -- well, we

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1 upon sale had not yet -- had not been recorded at the
2 time it went to sale. I -- I'm assuming I believe that
3 an NOD probably was, but there are a lot of NODs that
4 are recorded by the bank that never go to sale, and we
5 don't make it a practice of calling the bank to find out
6 whether or not the NOD had been satisfied.
7 So inasmuch as there was no record of the
8 sale, my guess is that we didn't know about it.
9 Q. Okay. If Alessi had known that the lender had
10 foreclosed days before the HOA foreclosure sale, would
11 it have moved forward with the sale?
12 MS. EBRON: Calls for speculation, incomplete
13 hypothetical.
14 MR. LOIZZI: Join. Go ahead.
15 THE WITNESS: I would answer the question that
16 in general we would not.
17 BY MS. MORGAN:
18 Q. And why not?
19 A. Because there would have been a new -- well,
20 would have been a trustee's deed recorded by the bank
21 and we would have known of the foreclosure and probably
22 sought payment by the bank of the amounts due. We
23 probably would have restarted the collection process if
24 there had been a trustee's deed recorded into the bank's
25 name. That is my recollection of our policy at that

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14 (Pages 50 to 53)

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1 time.
2 Q. When you prepared for this deposition, did you
3 specifically look for any payments made by First Horizon
4 after the -- or after its foreclosure sale?
5 A. I did look for payments by First Horizon
6 after its foreclosure sale. I didn't see any.
7 Q. Okay. Did you look for those payments with
8 the thought in mind that they were tendering the
9 super-priority amount, like we have seen in other cases,
10 or did you look for payments that would typically be
11 made following the bank's foreclosure as it pays off
12 junior liens?
13 A. Not really for any reason in particular. Just
14 to see if that would -- just in reviewing the file
15 that -- I'm not sure I even specifically thought to look
16 for those -- any payments. I just don't believe I saw
17 any. I don't have any specific recollection that I said
18 to myself, "I'm going to look for payments by the bank."
19 Q. Okay. So in this case, we have the HOA
20 foreclosure on March 6, 2013 and the trustee's deed upon
21 sale from the bank's foreclosure recorded on March 7,
22 2013, and I'm looking at page -170.
23 MS. EBRON: Can we repeat the question,
24 please?
25 (The following record was read by the court

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1 Q. And it was recorded publicly, correct?
2 A. Yes.
3 Q. Is there a reason why the trustee's deed upon
4 sale to SFR did not identify First Horizon as the former
5 owner?
6 A. Because they were not the successful bidder at
7 the sale.
8 Q. Oh, sorry. As the former owner.
9 A. As the former owner? Because First Horizon,
10 it is my understanding, had not yet -- had not recorded
11 a trustee's deed upon sale deeding the property into
12 their name.
13 Q. Okay.
14 A. So we were not aware of the previous day's
15 foreclosure.
16 Q. Okay. We've been through this before at
17 several depositions, but just so we can have a complete
18 transcript here, does anyone who has an interest or
19 works for Alessi have any ownership interest in SFR
20 Investments Pool 1, LLC?
21 A. No.
22 Q. Same question but for SFR Investment, LLC.
23 A. No.
24 Q. SFR Funding, LLC.
25 A. Same answer, no.

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1 reporter: "Question: So in this case, we
2 have the HOA foreclosure on March 6, 2013 and
3 the trustee's deed upon sale from the bank's
4 foreclosure recorded on March 7, 2013, and I'm
5 looking at page -170.")
6 THE WITNESS: That appears to be right. Yes.
7 BY MS. MORGAN:
8 Q. So had the lender recorded its trustee's deed
9 upon sale a day earlier and Alessi had seen it, it would
10 not have moved forward with the HOA foreclosure; is that
11 accurate?
12 A. Yeah. That is my recollection of our policy
13 at that time. Yes.
14 MS. MORGAN: That is all I have.
15 EXAMINATION
16 BY MS. EBRON:
17 Q. Good afternoon. I'm Diana Ebron. I represent
18 SFR Investments Pool 1, LLC, in this matter.
19 Earlier you were talking about the notice of
20 delinquent assessments and you testified that it was not
21 to provide it to First Horizon or to MERS. Is there a
22 reason why a notice of delinquent assessment was not
23 provided to First Horizon or MERS?
24 A. Because our Nevada counsel does not feel that
25 that is necessary to be in compliance with the statutes.

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1 Q. Does anyone who works at or has an interest in
2 Alessi have any management control over SFR Investments
3 Pool 1, LLC?
4 A. No.
5 MS. EBRON: Thank you.
6 MS. LOZZI: Yay.
7 MS. MORGAN: All right.
8 COURT REPORTER: Do you need a transcript,
9 Diana?
10 MS. EBRON: Please. E-tran.
11 COURT REPORTER: For both depositions?
12 MS. EBRON: Yes.
13 THE WITNESS: We don't want one.
14 (The deposition concluded at 4:42 p.m.)
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David Alessi January 11, 2016
30(b)(6) Representative for Alessi & Koenig, LLC

15 (Page 54)

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1 CERTIFICATE OF COURT REPORTER

2
3 I, Cindy Johnson, a duly certified court
4 reporter in and for the State of Nevada do hereby
5 certify: That I reported the deposition of David
6 Alessi, commencing on Monday, January 11, 2016, at
7 3:20 p.m.

8 That prior to being deposed, the witness was
9 duly sworn by me to testify to the truth. That I
10 thereafter transcribed my said shorthand notes into
11 typewriting and that the typewritten transcript is a
12 complete, true and accurate transcription of my said
13 shorthand notes. Transcript review pursuant to NRCP
14 30(e) was not requested.

15 I further certify that I am not a relative
16 or employee of counsel or any of the parties, nor a
17 relative or employee of the parties involved in said
18 action, nor a person financially interested in the
19 action.

20 IN WITNESS WHEREOF, I have set my hand in my
21 office in the state of Nevada, this 14th day of
22 January 2016.
23

24 _____
25 Cindy K. Johnson, RPR, CCR No. 706

EXHIBIT N

EXHIBIT N

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12 *Attorneys for First Horizon Home Loans*

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14 **CLARK COUNTY, NEVADA**

15 **AKERMAN LLP**
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17 LAS VEGAS, NEVADA 89144
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19 SFR INVESTMENTS POOL 1, LLC, a Nevada
20 limited liability company,

21 Plaintiff,

22 v.

23 FIRST HORIZON HOME LOANS, A DIVISION
24 OF FIRST TENNESSEE BANK, N.A., a national
25 association; ANA TORRES, an individual; DOES I
26 through X; and ROE CORPORATIONS I through
27 X, inclusive,

28 Defendants.

Case No.: A-13-679329-C

Dept. No. XXVI

**FIRST HORIZON HOME LOANS'
INITIAL EXPERT DISCLOSURE**

Defendant First Horizon Home Loans, a Division Of First Tennessee Bank, N.A., a national association (**FHHL**), by and through its attorneys of the law firm AKERMAN LLP, hereby designates the following expert witness pursuant to Nevada Rules of Civil Procedure 26(a)(2).

1. Certified General Appraiser
Matthew Lubawy, MAI
Valbridge Property Advisors/ Lubawy & Associates
3034 S. Durango Dr. #100
Las Vegas, NV 89117

...

...

1 Mr. Lubawy will provide his expert opinion concerning the market value at the time of the
2 HOA's foreclosure sale. Mr. Lubawy's initial expert report, curriculum vitae with trial testimony and
3 fee schedule are attached hereto as **Exhibit A**, (LUBAWY000001 – LUBAWY000030).

4 DATED this 6th day of October, 2015.

5 **AKERMAN LLP**

6
7 */s/ Melanie D. Morgan, Esq.*

8 MELANIE D. MORGAN, ESQ.

9 Nevada Bar No. 8215

10 CHRISTINE M. PARVAN, ESQ.

11 Nevada Bar No. 10711

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14 *Attorneys for First Horizon Home Loans*

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AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 6th day of October, 2015 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **FIRST HORIZON HOME LOANS' INITIAL EXPERT DISCLOSURE**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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Squire Village at Silver Springs Community Association*

/s/ Allen G. Stephens

An employee of AKERMAN LLP

RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

Property Address: 5069 Midnight Oil Drive City: Las Vegas State: NV Zip Code: 89122
 County: Clark Legal Description: Silver Springs Unit A, Lot 46 (Book 91, Page 36)

Assessor's Parcel #: 161-26-111-017 Tax Year: 2013-14 R.E. Taxes: \$ 594.75 Special Assessments: \$ None known
 Current Owner of Record: Ana Torres (as of March 6, 2013) Occupant: Owner Tenant Vacant Manufactured Housing
 Project Type: PUD Condominium Cooperative Other (describe) HOA: \$ 90 per year per month
 Market Area Name: Southeast Map Reference: 926-3A (Thomas) Census Tract: 50.16

The purpose of this appraisal is to develop an opinion of: Market Value (as defined), or other type of value (describe) Fair Market Value
 This report reflects the following value (if not Current, see comments): Current (the Inspection Date is the Effective Date) Retrospective Prospective

Approaches developed for this appraisal: Sales Comparison Approach Cost Approach Income Approach (See Reconciliation Comments and Scope of Work)
 Property Rights Appraised: Fee Simple Leasehold Leased Fee Other (describe)

Intended Use: Litigation
 Intended User(s) (by name or type): Akerman, LLP

Client: Akerman, LLP Address: 1160 Town Center Dr, Suite 330, Las Vegas, NV 89144
 Appraiser: Tammy L. Howard Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117

Location: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Predominant Occupancy <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input checked="" type="checkbox"/> Vacant (0-5%) <input type="checkbox"/> Vacant (>5%)	One-Unit Housing		Present Land Use		Change in Land Use	
Built up: <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%		PRICE \$ (000)	AGE (yrs)	One-Unit 65%	<input checked="" type="checkbox"/> Not Likely <input type="checkbox"/> Likely * <input type="checkbox"/> In Process *		
Growth rate: <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	<input type="checkbox"/> 27 Low New		2-4 Unit %				
Property values: <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	190 High 25		Multi-Unit 10%				
Demand/supply: <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	90 Pred 10		Comm'l 10%				
Marketing time: <input type="checkbox"/> Under 3 Mos. <input checked="" type="checkbox"/> 3-6 Mos. <input type="checkbox"/> Over 6 Mos.			Vacant 15%				

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): The nbhd. is located in the east ptn. of Las Vegas Valley, +/- 8-10 miles from the Las Vegas Strip & downtown areas. It is bound on the north by the alignment of Harmon Ave, the Charleston Blvd., the east by Hollywood Blvd. or limits of development in that direction, the south by Russell Road and the west by Boulder Highway. This area includes a compatible mix of tract style SFR's with most new development occurring in the far SE ptn of the nbhd. Notable properties in the area include the Wetlands Park and Sam Boyd Stadium. The Clark County and City of Las Vegas sewage treatment plants border the nbhd to the north. The industrial uses are located near the nbhd. as well as along a portion of Boulder Hwy. The area has an adequate mix of public schools, parks, shops, & general conveniences. Access is average via Boulder Highway, US 95 & local streets. Prices over the past 12 months show an upward trend in the first couple of months of 2013. The average list price to sale price ratio during the prior year within the neighborhood is 102%. The reasonable exposure time for the subject property at the opinion of market value stated in this report is 60-90 days. Average overall appeal and marketability.

Dimensions: 39 x 87 Site Area: 3,393 Sq.Ft. Corner Lot Cul de Sac

Zoning Classification: R-3 Description: Multiple Family Residential, 18 units per acre
 Zoning Compliance: Legal Legal nonconforming (grandfathered) Illegal No zoning

Utilities	Public	Other	Description	Off-site Improvements	Type	Public	Private	Topography	Level
Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Street	Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Size	Typical for neighborhood
Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Curb/Gutter	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shape	Rectangular
Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Sidewalk	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drainage	Assume adequate
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Street Lights	Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	View	None, typical
Storm Sewer	<input type="checkbox"/>	<input type="checkbox"/>	Unknown	Alley	None	<input type="checkbox"/>	<input type="checkbox"/>	Landscaping	Minimal front and rear

FEMA Spec'l Flood Hazard Area Yes No FEMA Flood Zone X FEMA Map # 32003C 2585F FEMA Map Date 11/16/2011

Highest & Best Use as improved: Present use, or Other use (explain)

Actual Use as of Effective Date: Single family residential Use as appraised in this report: Single family residential

Summary of Highest & Best Use: The highest and best use is as it exists, a single family residence.

Site Comments: No apparent adverse easements, encroachment, environmental conditions, illegal or legal nonconforming zoning uses noted at the time of the inspection; however, inspection was made without the benefit of a title report or survey. The subject site is located at the rear of an 8 lot cul-de-sac.

General Description		Exterior Description		Foundation		Basement		Heating	
# of Units	1 <input type="checkbox"/> Acc. Unit	Foundation	Concrete	Slab	Concrete	Area Sq. Ft.	<input checked="" type="checkbox"/> None	Type	FAU
# of Stories	1	Exterior Walls	Stucco	Crawl Space	None	% Finished	N/A	Fuel	Gas
Type	<input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/>	Roof Surface	Concrete tiles	Basement	None	Ceiling		Cooling	
Design (Style)	Standard	Gutters & Dwnspts.	None	Sump Pump	<input type="checkbox"/> N/A	Walls		Central	Air
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.		Window Type	Fixed/Sliding	Dampness	<input type="checkbox"/> None/Noted	Floor		Other	
Actual Age (Yrs.)	12	Storm/Screens	Woven Mesh	Settlement	None/Noted	Outside Entry			
Effective Age (Yrs.)	10			Infestation	None/Noted				

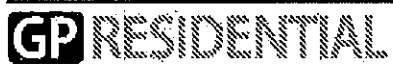
Interior Description		Appliances		Attic		Amenities		Car Storage	
Floors	Vinyl/carpet	Refrigerator	<input type="checkbox"/> None	Fireplace(s) #	None	Woodstove(s) #		Garage	# of cars (2 Tot.)
Walls	Drywall/paint	Range/Oven	<input checked="" type="checkbox"/>	Patio	Open			Attach.	2
Trim/Finish	Wood/paint	Disposal	<input checked="" type="checkbox"/>	Deck	None			Detach.	
Bath Floor	Vinyl	Dishwasher	<input checked="" type="checkbox"/>	Porch	Covered			Bit-In	
Bath Wainscot	Fiberglass	Fan/Hood	<input checked="" type="checkbox"/>	Fence	Masonry block			Carport	
Doors	Flat, hollow core	Microwave	<input checked="" type="checkbox"/>	Pool	None			Driveway	
		Washer/Dryer	<input type="checkbox"/> Finished					Surface	Concrete

Finished area above grade contains: 5 Rooms 3 Bedrooms 2 Bath(s) 1,183 Square Feet of Gross Living Area Above Grade

Additional features: Assume vinyl/carpet flooring, standard cabinets with laminate countertops in kitchen and bathrooms, overhead lights/fans, front yard drought tolerant landscaping, masonry block enclosed rear yard. Silver Springs is an age restricted community.

Describe the condition of the property (including physical, functional and external obsolescence): As of the effective date of this appraisal, the subject property is assumed to be in average condition. At the time of inspection, there were no apparent major repairs, renovation, or remodeling evident. The effective age is based on the appraiser's exterior inspection of the property. An exterior inspection of the property was performed from the public street. An extraordinary assumption is made that the interior is in similar condition as the exterior and that the condition was similar at the effective date of this appraisal. The use of the extraordinary assumption may have affected the assignment results.

*Personal property items are not included herein. The interior description has been based on public records and MLS records.



RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

My research did did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): County Records/MLS

1st Prior Subject Sale/Transfer	Analysis of Sale/Transfer History: MLS & County Records did not reveal any sale of the subject in the 3-year period preceding the date of value, March 6, 2013. The subject property was not listed for sale as of the effective date of value. It had been under the ownership of Ana Torres since July 25, 2008 at which time it was purchased as an REO for \$142,000.			
	Date:	None/Prior three years		
	Price:	N/A		
2nd Prior Subject Sale/Transfer	Date:			
	Price:			
	Source(s):			

SALES COMPARISON APPROACH TO VALUE (if developed) The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Address	5069 Midnight Oil Drive Las Vegas, NV 89122	5110 Mascaro Drive Las Vegas, NV 89122			4986 Mascaro Drive Las Vegas, NV 89122			5154 Mascaro Drive Las Vegas, NV 89122		
Proximity to Subject		0.20 miles E			0.21 miles NE			0.20 miles SE		
Sale Price	\$ 0.00	\$ 89,900			\$ 90,500			\$ 104,900		
Sale Price/GLA	\$ /sq.ft.	\$ 82.63 /sq.ft.			\$ 84.90 /sq.ft.			\$ 76.18 /sq.ft.		
Data Source(s)	Exterior Inspection	MLS#1288664			MLS#1307338			MLS#1285679		
Verification Source(s)	County Rcrds	Clark County Records			Clark County Records			Clark County Records		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	
Sales or Financing	N/A	Cash		Conv.		FHA, sellers contrib.	-500			
Concessions	0.00	Traditional sale		Traditional sale		Traditional sale				
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple				
Date of Sale/Time	N/A	10/18/2012 COE		02/04/2013 COE		02/27/2013 COE				
Location	Average/gated	Average/gated		Average/gated		Average/gated				
Site	3,393 SF	3,485 SF		3,920 SF		3,920 SF				
View	None, typical	Wetlands Park	-1,500	Wetlands park	-1,500	None				
Design (Style)	Standard	Standard		Standard		Standard				
Quality of Construction	Average, typical	Average		Average		Average				
Actual Age	12 years	11 years		11 years		14 years				
Condition	Assm. average	Average		Average		Average				
Above Grade Room Count	Total Bdrms. Baths	Total Bdrms. Baths		Total Bdrms. Baths		Total Bdrms. Baths		Total Bdrms. Baths		
	5 3 2	5 2 2		5 2 2		5 3 2				
Gross Living Area	1,183 sq.ft.	1,088 sq.ft.	+4,750	1,066 sq.ft.	+5,850	1,377 sq.ft.	-9,700			
Basement & Finished Rooms Below Grade	0 N/A	0 N/A		0 N/A		0 N/A				
Functional Utility	Average	Average		Average		Average				
Heating/Cooling	FAU/Central	FAU/Central		FAU/Central		FAU/Central				
Energy Efficient Items	Standard	Standard		Standard		Standard				
Garage/Carport	2 car garage	2-car garage		2-car garage		2 Car Garage				
Porch/Patio/Deck	Patio	Superior patio	-500	Cov. patio	-500	Cov. patio	-500			
Fireplace/Upgrades	None/standard	None/Similar		None/similar		None/similar				
Pool	None	None		None		None				
Site Improvements	L/S, block walls	Similar	-500	Similar		Similar				
Contract Date	N/A	01/10/2013		12/20/2012		01/19/2013				
Day on Market	N/A	48		55		162				
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 2,250	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 3,850	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -10,700			
Adjusted Sale Price of Comparables			\$ 92,150		\$ 94,350		\$ 94,200			

Summary of Sales Comparison Approach COE, Close of Escrow date indicates the date the transaction was recorded. The contract date is the date the contract for sale was signed. Information for the COE and contract sales dates was obtained from MLS and county records and has been provided to give the Client additional understanding of the market conditions as of the effective date of this appraisal.

For the purpose of this appraisal, when conflict between County Records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, when conflict between MLS and county records were noted, MLS was used.

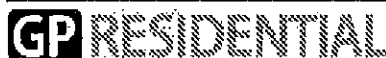
The sales comparables were inspected from the exterior on October 3, 2015, however, GLVAR MLS photos were used from the time of the sale as they are more reflective of the condition at the time of sale and the retrospective effective date of this appraisal.

All of the sales are typical tract residences from the subject subdivision that have closed within 1-5 months of the effective date of value. Sale 1 is a smaller two bedroom residence in the subject subdivision. It was on the market for 48 days before selling at list as an all cash, traditional sale. It backs to the Wetlands park area and has a natural desert view rather than other houses. Downward adjustments are made for a larger patio and superior rear yard landscaping while upward is necessary for the smaller size. Previously, the property had been under several variations of the Gault (seller in this transaction) name since August 2001.

Sale 2 is a smaller residence in the subject subdivision also. This property was on the market for 55 days before selling \$3,000 below list as a traditional sale. The buyer obtained Conventional financing. The property backs to the Wetlands park for which a downward adjustment is made. Adjustments are also made for the smaller size (upward) and the covered patio (downward). The property had been under variations of the seller's name, Pupeter, name since December 2006.

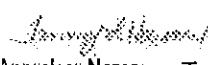
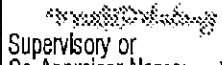
Sale 3 is a slightly larger residence in the subject subdivision. This property was on the market for 162 days before selling at list as a traditional sale. The buyer obtained FHA financing and the seller contributed \$500 to the buyer's closing costs. This property is similar to the subject overall with adjustments necessary for living area and covered patio only. The seller had owned the property (several name variations) since November 2002.

Indicated Value by Sales Comparison Approach \$ 94,000



RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 15-1087

COST APPROACH	COST APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal. Provide adequate information for replication of the following cost figures and calculations. Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): <u>The cost approach is not considered an accurate reflection of current market value for the subject property, and has not been developed.</u>	
	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE _____ = \$
	Source of cost data: _____	DWELLING Sq.Ft. @ \$ _____ = \$
	Quality rating from cost service: _____ Effective date of cost data: _____	Sq.Ft. @ \$ _____ = \$
	Comments on Cost Approach (gross living area calculations, depreciation, etc.): _____	Sq.Ft. @ \$ _____ = \$
		Sq.Ft. @ \$ _____ = \$
		Sq.Ft. @ \$ _____ = \$
		Sq.Ft. @ \$ _____ = \$
		Garage/Carport Sq.Ft. @ \$ _____ = \$
		Total Estimate of Cost-New _____ = \$
	Less Physical Functional External _____ = \$	
	Depreciation _____ = \$()	
	Depreciated Cost of Improvements _____ = \$	
	"As-Is" Value of Site Improvements _____ = \$	
	_____ = \$	
	_____ = \$	
	Estimated Remaining Economic Life (if required): _____ Years INDICATED VALUE BY COST APPROACH _____ = \$	
INCOME APPROACH	INCOME APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal.	
	Estimated Monthly Market Rent \$ _____ X Gross Rent Multiplier _____ = \$ _____	Indicated Value by Income Approach _____
	Summary of Income Approach (Including support for market rent and GRM): <u>Single family homes are not typically sold on an income basis. The income approach is not required for credible results.</u>	
PUD	PROJECT INFORMATION FOR PUDs (if applicable) <input type="checkbox"/> The Subject is part of a Planned Unit Development.	
	Legal Name of Project: _____ Describe common elements and recreational facilities: <u>An association fee of approximately \$90 per month is reportedly charged for maintenance of common area landscaping. This is an age restricted community with a clubhouse and pool.</u>	
RECONCILIATION	Indicated Value by: Sales Comparison Approach \$ 94,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A	
	Final Reconciliation <u>The sales comparison approach is considered the most reliable indicator of value, as it best reflects the actions of buyers & sellers in the market. Most homes are owner occupied & do not produce income, so the income approach is not applicable. The cost approach is not an accurate reflection of current market value for the subject property & was not developed. The adjusted range is from \$92,150 to \$94,350 with a retrospective value of \$94,000 estimated for the subject by weighting Sale 3 as most recent & similar in 3 bedroom design. This value is reasonably above that indicated by Sale 1 in light of the upward trend that was noted after the date. This equates to a per square foot figure of \$79.46 which falls within the unadjusted range established by the sales.</u>	
	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the Improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: <u>The subject property is being appraised with a retrospective date of value as of March 6, 2013. We assume the condition noted from an exterior inspection is similar to the property's retrospective date.</u>	
	<input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.	
ATTACHMENTS	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ 94,000, as of: March 6, 2013, which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.	
	A true and complete copy of this report contains <u>19</u> pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.	
SIGNATURES	Attached Exhibits: <input checked="" type="checkbox"/> Scope of Work <input checked="" type="checkbox"/> Limiting Cond./Certifications <input type="checkbox"/> Hypothetical Conditions <input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Narrative Addendum <input type="checkbox"/> Sketch Addendum <input checked="" type="checkbox"/> Location Map(s) <input type="checkbox"/> Flood Addendum <input checked="" type="checkbox"/> Additional Sales <input type="checkbox"/> Cost Addendum <input type="checkbox"/> Manuf. House Addendum <input checked="" type="checkbox"/> Supplemental Addendum <input type="checkbox"/> GLB Privacy Act <input type="checkbox"/> _____	
	Client Contact: <u>Michele Pori</u> Client Name: <u>Akerman, LLP</u> E-Mail: <u>michele.pori@akerman.com</u> Address: <u>1160 Town Center Dr, Suite 330, Las Vegas, NV 89144</u>	
	APPRAISER  Appraiser Name: <u>Tammy L. Howard</u> Company: <u>Valbridge Property Advisors</u> Phone: <u>(702) 242-9369</u> Fax: <u>(702) 242-6391</u> E-Mail: <u>toward@valbridge.com</u> Date of Report (Signature): <u>October 06, 2015</u> License or Certification #: <u>A.0000253-CG</u> State: <u>NV</u> Expiration Date of License or Certification: <u>06/30/2017</u> Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None Date of Inspection: <u>October 3, 2015</u>	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)  Supervisory or Co-Appraiser Name: <u>Matthew J. Lubawy, MAI</u> Company: <u>Valbridge Property Advisors</u> Phone: <u>(702) 242-9369</u> Fax: <u>(702) 242-6391</u> E-Mail: <u>mlubawy@valbridge.com</u> Date of Report (Signature): <u>October 06, 2015</u> License or Certification #: <u>A.0000044-CG</u> State: <u>NV</u> Expiration Date of License or Certification: <u>04/30/2017</u> Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input checked="" type="checkbox"/> None Date of Inspection: _____



Supplemental Addendum

File No. 15-1087

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County	Clark	State	NV Zip Code 89122
Client	Akerman, LLP				

Purpose: The purpose of this appraisal is to form an opinion of the fair market value for the subject property as of the effective date which is a retrospective date of March 6, 2013.

Intended User: Akerman, LLP. No other users are intended by the Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

Intended Use: Litigation. No other use is intended by the Appraiser. The intended use as stated shall be used by the Appraiser in determining the appropriate Scope of Work for the assignment.

Scope of Appraisal:

Upon receiving this assignment from the client we identified the intended users of the report, confirmed that the effective date of the appraisal is to be consistent with the date of inspection. Next the real property being appraised was identified and available property-specific data was collected through public records, various data services and or MLS database.

An exterior inspection of the property was completed as described herein; a visual observation of the unobstructed, exposed surfaces of accessible areas from standing height was performed on the exterior areas of the subject property for valuation purposes only. The appraiser is NOT a "home inspector" and can only report conditions based on the visual observation noted above. The appraiser DOES NOT warrant any part/whole of the subject property environmental conditions or other conditions that would require a licensed professional such as; identifying the existence of Lead Based paint, Mold, Soil Slippage, Hazardous Waste, Radon Gas etc. We did not test the subject's mechanical systems; the appraiser is not an expert with regard to mechanical issues or electrical, plumbing, roof, foundation systems, or State, City, County, Building Code compliance etc.

The appraiser's inspection included noting the apparent condition, quality, utility, amenities and architectural style. Measurements and room counts used in this report came from county records. Zoning data was obtained from public records, office files, and or city/county planning offices. The collected data was then used to develop a profile of the subject property and analyze the highest and best use of the subject property.

The appraiser performed a search of the local market area for the most similar closed comparable sales, pending/contingent sales and active listings. The accessible sales were inspected from the street and photos taken. MLS photos may be used when there is; obstruction, people are outside, when there is no access to the property, or when the MLS photo is considered a more accurate depiction of the properties condition at the time of sale. The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner, or the title company. Interior/exterior upgrade adjustments may be made to one or more of the comparables due to information obtained from the appraiser's exterior inspection of the property and/or information obtained from the multiple listing service (MLS). Where available, the appraiser has reviewed interior photographs provided by listing agents on the comparables to obtain a better understanding of these properties. The sales data was then analyzed and a value opinion derived.

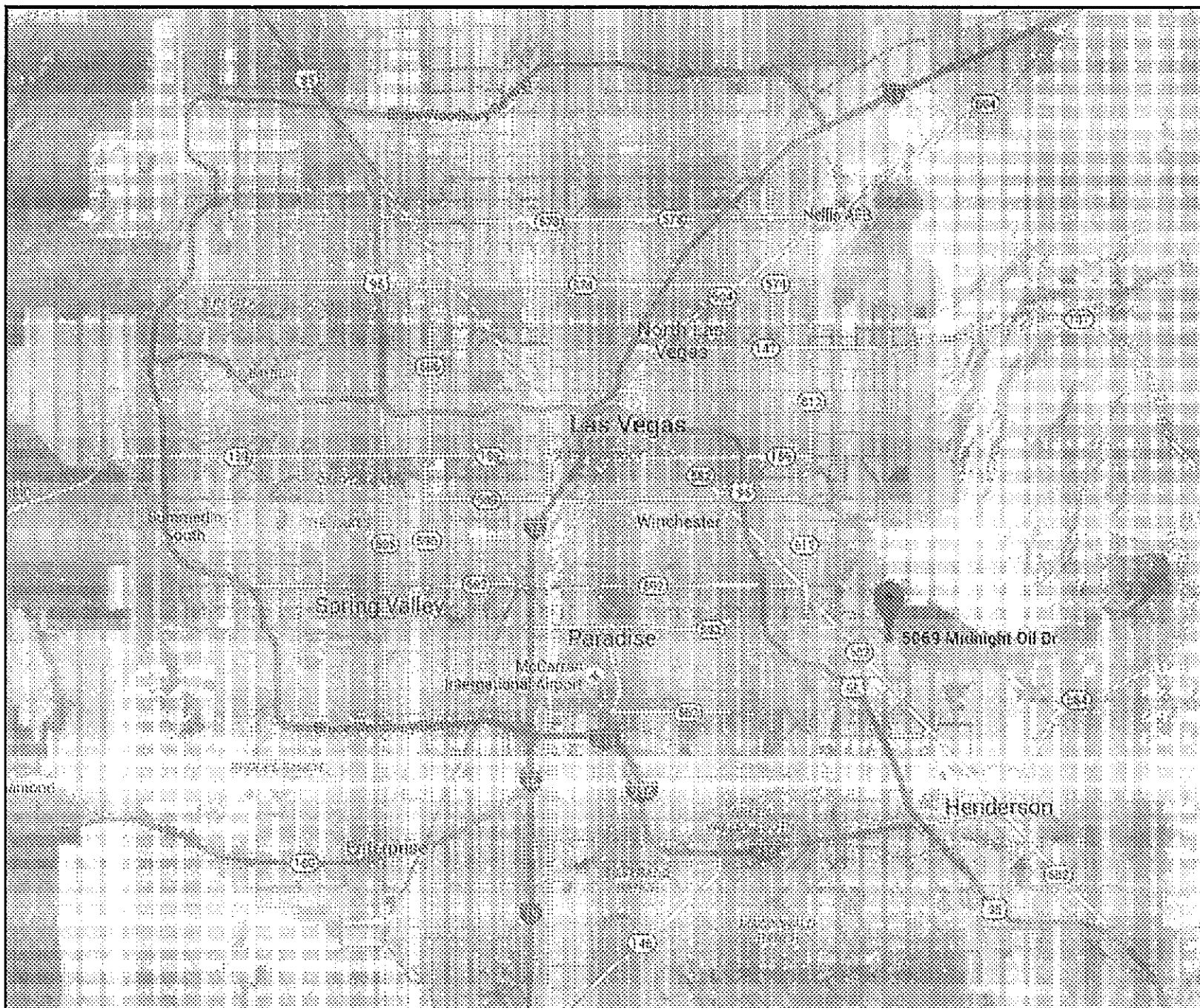
In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Sales Comparison Analysis:

For the purpose of this appraisal, when conflict between County Records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, when conflict between MLS and county records were noted, MLS was used.

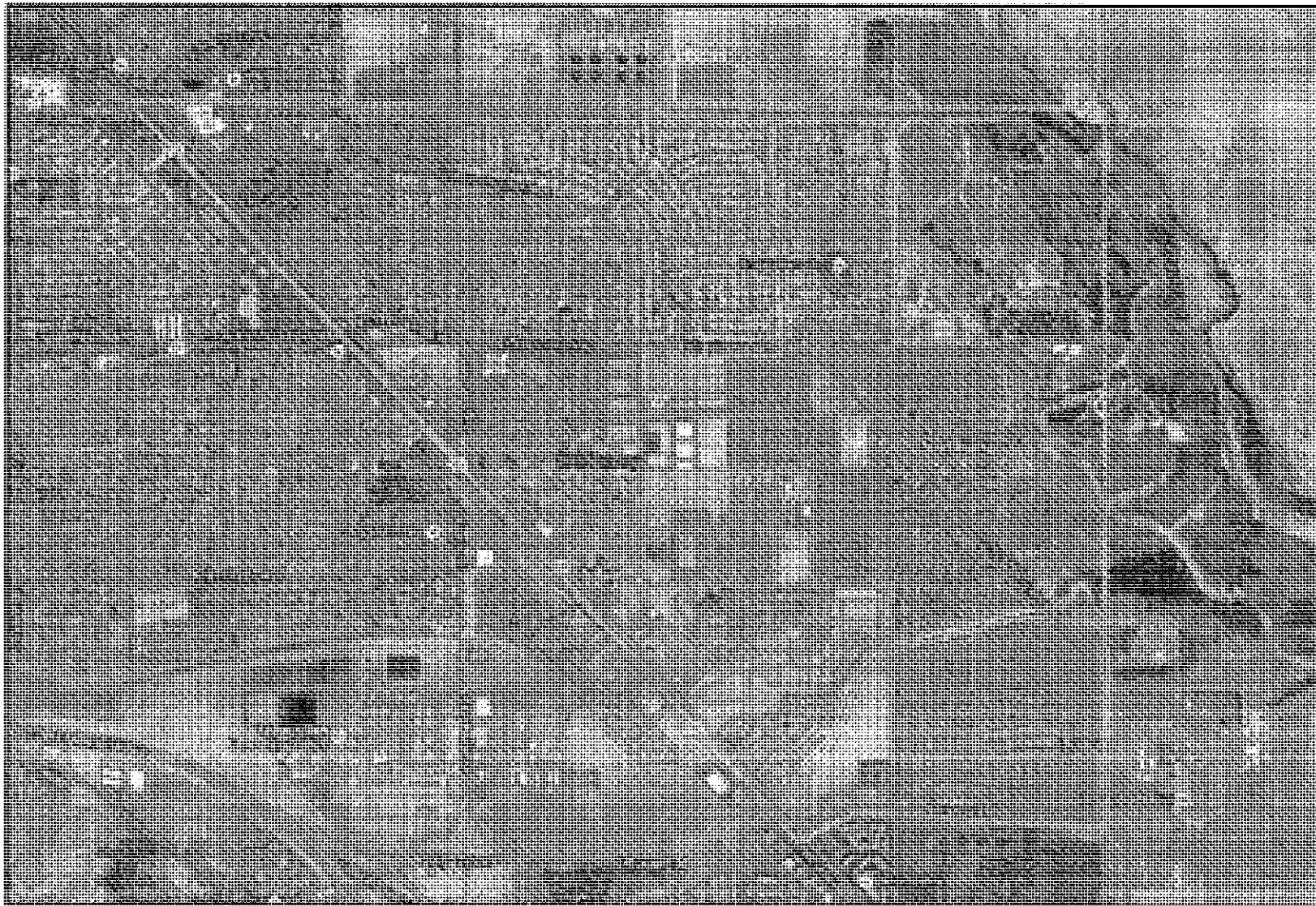
Location Map

Owner	Ana Torres (as of March 6, 2013)		
Property Address	5069 Midnight Oil Drive		
City	Las Vegas	County	Clark
		State	NV
		Zip Code	89122
Client	Akerman, LLP		



Neighborhood Map

Owner	Ana Torres (as of March 6, 2013)		
Property Address	5069 Midnight Oil Drive		
City	Las Vegas	County Clark	State NV Zip Code 89122
Client	Akerman, LLP		



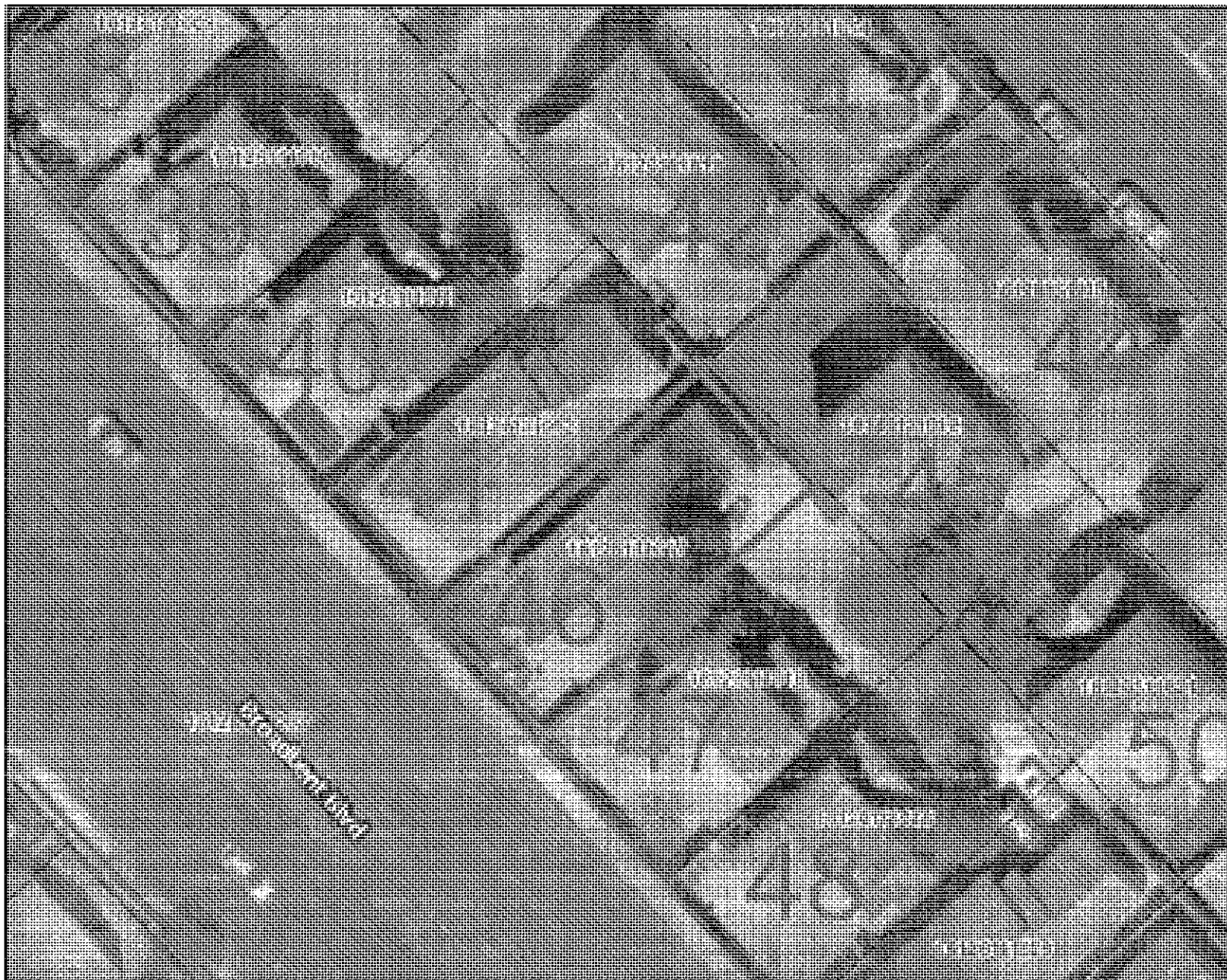
Aerial View

Owner	Ana Torres (as of March 6, 2013)						
Property Address	5069 Midnight Oil Drive						
City	Las Vegas	County	Clark	State	NV	Zip Code	89122
Client	Akerman, LLP						



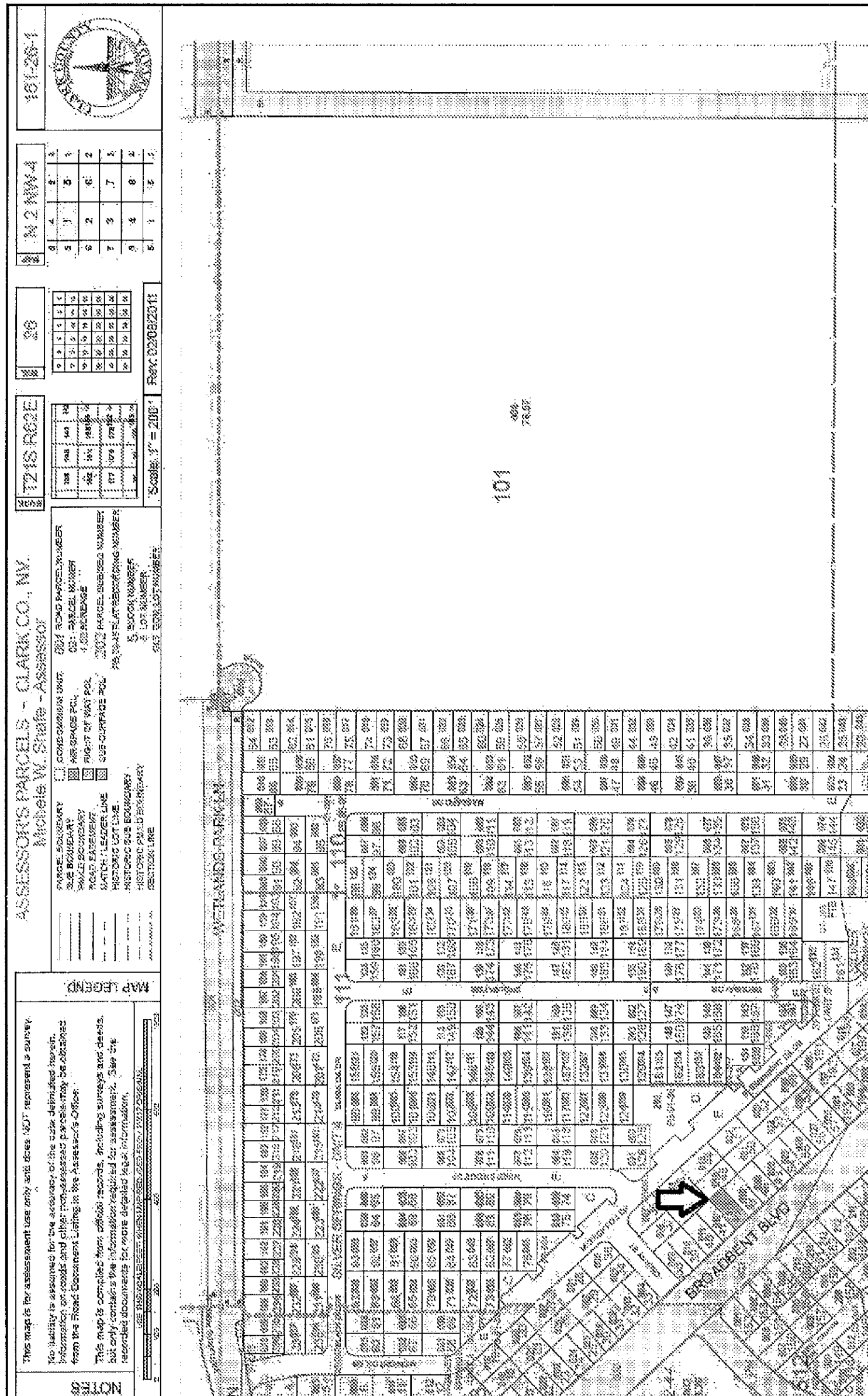
Aerial View Close Up

Owner	Ana Torres (as of March 6, 2013)		
Property Address	5069 Midnight Oil Drive		
City	Las Vegas	County Clark	State NV Zip Code 89122
Client	Akerman, LLP		



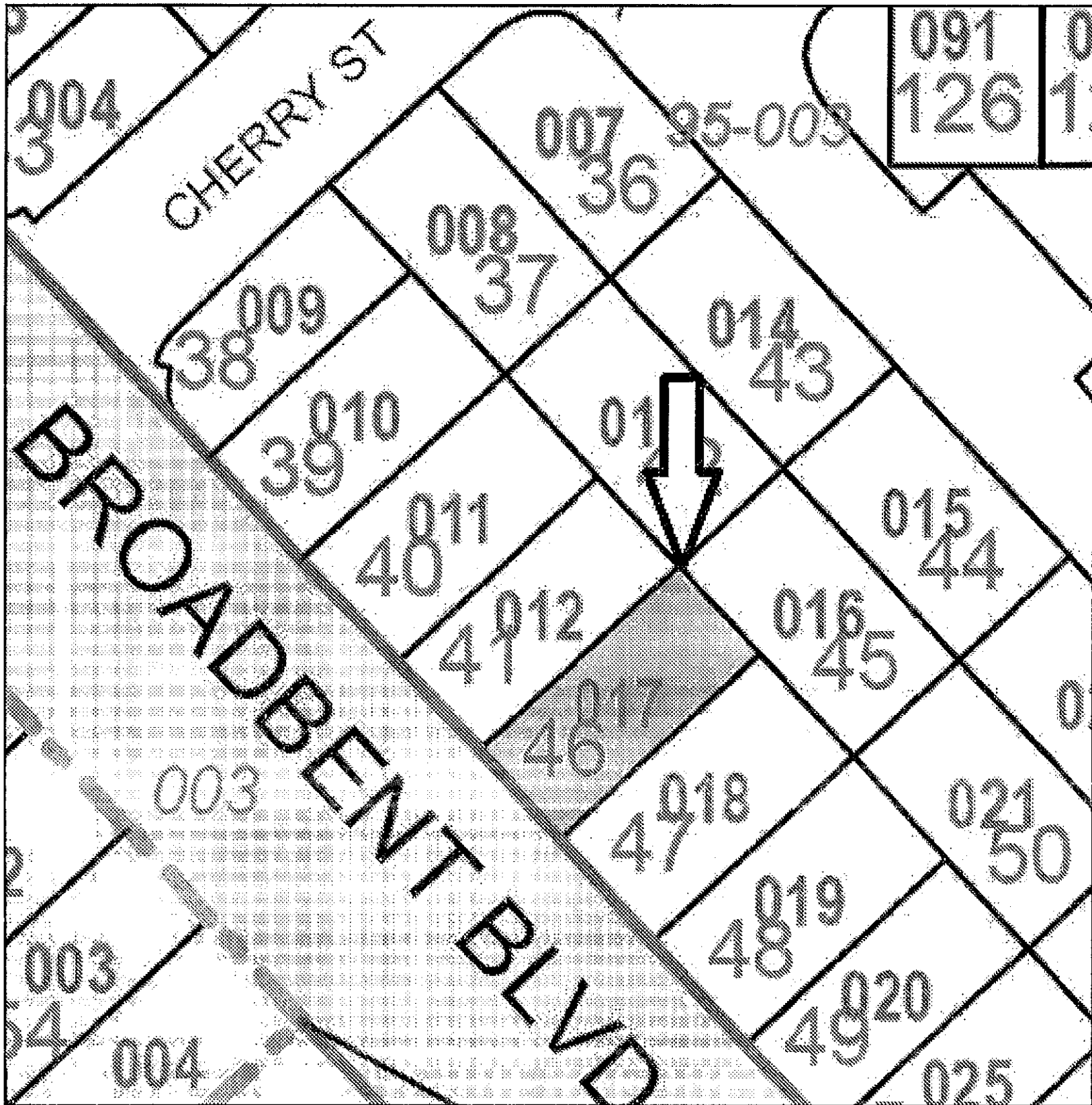
Assessor's Parcel Map

Owner	Ana Torres (as of March 6, 2013)						
Property Address	5069 Midnight Oil Drive						
City	Las Vegas	County	Clark	State	NV	Zip Code	89122
Client	Akerman, LLP						



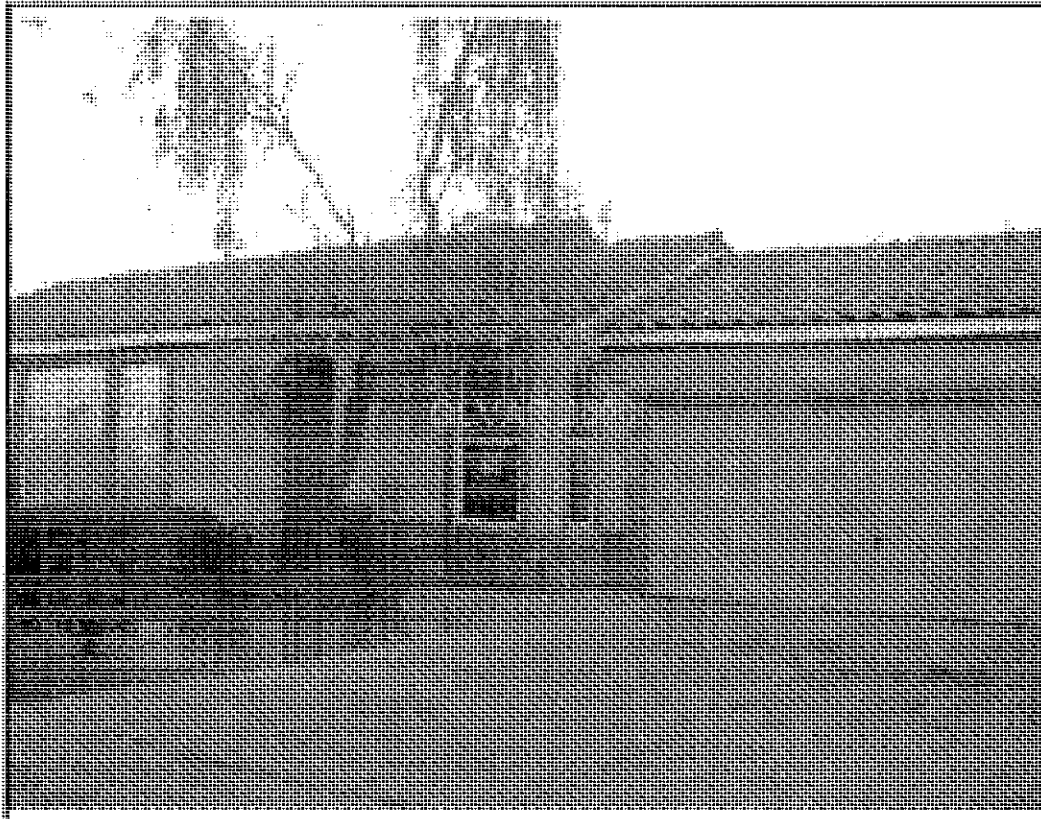
Assessor's Parcel Map Close Up

Owner	Ana Torres (as of March 6, 2013)						
Property Address	5069 Midnight Oil Drive						
City	Las Vegas	County	Clark	State	NV	Zip Code	89122
Client	Akerman, LLP						



Subject Photo Page

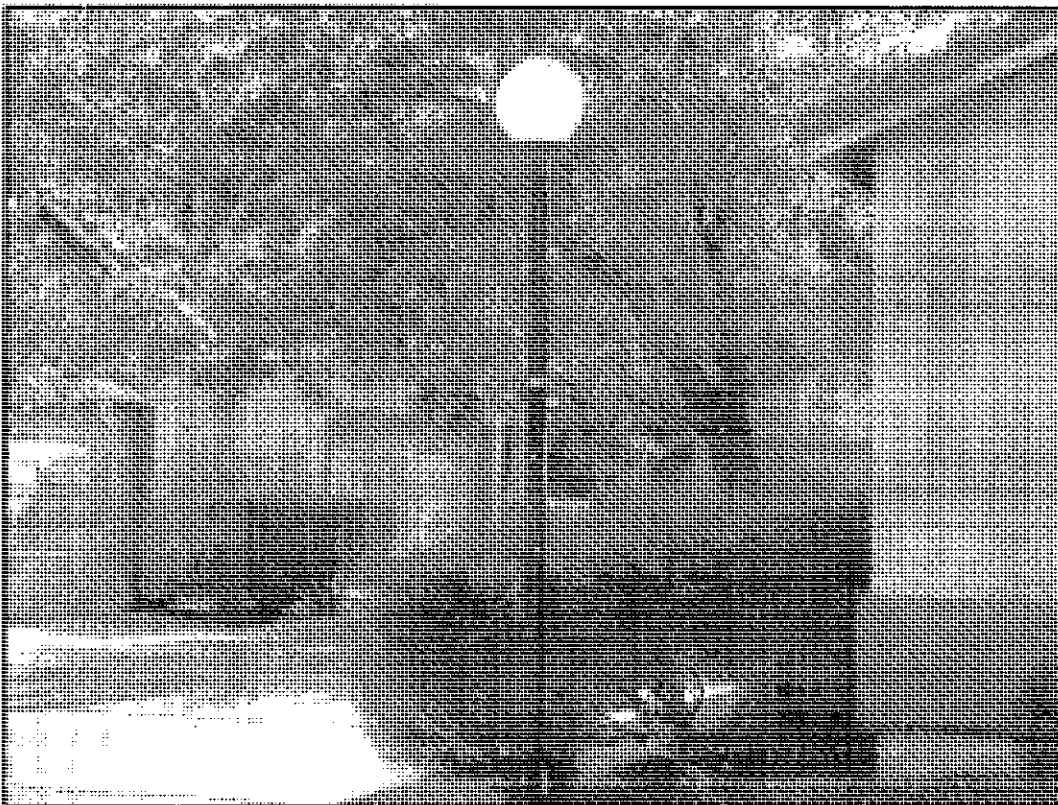
Owner	Ana Torres (as of March 6, 2013)		
Property Address	5069 Midnight Oil Drive		
City	Las Vegas	County	Clark
		State	NV
		Zip Code	89122
Client	Akerman, LLP		



Subject Front

5069 Midnight Oil Drive
 Sales Price 0.00
 Gross Living Area 1,183
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2
 Location Average/gated
 View None, typical
 Site 3,393 SF
 Quality Average, typical
 Age 12 years

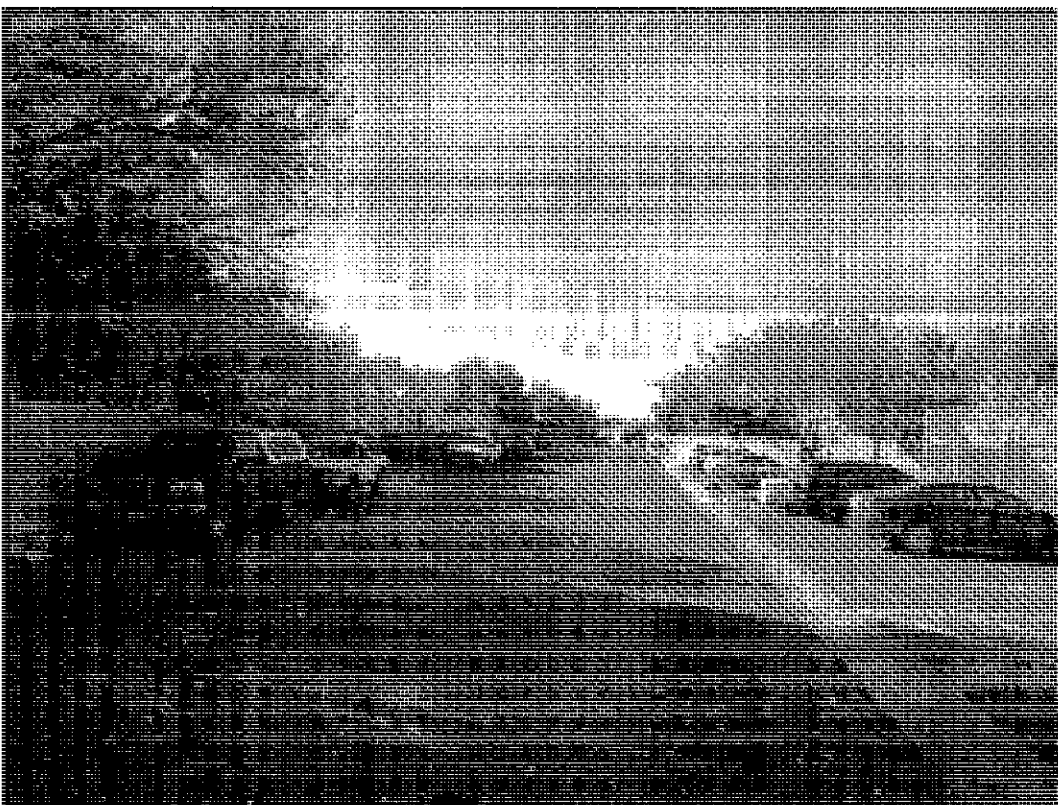
Photo from MLS



View of subject cul-de-sac

Photo taken 10/03/2015
 by Tammy Howard

Subject is on the right in
 the back



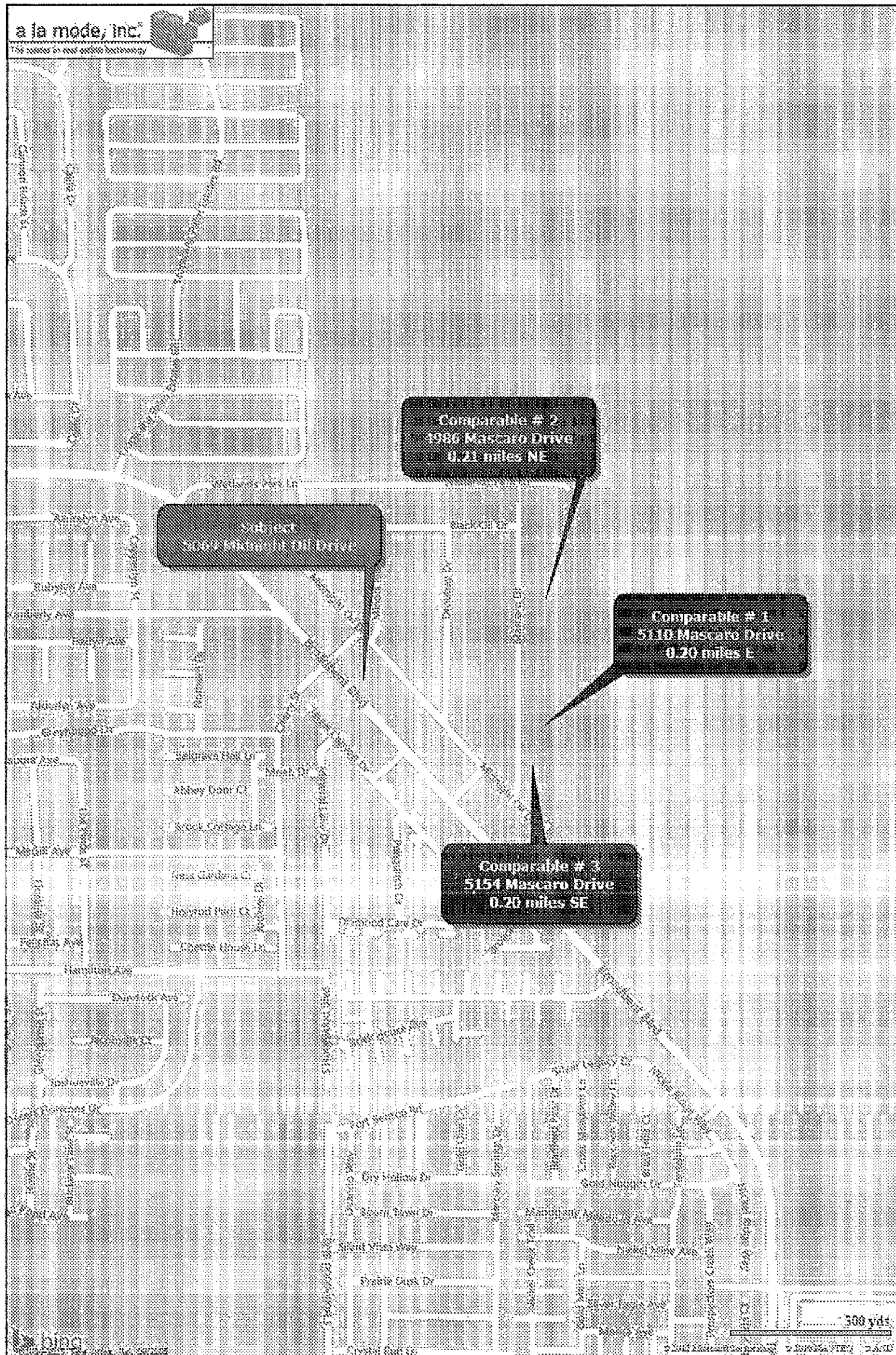
Street Scene

Looking NW
 Photo taken 10/03/2015
 by Tammy Howard

Subject cul-de-sac
 is on the left

Comparable Sale Location Map

Owner	Ana Torres (as of March 6, 2013)						
Property Address	5069 Midnight Oil Drive						
City	Las Vegas	County	Clark	State	NV	Zip Code	89122
Client	Akerman, LLP						



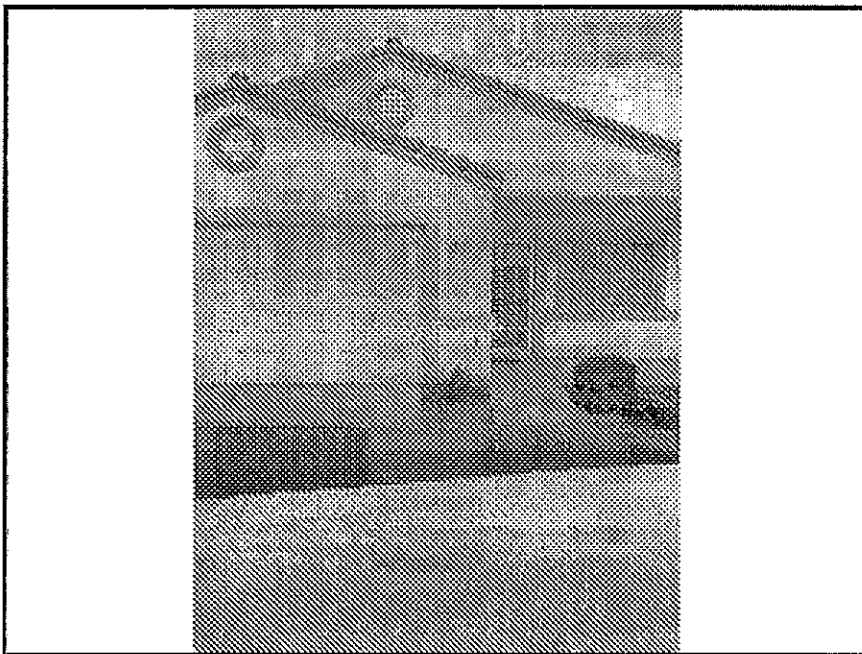
Comparable Photo Page

Owner	Ana Torres (as of March 6, 2013)				
Property Address	5069 Midnight Oil Drive				
City	Las Vegas	County	Clark	State	NV Zip Code 89122
Client	Akerman, LLP				

**Comparable 1**

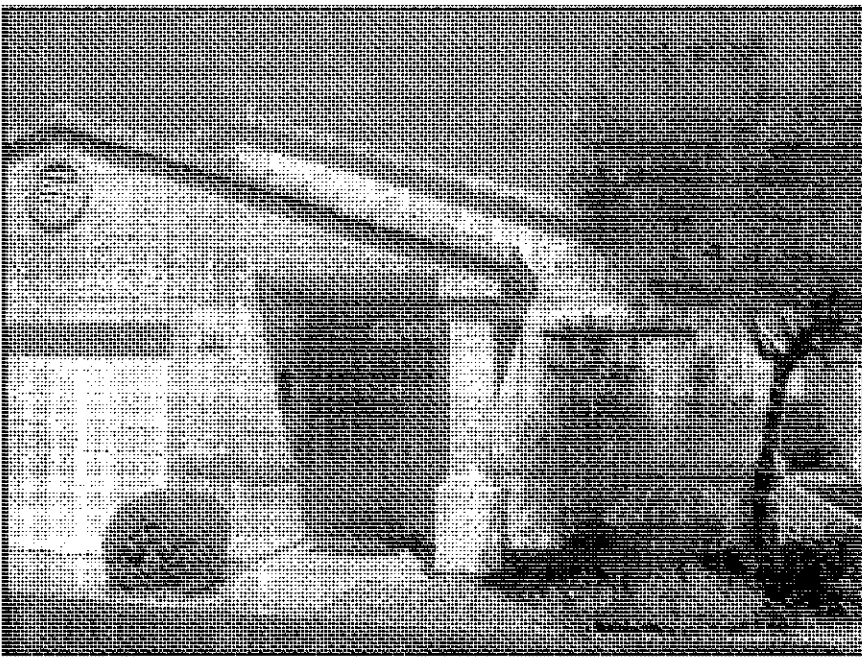
5110 Mascaro Drive
 Prox. to Subject 0.20 miles E
 Sales Price 89,900
 Gross Living Area 1,088
 Total Rooms 5
 Total Bedrooms 2
 Total Bathrooms 2
 Location Average/gated
 View Wetlands Park
 Site 3,485 SF
 Quality Average
 Age 11 years

Photo from MLS listing

**Comparable 2**

4986 Mascaro Drive
 Prox. to Subject 0.21 miles NE
 Sales Price 90,500
 Gross Living Area 1,066
 Total Rooms 5
 Total Bedrooms 2
 Total Bathrooms 2
 Location Average/gated
 View Wetlands park
 Site 3,920 SF
 Quality Average
 Age 11 years

Photo from MLS listing

**Comparable 3**

5154 Mascaro Drive
 Prox. to Subject 0.20 miles SE
 Sales Price 104,900
 Gross Living Area 1,377
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2
 Location Average/gated
 View None
 Site 3,920 SF
 Quality Average
 Age 14 years

Photo from MLS listing

Assumptions, Limiting Conditions & Scope of Work

File No.: 15-1087

Property Address: 5069 Midnight Oil Drive	City: Las Vegas	State: NV	Zip Code: 89122
Client: Akerman, LLP	Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144		
Appraiser: Tammy L. Howard	Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117		

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the Improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

An exterior inspection of the property was performed for the public street. An extraordinary assumption is made the interior is in similar condition as the exterior and that these conditions were similar on the retrospective date of value. The use of the extraordinary assumption may have affected the assignment results.

The purpose of this appraisal is for a "non lender" appraisal. It should be noted that the appraisers's data and comparables utilized were retrieved as of the inspection date noted within the body of the report. This report is intended for use by the Client that is named on page 1 of this report.

Measurements and room counts used in this report come from the appraisers interior/exterior inspection of the subject property, previous appraisal files and/or builder floor plans. These numbers may differ slightly with those recorded with Clark County records due to differences in measuring techniques.

The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner or the title company.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Certifications

File No.: 15-1087

Property Address: 5069 Midnight Oil Drive	City: Las Vegas	State: NV	Zip Code: 89122
Client: Akerman, LLP	Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144		
Appraiser: Tammy L. Howard	Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117		

APPRAISER'S CERTIFICATION
I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:
The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.

- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Matthew Lubawy, MAI has completed the continuing education program of the Appraisal Institute.
- The appraisers' state registration/certification has not been revoked, suspended, canceled or restricted.

Disclosure of Prior Appraisal and/or Other Services:
I certify that, to the best of my knowledge and belief:
I have not performed a prior appraisal or other service regarding the subject property within the 3 year period immediately preceding acceptance of this appraisal assignment.

DEFINITION OF FAIR MARKET VALUE *:
"The price which a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell, taking into consideration all the uses to which the property is adapted and might in reason be applied."

Source: Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247 (1980)

Client Contact: Michele Pori	Client Name: Akerman, LLP
E-Mail: michele.pori@akerman.com	Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144

APPRAISER	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)
<i>Tammy L. Howard</i>	<i>Matthew J. Lubawy</i>
Appraiser Name: Tammy L. Howard	Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI
Company: Valbridge Property Advisors	Company: Valbridge Property Advisors
Phone: (702) 242-9369 Fax: (702) 242-6391	Phone: (702) 242-9369 Fax: (702) 242-6391
E-Mail: tthoward@valbridge.com	E-Mail: mlubawy@valbridge.com
Date Report Signed: October 6, 2015	Date Report Signed: October 6, 2015
License or Certification #: A.0000253-CG State: NV	License or Certification #: A.0000044-CG State: NV
Designation:	Designation: MAI
Expiration Date of License or Certification: 06/30/2017	Expiration Date of License or Certification: 04/30/2017
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None	Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input checked="" type="checkbox"/> None
Date of Inspection: October 3, 2015	Date of Inspection:



LUBAWY000015

JA_0212

Qualifications of Tammy L. Howard
Senior Appraiser
 Valbridge Property Advisors | Lubawy & Associates, Inc.

Independent Valuations for a Variable World

State Certifications

State of Nevada
 License #A.0000253-CG

Education

Attended University of
 Nevada, Las Vegas, 1988-89
 Graduated Plainwell High
 School, MI, 1980

Contact Details

702-242-9369 (p)
 702-242-6391 (f)

Valbridge Property Advisors |
 Lubawy & Associates
 3034 S. Durango Drive
 Suite 100
 Las Vegas, NV 89117

www.valbridge.com
torourke@valbridge.com

Related Courses/Seminars:

Real Estate Appraisal Principles
 Residential Valuation
 Uniform Standards of Professional Appraisal Practice
 Basic Valuation Procedures
 Residential Case Studies
 Case Studies in Law & Ethics
 Forensic Real Property Appraising
 FHA Appraisal Inspections from the Ground Up
 Litigation Appraisal & Expert Testimony
 Real Estate Law I and II
 Income Property Analysis
 Market Extraction
 Factory Built Housing
 Income Capitalization

Experiences:

Senior Appraiser:

Valbridge Property Advisors | Lubawy & Associates (2013-Present)

Senior Appraiser

Lubawy & Associates (June 2012-2013)

Senior Appraiser

Grubb & Ellis-Landauer Valuation (Oct 2010-May 2012)

Associate Appraiser

Integra Realty Resources | Shelli Lowe & Associates (1985-2010)

Appraisal/valuation and consulting assignments include: apartment buildings; retail buildings and shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools and houses of worship; residential subdivisions; and vacant industrial, commercial and residential land. Assignments have been concentrated in Nevada.

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That: TAMMY L. HOWARD

Certificate Number: A.0000253-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: June 30, 2015

Expire Date: June 30, 2017

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

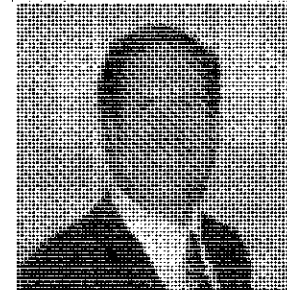
FOR: VAL BRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator



Qualifications of Matthew Lubawy, MAI, CVA, CMEA
 Senior Managing Director
 Valbridge Property Advisors | Lubawy & Associates, Inc.



Independent Valuations for a Variable World

State Certifications

Nevada License
 # A.0000044-CG

Arizona License
 #31821

Education

Bachelor of Science
 Business Administration
 University of Nevada, Las Vegas

Contact Details

702-242-9369 (p)
 702-242-6391 (f)

Valbridge Property Advisors |
 Lubawy & Associates, Inc.
 3034 S. Durango Dr. #100
 Las Vegas, NV 89117
www.valbridge.com
mlubawy@valbridge.com

Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653
 Director - (2008 - 2011)
 President of Las Vegas Chapter (1998 - 1999)
 1st V.P. of Las Vegas Chapter (1997 - 1998)
 2nd V.P. of Las Vegas Chapter (1996 - 1997)

Member: NACVA - CVA Designation (Certified Valuation
 Analyst for business valuation)

Member: NEBB Institute - CMEA Designation for Machinery
 and Equipment

Board Member: Valbridge Property Advisors -
 Vice-Chairman of the Board of Directors
 (2011 - Present)

Member: International Right of Way Association

Member: National Association of Realtors

Member: GLVAR

Board Member: Nevada State Development Corporation
 Chairman of the Board (2008 - Present)

Experience:

Senior Managing Director
 Valbridge Property Advisors | Lubawy & Associates (2013 to Present)

Principal
 Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant
 Timothy R. Morse and Associates (1992 - 1994)

Staff Appraiser/Assistant Vice President
 First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant
 The Clark Companies (1987 - 1988)

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That: MATTHEW J LUBAWY

Certificate Number: A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: March 31, 2015

Expire Date: April 30, 2017

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator



MATTHEW LUBAWY, MAI DEPOSITIONS/TRIAL TESTIMONY

DEPOSITIONS

NEVADA STATE DISTRICT COURT

- **State of Nevada vs. Friendly Lounge, Inc.,** (Case #05-A-508773)
Date: January 4, 2007
Attorneys: Michael Chapman (Chapman Law Firm) and Kirby Gruchow (Santoro, Driggs, Walch, Kearney, Johnson & Thompson)
Judge: Timothy Williams, District 16
Our File Nos: 05-156 & 06-303
- **Nevada Power vs. Don & Paul, LLC** (Case #06-A-518730)
Date: January 2007
Attorney: Michael Chapman (Chapman Law Firm)
Judge: Mark R. Denton, District 13
Our File No: 06-266
- **Nevada Power vs. DFA, LLC** (Case #06-A-518732)
Date: January 2007
Attorney: Michael Chapman (Chapman Law Firm)
Judge: Jennifer Togliatti, District 9
Our File No: 06-263
- **Nevada Power vs. North Brown Properties, Inc.** (Case #05-A-508237)
Date: February 2007
Attorneys: Michael Chapman (Chapman Law Firm) and Bill Coulthard (Harrison, Kemp, Jones and Coulthard)
Judge: Elizabeth Gonzalez, District 11
Our File Nos: 05-324 & 06-380
- **Nevada Power vs. Steven P. Shearing (et al)** (Case #05-A-509849)
Date: June 2007
Attorneys: Joshua Reisman (Ballard Spahr Andrews & Ingersoll LLP)
Judge: Michael Villani, Dept. 17
Our File No: 07-138

**MATTHEW LUBAWY, MAI
DEPOSITIONS (continued)**

- **Peach vs. Warmington Homes-Nevada (Case #03-A-466958)**
Date: January 31, 2008
Attorneys: Andrew C. Green - McKay Law Firm; William J. Taylor
Judge: Timothy C. Williams
Our File No: 06-1034
- **NDOT vs. BDR South Parcel Investments LLC (Case #06-A-527718)**
Date: April 22, 2008
Attorneys: Thomas Rondeau - Goold Patterson Ales & Day; Charles Titus -
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Judge: Mark R. Denton
Our File No: 07-181
- **Vons Company vs. Del Webb Communities (Case #05-A-501372)**
Date: June 5, 2008
Attorneys: Rogelio M. Ruiz - Garcia, Calderon & Ruiz; Sean Thueson - Holland
& Hart
Judge: Mark R. Denton
Our File No: 08-096
- **Nevada Power Company vs. Pardee Homes of Nevada (Case #07-A-549636)**
Date: September 5, 2008
Attorneys: P. Kyle Smith - Harrison, Kemp, Jones & Coulthard; Kirby
Gruchow - Leach Johnson Song & Gruchow
Judge: Michael Villani
Our File No: 07-105
- **Nevada Power Company vs. Michael B. Phillips (Case #07-A-0549641)**
Date: October 21, 2008
Attorneys: Charles M. Damus - Charles M. Damus & Associates; Kirby Gruchow
- Leach Johnson Song & Gruchow
Judge: Valorie J. Vega
Our File No: 08-021
- **Nevada Power Company vs. Lucky Blue II LLC & Norman Family LP (Case
#07-A-549646-C)**
Date: October 22, 2008
Attorneys: Mark Ferrario - Kummer Kaempfer Bonner Renshaw; Kirby Gruchow
- Leach Johnson Song & Gruchow
Judge: Jessie Walsh
Our File No: 08-023

**MATTHEW LUBAWY, MAI
DEPOSITIONS (continued)**

- **Nevada Power Company vs. Treasure Cove, LLC and Storybook Homes (Case #07-A-549645-C)**
Date: October 23, 2008
Attorneys: Kyle Smith - Harrison, Kemp, Jones & Coulthard; Kirby Gruchow - Leach Johnson Song & Gruchow
Judge: Valorie J. Vega
Our File No: 08-022
- **Nevada Power Company vs. Ernest A. and Kathleen C. Becker/Nevada State Bank (Case #07-A-550071-C)**
Date: March 19, 2009
Attorneys: John M. Netzorg - Law Offices of John M. Netzorg; Erich N. Storm, Chapman Law Firm
Judge: Valorie J. Vega
Our File No: 08-171
- **Albert D. Massi, et al vs. Clark County and City of Las Vegas (Case #A555582)**
Date: July 9, 2009
Attorneys: Philip Byrnes, City of Las Vegas Attorney's Office; Laura FitzSimmons, Sylvester & Polednak
Our File No: 09-048
- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC (Case #A575592)**
Date: May 25, 2010
Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
Our File No: 09-251
- **Nevada Power Company vs. Vegas Valley Investment, LLC, et al. (Case #A-09-592829-C)**
Date: August 17, 2010
Attorneys: Neil J. Beller - Law Office of Neil J. Beller, Ltd.
Our File No: 10-194
- **Branch Banking and Trust Company, et al., v. Joe D. Thomas, et al., (Case #A-12-670622-B)**
Date: August 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000

**MATTHEW LUBAWY, MAI
DEPOSITIONS (continued)**

U.S. DISTRICT COURT

- **George F. Tibsherany, Inc. vs. The Midby Companies, LLC** (Case #CV-S-05-0613-LDG-GWF)
Date: December 11, 2006
Attorneys: Nicholas M. Wieczorek (Morris, Polich, and Purdy, LLPO), William L. Coulthard (Harrison, Kemp & Jones), John Wendland (Weil & Drage, APC), Scott R. Cook (Gordon & Rees), Aviva Gordon (Ellis & Gordon)
Judge: Lloyd D. George
Our File No: 06-301
- **OMRLV Property LLC vs. Earl W. Courtney, et al** (Case #2:07-CV-01523-PMP-RJJ)
Date: August 12, 2009
Attorneys: David Stoft (McDonald Carano Wilson LLP), Jeffrey S. Rugg (Brownstein Hyatt Farber Schreck)
Our File No: 08-280

FEDERAL BANKRUPTCY COURT

- **Castaways Hotel/Casino, 2800 E. Fremont Street** (Bankruptcy Case #BK-S-0317939-LBR)
Attorney: Candace Carlyon, Gordon and Silver
Our File No: 04-240
- **Murano Apartments, LLC vs. Michael J. Mona, Jr., Rudolph Straat; and Maria Gudelis** (Case #BK-S-05-10067-BAM)
Date: December 5, 2005
Attorneys: Anthony Zmaila (Santoro, Driggs, Walch, Kearney, Johnson & Thompson and Shawn Mangano (Sylvester and Polednak)
- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
Date: April 13, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins)

- **Marion Manor, LLC (Case No, BK-S-11-28020-BAM)**
Date: February 24, 2012
Attorneys: Chris Kaup and Lars Evensen with Holland & Hart; David J. Winterton & Associates, Ltd.
- **Desert Inn Management Company, LTD, (Case No, BK-S-12-16719-LBR)**
Date: January 29, 2013
Attorneys: Eric T. Gjerdingen, Gordon Silver & Jeffrey Willis, Snell & Wilmer

TRIAL TESTIMONY

NEVADA STATE DISTRICT COURT

- **Clark County vs. Sepehri, (Case #04-A-488474-C)**
Date: June 1, 2006
Attorneys: Michael Mansfield and Brent Larsen
Judge: Valorie Vega
Our File No: 04-218
- **Becker vs Nevada Power (Case #07-A-550071-C)**
Date: November 9, 2007
Attorney: Michael Chapman
Judge: Valorie Vega
Our File Nos: Various
- **NDOT vs, BDR South Parcel Investments LLC (Case #06-A-527718)**
Date: February 4, 2009
Attorneys: Thomas Rondeau - Gould Patterson Ales & Day; Charles Titus - Santoro, Driggs, Walch, Kearney, Holley & Thompson
Judge: Mark R. Denton
Our File No: 07-181
- **Adaven Management, Inc. vs. Mountain Falls Acquisition Corporation (Case #CV21737 - Fifth Judicial District Court, Dept. 2 - Pahrump)**
Date: August 13, 2009
Attorneys: Paul Taggert - Taggert & Taggert, Ltd.; Jeremy J. Nork - Holland & Hart LLP
Judge: Robert W. Lane
Our File Nos: 09-144 & 09-145

**MATTHEW LUBAWY, MAI
TRIAL TESTIMONY (continued)**

- **Becker vs Nevada Power (Case #07-A-550071-C)**
Date: August 25, 2009
Attorney: Michael Chapman
Judge: Valorie Vega
Our File No: 08-171
- **Bank of Nevada vs. CSC Temple, LLC; Temple Development Corporation; and Aaron Temple (Case #A572394)**
Date: February 10, 2010
Attorneys: Gardner Jolley, David Malley - Jolley Urga Wirth Woodbury & Standish; Richard Scottie
Judge: Jessie Walsh
Our File No: 08-270
- **City National Bank vs. Vandoza Investments LLC and Charles Vanicek (Case #A-10-611624-B)**
Date: August 20, 2010
Attorneys: Justin L. Carley - Snell & Wilmer
Judge: Elizabeth Gonzalez
Our File No: 10-239
- **Bank of Nevada vs. Monterey Industrial, LLC; and Maria Guadalupe De Tostado, (Case #A-10-623435-C)**
Date: March 15, 2011
Attorney: Michael D. Mazur, ESQ
Judge: Jessie Walsh
- **Alliance Homes LLC (Bank of NV) vs. N. Las Vegas II, LLC; Frank T. Ferraro, Jr.; Christopher Paskvan; Tom Fehrman, (Case #A-10-610698-C)**
Date: April 15, 2011
Attorneys: H. Stanley Johnson, CJD Law Group LLC; James B. Ball, Poli and Ball, PLC
Judge: Nancy L. Allf

**MATTHEW LUBAWY, MAI
TRIAL TESTIMONY (continued)**

- **Bank of Nevada vs. Pebble Pines, LLC and Quiet Moon, LLC, (Case #A-11-637410-C)**
Date: June 3, 2011
Attorney: Stephanie Hardie Allen - Kaempfer Crowell Penschaw Gronauer & Florentino
Judge: Jerry A. Wiese
Our File No: 10-468
- **NV Energy v. Copperfield Investment & Development Co.**
(Case # A-09-604760-C) testified on behalf of Plaintiff
Date: October 27, 2011
Attorneys: Plaintiff attorney: Kirby Gruchow (Leach, Johnson, Song & Gruchow)
Defendant attorney: John M. Netzorg
Judge: Susan Johnson
- **Bank of Nevada v. Classic Productions, LLC**
(Case # A-10-626894-C) testified on behalf of Plaintiff
Date: August 27, 2012
Attorneys: Plaintiff attorney: Michael D. Mazur
Defendant attorney: Lucas M. Gjovig
Judge: Jerry A. Wiese
- **Taylor Emanuel v. Richard Jones, et al.**
(Case # A-10-611339-B) testified on behalf Defendant/Counter Claimant -
Bank of Las Vegas
Date: August 28, 2012
Attorneys: Defendant/Counter Claimant attorney: Nicole Lovelock
(Holland & Hart, LLP)
Plaintiff attorney: David J. Winterton
Judge: Elizabeth Gonzalez
- **November 2005 Land Investors, LLC, et al, v. Nevada Power Co.**
(Case # A-611150 - testified on behalf of Defendant - Nevada Power Company
Date: June 28 & July 1, 2013
Attorneys: Defendant; William E. Peterson & Janine C. Prupas, Snell & Wilmer
(Snell & Wilmer, LLP)
Plaintiff attorney: J. Randall Jones & Eric M. Pepperman (Kemp, Jones &
Coulthard, LLP) & Mark E. Farrario (Greenberg Traurig)

**MATTHEW LUBAWY, MAI
TRIAL TESTIMONY (continued)**

- **Branch Banking and Trust Company, et al., v. Joe D. Thomas, et al., (Case #A-12-670622-B)**
Date: September 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000

U.S. DISTRICT COURT

- **Kohlrautz vs. Oilmen Participation Corp. (Case #CV-S-00-0042-RLH-PAL)**
Date: December 18, 2007
Attorney: Kenneth Hogan
Judge: Roger L. Hunt
Our File No: 06-002 & 06-341
- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC (Case #A575592)**
Date: January 10, 2011
Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
Judge: Elizabeth Gonzales
Our File No: 09-251

FEDERAL BANKRUPTCY COURT

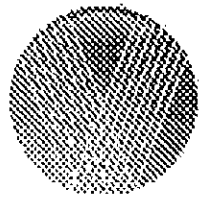
- **International Bank of Commerce vs. Boulder Crossroads, LLC (Bankruptcy Case #09-10381, Western District of Texas, Austin Division)**
Date: August 26-28, 2009
Attorney: Sabrina L. Streusand, Streusand & Landon, LLP; Barbara M. Barron and Stephen W. Sather of Barron & Newburger, P.C.; Diann M. Bartek, Cox Smith Matthews Inc.
Judge: Craig A. Gargotta
Our File No: 09-129

**MATTHEW LUBAWY, MAI
TRIAL TESTIMONY (continued)**

- **Motion for Relief from Stay**
(Bankruptcy Case #09-11113-LBR, Las Vegas, Nevada)
Date: March 16, 2010
Attorney: Michael H. Singer on behalf of Overland Financial; David A. Riggi on behalf of Toros Yeranossian
Judge: Linda Riegel
Our File No: 09-106
- **Celtic Bank vs. Braelynn Land, LLC (Bankruptcy Case)**
Date: August 31, 2010
Attorney: Karl Y. Olsen of Parsons Behle & Latimer
Judge: Linda Riegel
Our File No: 09-382
- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron (Bankruptcy Case #09-22463-mkn)**
Date: November 9, 2010
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron (Bankruptcy Case #09-22463-mkn)**
Date: January 13, 2011
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Whitton Corporation (Case #BK-S-10-32680-BAM)**
Date: June 3, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins); David Snyder and Brett Axelrod (Fox Rothschild)
Judge: Bruce A. Markell

**MATTHEW LUBAWY, MAI
TRIAL TESTIMONY (continued)**

- **Marion Manor, LLC (Bankruptcy Case No. BK-S-11-28020-BAM)**
Date: February 28-29, 2011 and March 9, 2011
Attorneys: Tenille Pereira, (David J. Winterton & Associates, Ltd.) Debtor's
Attorneys; Lars K. Evensen, (Holland & Hart, LLP) Creditor's Attorney
Judge: Bruce A. Markell
Our File No: 11-272



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Expert Witness Testimony	\$400/hr.
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EXHIBIT O

EXHIBIT O

2014 Community Association Fact Book



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The Foundation for Community Association Research (FCAR) was founded in 1975. FCAR is a 501(c)(3) organization that supports and conducts research and makes that information available to those involved in association development, governance and management.

FCAR provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions. Your support is essential to our research.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

—From *A Declaration of Principles*, jointly adopted by a Committee of the American Bar Association and a Committee of Publishers

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1. Acknowledgement

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The information in the *Community Association Fact Book* was developed with significant assistance from Clifford J. Treese, CIRMS. A member of CAI almost since its inception, Treese is a past president of both CAI and the Foundation for Community Association Research (FCAR). We express our gratitude for his invaluable contributions. He can be reached at clifford.treese@gmail.com.

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2.2 Sources

American Community Survey (ACS)
Census – Statistical Brief 1994
CAI: Common Ground magazine
CAI Government & Public Affairs (G&PA)
CAI Press
California Department of Real Estate
California Law Revision Commission
Colorado Department of Regulatory Agencies
Connecticut Judicial Branch Law Libraries
Department of Agriculture – Rural Development
Department of Veterans Affairs (VA)
Federal Emergency Management Agency (FEMA)
Federal Home Loan Mortgage Corporation (Freddie
Mac)
Federal Housing Administration (FHA)

Federal National Mortgage Association (Fannie
Mae)
Florida Department of Business & Professional
Regulation
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Mobile Homes
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Hawaii Real Estate Branch
Maryland Montgomery County Office of Common
Ownership Communities
National Association of Homebuilders (NAHB)
National Association of Realtors (NAR)
Nevada Real Estate Division
Urban Land Institute
Virginia Common Interest Community Board

2.3 Notes on Community Association Data: The *Fact Book* is based on information from six sources grouped in two categories:

- Public Data: (1) Census data, (2) State data, (3) Related housing industries data such as that from the National Association of Realtors (NAR) and the National Association of Homebuilders (NAHB),
- FCAR and CAI Data: (4) FCAR data accumulated over time, (5) CAI data, also, accumulated over time, and (6) Data provided by CAI members.

The public data is largely from the Census and the American Community Survey (ACS). This data has a lag time to publication, i.e., certain of the ACS 2014 data may not be available until late in 2015. Some public association data is available from individual states. This state data, also, may have a lag time from collection to publication. Usually, both the few states with association data and the ACS data lack specificity in critically identifying the three basic types of associations: condominiums, cooperatives and planned communities. Similarly, the public data may count certain association units, but not the entities (the associations) themselves. From a timing viewpoint, FCAR, CAI data and CAI member data are more readily available. Because of the timing issue, the *Fact Book* data generally will be one year ahead of public data.

3. Getting Started with the FCAR 2014 Fact Book

3.1 CAI and the Growth of Community Associations

It's been said that the growth of community associations (condominiums, planned communities and cooperatives) offers the greatest single extension of homeownership opportunities since the housing reforms of the New Deal and the provision of GI Bill benefits just after World War II. The Community Associations Institute estimates that in 1970 there were 10,000 community associations nationwide. In 2014, there are 333,600 associations housing more than 66 million Americans. See the Statistical Review 2014. From its inception, CAI has grown along with association housing, along with the homeowners and along with association professionals – to foster better communities based on fostering harmony, transparency and sustainability.

The Community Associations Institute (CAI) is a national nonprofit 501(c)(6) organization founded in 1973 to foster competent, responsive community associations through research, training and education.

The Foundation for Community Association Research (FCAR) is a national, nonprofit 501(c)(3) organization devoted to common interest community research, development, and scholarship. Incorporated in 1975, the Foundation supports and conducts research in the community association industry.

3.2 Community Association 2014 Fact Book – Key Features

The *Fact Book* is published by FCAR and it documents, in general, the history, current status, trends and future issues of U.S. community association housing. The *Fact Book*, also, provides community association information on a state-by-state basis in "State Summaries." The *Fact Book* and any one of the *State Summaries* will facilitate, demonstrate and provide an understanding of four points:

- (1) **Evidence-Based Decisions:** Facilitate the creation, publication and analysis of credible data such that evidence-based decisions on various community association issues, regulations and laws can be made.
- (2) **Contributions to the Economy and Society:** Demonstrate the role of community associations as part of the evolving *transformation of land development practices* and in maintaining housing as shelter, as a neighborhood benefit and as an investment.
- (3) **Core Services:** Provide an understanding that there are three core services delivered by associations to residents (owners and renters)
 - Governance Services,
 - Community Services and
 - Business Services– and that these three core services are complimentary to a broad range of both local and national housing services, housing goals and of related public policy considerations.
- (4) **Associations as a Housing Market:** Demonstrate that all three types of community associations in and of themselves, are an important housing market that needs to be understood and analyzed in a comprehensive manner.

3.3 Statistical Review 2014: The *Statistical Review 2014* is part of the *Fact Book*, but it is provided as a separate document available by a hyperlink. Like its predecessor, the *Statistical Review 2013* (also found by hyperlink), *Review 2014* provides national facts concerning community associations.

3.4 State Summaries: While the *Fact Book* and the *Statistical Review 2014* deal with community associations from a broad national perspective, there are 51 *State Summaries* (including the District of Columbia) that bring the national data to the state level. The format of the *State Summaries* generally follows the *Fact Book*, but without the emphasis on history, definitions and comparative matters.

4. Community Association National Trends and Issues

In *Democracy in America*, Alexis de Tocqueville reflected in differing ways on the constant activity that characterized American society in the 1830s as it strived for continuous improvement at all levels of society and government. Little has changed since that time. He would be right at home at a community association board meeting, at a CAI Chapter program or at a national CAI Conference or Law Seminar. The best way to keep up with association trends and issues (and the need for continuous improvement) at either or both the national or local level is through the links that follow.

4.1 At the National Level

CAI Issues and Advocacy

- From federal affairs, to state issues, to amicus briefs and more – this is constantly updated. Topics include regulatory issues with FHA and FEMA, new mortgage rules and CAI's Public Policies.

CAI Common Ground Magazine Key Issues

- From aging in place, to fostering participation, to manager licensing and more – key themes from the *Common Ground* articles. A subscription to Common Ground is part of CAI Membership, but separate subscriptions are available.

Chronological History of the Federal Involvement in Community Associations

- From the early Twentieth Century through today, you can track over 40 major federal initiatives and related issues and activities that have impacted community associations.

4.2 At the Local Level

CAI Local Chapters

- This will help you find and contact any of CAI's 60 U.S. Chapters and CAI's South African Chapter.

CAI Grass Roots Advocacy Center

- CAI's Government & Public Affairs provides political information and intelligence for the association industry.

4.3 At all Levels for All Interests

CAI Press: CAI Press, the publishing division of CAI, is dedicated to publishing the very best resources for community associations. We offer the largest collection of over 100 books on association governance, management and operations. Browse by category, view our most popular products and discover what's new. Check back frequently to see our Featured Products and to take advantage of our money-saving promotions.

Webinars: CAI webinars offer specialized, professional training without leaving your home or office. Conducted via internet and audio teleconference, the programs are hosted by industry experts to keep you up to date on the latest legislative activity, management trends, industry best practices and subjects of special interest to community managers and homeowners. More than 150 on-demand webinars are now available, and new live webinars are added every month. Continuing education credit for management credentials is available.

Snap Surveys: The Foundation for Community Association Research periodically conducts targeted surveys of key industry groups to produce interesting, intriguing, or newsworthy research.

If you are just interested in finding out more about community associations, this *Fact Book* and a *State Summary* is the place to start. If you live in an association or work in the association industry, this *Fact Book* will help keep you and your association current on the latest facts, trends and issues.

5. Getting Started with Community Associations

5.1 Community Association Basics: Community associations (condominiums, planned communities and cooperatives) are housing management organizations that deliver three core services to their residents (owners and tenants):

- ▶ **Governance Services:** Services designed to secure cooperation and compliance of residents based on fair and efficient adherence to association governing documents, local, state and federal laws;
- ▶ **Community Services:** Services designed to produce a harmonious living environment as well as a cooperative framework for working within the local governmental system; and,
- ▶ **Business Services:** Services designed to maintain and replace the common assets of the association based on sustainable and prudent practices that not only protect the value of the homes, but that are consistent with a broad range of local and national housing goals.

In delivering these three core services, a successful community association provides its residents with:

- Organized and productive business operations to control costs
- Transparent governance principles and practices
- Clear and timely communications
- Fair and effective rules notification and enforcement procedures
- Creative programs designed to foster a sense of community and enhance residents' enjoyment of their homes
- Efficient use of land and resources based on prudent budgeting and accumulation of reserves.

5.2 Community Association Contributions to the Economy: In the aggregate, community association housing was valued at just over \$4.9 trillion dollars at 2014 Q4 [Estimate based on the Federal Reserve Z.1 Financial Accounts]. Further, the notion of Housing Services plays an important role in this country's Gross Domestic Product (GDP). According to a National Association of Home Builders (NAHB) Report: "Historically, residential investment has averaged roughly 5% of GDP while housing services have averaged between 12% and 13%, for a combined 17% to 18% of GDP. These shares tend to vary over the business cycle."

Community association housing is an important and growing component of both residential investment and "Housing Services." Using NAHB estimates, community associations contribute about 4.0% to 4.3% to GDP. Community associations are not only a place to live, but they are a place to work and for the creation of jobs.

By fairly and effectively delivering the three core services, community associations protect and enhance value:

- Value of the individual homes (and the lenders' interests in those homes),
- Value derived from accepting shared responsibilities, performing mutual obligations that impact the larger community, and the
- Value inherent in governance, collective participation, and collaborative decision making at a very essential level – the level of the home.

5.3 Community Association General Terms

- Community Association (CA): Used by the Community Associations Institute (CAI) and the Division of Florida Condominiums, Timeshares and Mobile Homes
- Common Interest Community (CIC): Used by the Uniform Law Commission, promulgator of the uniform real property acts: Uniform Condominium Act (UCA), Uniform Planned Community Act (UPA), Uniform Common Interest Ownership Act (UCIOA) and the Uniform Manufactured Housing Act (UMHA).
- Common Interest Realty Association (CIRA): Used only by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB), see the AICPA CIRA Wiki
- Common Interest Development (CID): Used by the California Bureau of Real Estate and in the Davis-Stirling Act which has been substantially recodified in California Civil Code Division 4 Part 5 on January 1, 2014. Also, on that date a new statute was created for Commercial and Industrial Common Interest Developments, Division 4 Part 5.3.

5.4 Three Basic Types: Condominium, Planned Community & Cooperative

The *Fact Book* provides three ways to understand the three basic types of community associations. A fundamental point of all three ways is the reminder that you cannot tell which of three basic types of community associations you are looking at by their architectural style. For instance, a detached single family home could be in a regular subdivision without an association or it could be in a condominium association, in a cooperative association or in a planned community. The governing documents are critical to determining the type of association.

First Way: Different parts of the country have more of one of the three types than the other two. For instance, New York state (and, in particular, New York City) has many more cooperatives than other states. Many states in the southeast and southwest have many more planned communities than other regions.

All three types of associations are characterized by being predominately designed for residential use with possibly some nominal percentage devoted to non-residential use, typically commercial.

- Planned Communities: Around 51% to 55%
- Condominiums: Around 42% to 45%
- Cooperatives: Around 3% to 4%

In a planned community, each member (owner) owns a dwelling unit/home on a lot. A separate nonprofit corporation holds title to the common areas which are subject to recorded Covenants, Conditions & Restrictions (CC&Rs). The planned community is governed by a board of directors elected by the owners. The owner's deed requires membership in the corporation. There may or may not be a state enabling statute. Planned communities are referred to by a number of different names that reflect diverse architectural styles and regional nomenclature variations, such as Homeowner Association (HOA), Property Owner Association (POA), Townhome Association and Planned Unit Development (PUD). The recorded CC&Rs are determinative and not the architectural style.

In a condominium, each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" in the common elements. Unlike in a planned community or in a cooperative, the entity (the condominium association itself) does not own the common elements. These common elements generally include the structural components, the exterior of the building or buildings, the grounds, the amenities, and all portions of the property other than the units (as defined). The condominium is governed by a board of directors elected by the owners. The condominium is subject to a recorded Declaration of Condominium (Declaration). There is always a state enabling condominium statute.

In a cooperative, a corporation holds title to the entire project, both units and common elements. A proprietary lease or membership document gives each member of a cooperative exclusive use of a unit for a specified period of time. The cooperative is governed by a board of directors elected by the owners. There may or may not be a state enabling statute.

Most associations are nonprofit corporations under state corporation laws, but they are not nonprofit (tax exempt) under federal income tax laws. Condominium and cooperatives can never be tax-exempt.

All three types of associations have three essential characteristics:

- **Automatic Membership:** All owners automatically become members of the association when taking ownership of the unit and that membership ceases only when the unit is sold.
- **Mutually Binding Obligations:** Governing documents bind all owners to the community association and require mutual obligations by owners, the board of directors and the association itself.
- **Mandatory Assessments:** All owners pay mandatory lien-based assessments to fund the operation of the association and maintain the common elements. Cooperatives are different in their enforcement of collections.

Second Way: This diagram of a Hypothetical Community Association is the second way. It may be useful to review the chart below both before and after reviewing the commentary on each type of association provided in the Third Way, Appendix One.

Common Area/Common Elements						
Common Area/ Common Elements	Lot/Unit 1	Lot/Unit 2	Lot/Unit 3	Lot/Unit 4	Lot/Unit 5	Common Area/ Common Elements
	Lot/Unit 6	Lot/Unit 7	Lot/Unit 8	Lot Unit 9	Lot/Unit 10	
Common Area/Common Elements						

	Units/Lots 1-10	Common Area/Common Elements Lot		
	Unit Owner Title	Assn Title	Unit Owner Title	Assn Title
Condominium	X	.....	X*	.....
Cooperative	.....	X	.....	X
Planned Community	X	.....	.....	X

X* --- The unit owners in a condominium have an undivided interest in the common elements as tenants in common. This is a critical definition for a condominium: An association is not a condominium if there are no common elements. Unlike in a planned community or in a housing cooperative, the condominium association does not own the common elements (or common area), hence the early condominium property acts sometimes referred to the board of directors as the "board of managers" – who "managed" the common elements.

Third Way: See Appendix One: Basic Types of Associations By Selected Characteristics

5.5 Varieties on the Community Association Theme: The entities below appear with some regularity in discussions of community associations, but a number of them do not all fall within the more generally accepted definition of a primarily residential community association.

• **Cohousing:** Cohousing association living can be organized in one of the three basics types of community association, but it is usually more definably based on personal commitments, some degree of communal living and/or communal participation as well as the recorded governing documents.

• **Communities for 55 and Older:** Quoting from the HUD Factsheet - "The Housing for Older Persons Act (HOPA), signed into law by President Clinton on December 28, 1995, amended the housing for older persons exemption against familial status discrimination. The HOPA modified the statutory definition of housing for older persons as housing intended and operated for occupancy by at least one person 55 years of age or older per unit. It eliminated the requirement that housing for older persons have significant services and facilities specifically designed for its elderly residents. It required that facilities or communities claiming the exemption establish age verification procedures. It established a good faith reliance defense or exemption against monetary damages for persons who illegally act in good faith to exclude children based on a legitimate belief that the housing facility or community was entitled to the exemption."

While HOPA has been in place for some time, it has been subject to continuous discussion. 55+ Communities can be organized as rentals as well as community associations. Many states and local governments have similar statutes and regulations dealing with 55+ housing as well as other issues related to aging.

Residential community associations are subject to the various state and Federal Fair Housing Laws and Executive Orders. Generally, residential community associations are not subject to the Americans with Disabilities Act unless they have amenities and commercial space open for public use.

●**Gated Communities:** This type of community association, if carefully defined, has three characteristics: (i) restricted access usually by being fully enclosed by a fence, wall or separator of some sort, (ii) controlled entrance by a fully staffed front gate and (iii) full time 24x7 security for the common area. Without such a definition, all housing (rental or ownership) in the U.S. is "gated" or "locked down" by some measure. Many associations have restricted access because the building permits issued for construction only allow for one two curb cut for access to a thoroughfare. Using the definition above, there are perhaps 3,000 to 5,000 gated communities in the U.S. They are expensive to maintain.

●**Lake Communities:** In the EPA's most recent Assessment of Lakes, Ponds and Reservoirs, there were 41,666,049 acres of water in these entities. Of that amount, 17,904,199 acres were "assessed" for quality issues and of that amount 7.1 million acres had recreational use with a "good" attainment status rating. Generally, the body of water needs to be 10 acres or more to be assessed. This would put the number of "lake communities" with possible residential housing at between 710,000 and 1.8 million. A conservative sub-set of these "lake communities," probably 200,000 to 250,000, contain some combination of part-time and full-time housing depending on public infrastructure and the ability to obtain property insurance. These communities may have by-laws and operating Rules & Restrictions. Typically, they do not qualify as community associations by general standards; but they might be considered border-line communities.

●**Limited-Purpose Association (LPA):** This type of association is used and described by statute only in Nevada, see NAC 116.095

●**Live/Work Association:** There is no set definition for this type of community association except that a person lives where the person works. Therefore, the association combines both residential and commercial uses. FHA in Mortgagee Letter 2012-18 requires that the non-residential part must be less than 25% of the floor area and the non-residential part must be subordinate to the unit's residential use and character.

●**Master Planned Community (MPC):** This is a planned community of some size that may be comprised of either sub-associations or cost-centers. The sub-associations may be any of the three basic types of associations. Cost centers are used to allocate revenue and expense liabilities more equitably. Since a MPC is basically a planned community, there usually is no enabling statute for the MPC although if a condominium is a sub-association, the condominium would have to be enabled by statute. MPCs, typically, exceed 1,000 lots or units and can range up to 50,000 lots or units. Other similar terms are Large Scale Association (LSA) and Large Scale Master Association (LSMA), and Large Scale Master Planned Community (LSMPC).

●**Manufactured Housing Communities/Parks (MHC):** This refers to the type of construction which is regulated, as of 1976, by the HUD Office of Manufactured Housing and state agencies. See this list of State Manufactured Housing Agencies. The Manufactured Housing Institute maintains a Summary of Manufactured Housing State Laws & Cases.

Manufactured housing typically is found in rental communities and they were (and still are to some extent) referred to incorrectly as "mobile home parks." MHC associations can be found in a cooperative or condominium association. According to the American Housing Survey 2013, there are 8,600,000 manufactured housing units. Of that total, 154,000 manufactured homes are in a community association – cooperative (103,000 units) and condominium (51,000 units) association.

There are 18 states with manufactured housing laws that deal with some aspect of the conversion of a rental manufactured housing community/park to a cooperative or condominium. Those 18 states and links to those laws are found in the given individual *State Summary* at #5.4 "Community Association and Related Statutes."

●**Mixed Use Association:** This type of community association can be found in any of the three basic types and combines residential and commercial uses. The percentage of commercial use varies, but typically is less than 20% of the square footage (to be more readily acceptable for residential mortgage lending). The commercial uses may or may not be in an association. There usually is no enabling statute unless a condominium is involved.

●**Private Road Maintenance Agreements:** Individual properties or groups of properties may be bound by recorded covenants and/or state statutes to maintain streets and roads that might otherwise be maintained by local government. These can be borderline associations. Nevertheless, the Fannie Mae Seller Guide [B4-1.3-04, April 15, 2014] requires that if the street is community or privately owned that there must be an adequate, legally enforceable covenant or agreement for maintenance.

●**Business Park Association (BPA):** Common practice does not include business parks within the three basic types of community associations. There is usually no enabling statute unless a condominium is involved. The BPA is created by conventional real estate transactions. See also Business Improvement District below. See NAIOP

●**Business Improvement District (BID):** Outwardly, BIDs resemble commercial community associations. They are created by legislation, but they may or may not be supported by recorded covenants. BIDs are usually public/private partnerships arranged around additional tax assessments to fund operations. Common practice does not include a BID in the definition of a community association. See The Business Improvement District Model

●**Reciprocal Easement Agreement (REA):** A REA has a recorded declaration that provides for cost sharing, maintenance and similar duties among entities in a common development. Sometimes, the REA gives one of the entities in the development responsibility of the management of certain common areas used by all the entities. REAs are sometimes used in residential, commercial and mixed use associations. The REA itself is just an agreement and not an association.

●**Special Tax District (STD):** Special tax districts (also called Special Purpose Districts) are not community associations. STDs have been popular in California, Florida, Colorado and other states by developers of associations to fund public improvements. If the STD is part of the development of a community association, then much or all of the association's common area and amenities may be placed in the STD whose construction is then paid for by bond financing. The bonds, in turn, are repaid by separate assessments levied against the members of the association. In this instance, the STD is an overlay of the community association so that homeowners pay two assessments, one to the association and one to the STD (to repay the bond financing and to pay for operations of the STD). The latter assessment usually is tax deductible. If the development process falters or the association falters, the bond holders may step in to cure a default. Other similar terms are Community Facility District (CFD) and Special Purpose District (SPD). There are over 37,000 such Districts of all types in the U.S, but not all are connected in some manner with a community association. See Census 2012 of All State Governments

Also, see Chronological History of Federal Involvement in Community Associations

●**Timeshare Association (TS):** Common practice does not include timeshare associations (of any kind) within the three basic types of community associations even though the TS may be organized as a condominium. Timeshare terminology defines the concept in various ways. There is some type of TS legislation in every state. See American Resort Development Association (ARDA)

5.6 Varieties of Community Association Uses

The *Fact Book* is mainly focused on residential community associations although some commercial use may be present. Nevertheless, residential associations can be developed around special themes and uses. Similarly, there are associations, apart from residential ones, that serve a variety of ownership interests and use and, as mentioned, there are associations comprised solely of manufactured homes and of those aged 55+.

- Star Gazing Planned Community
- Winery Planned Community
- Equestrian Planned Community
- Docks & Dockominium (Condominium)
- Rackominium (for boats)
- Site and Land Condominium
- Airport and Airport Garage Condominium
- Garage Condominium
- Cruise Ship Condominium
- Silent Cooperative (for the Deaf)
- Three Dimensional Airspace Subdivisions
- Wheat Growers Condominium Storage
- Retail Condominium
- Industrial Condominium
- Office Condominium
- Medical Office Condominium
- Condotel (hotels with a condominium component)
- Nudist Resort Condominium

5.7 U.S. Condominium Unit Owners 55+

Like the rest of the U.S. population, owners in community associations are getting older. Some association owners are aging-place while others in age-restricted communities described in #5.5 above. The data next is specific to condominium unit owners that are 55+:

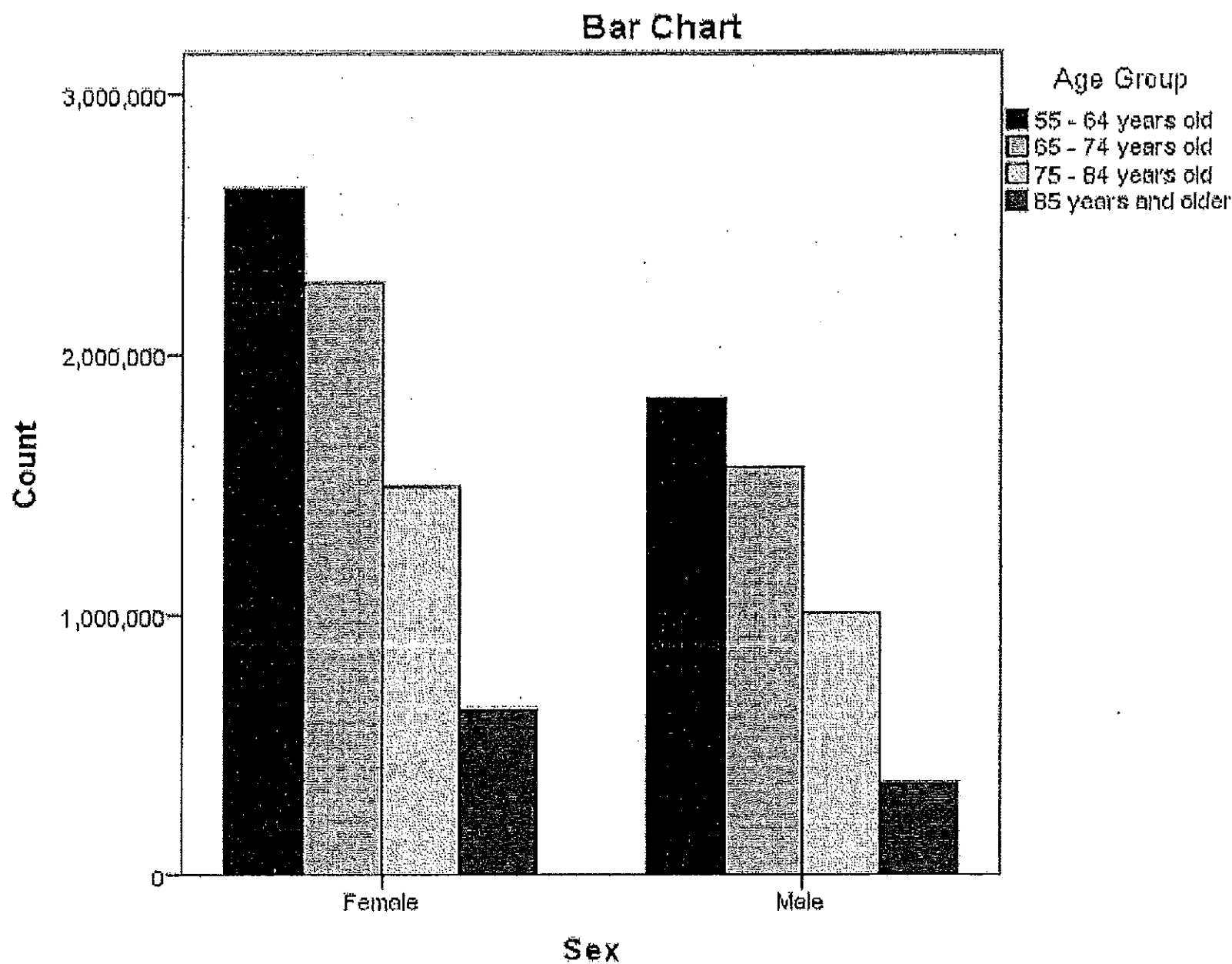
Table 1: *Persons Age 55 and Over Living in a Condominium by Age Group and Sex*

			Age Group				Total
			55 - 64 years old	65 - 74 years old	75 - 84 years old	85 years and older	
Sex	Female	Count	2,637,364	2,274,578	1,496,225	640,071	7,048,238
		% within Sex	37.4%	32.3%	21.2%	9.1%	100.0%
	Male	Count	1,832,541	1,570,225	1,009,276	353,770	4,765,812
		% within Sex	38.5%	32.9%	21.2%	7.4%	100.0%
Total	Count		4,469,905	3,844,803	2,505,501	993,841	11,814,050
	% within Sex		37.8%	32.5%	21.2%	8.4%	100.0%

Data above and chart below from American Community Survey (ACS) 2011 - 2013, and Integrated Public Use Microdata Series (IPUMS-USA). Created courtesy of Lynn Boergerhoff, MPH, [Community Association Atlas](#).

See also the [Age of Housing by State](#) and [Housing Vacancies and Homeownership \(CPS/HVS\)](#).

Figure 1
Persons Age 55 and Over Living in a Condominium by Age Group and Sex



In addition to the data above, the U.S. Condominium Unit Owner 55+ data contains information of the following categories:

- Table 2: *Race of Persons Age 55 and Over Living in a Condominium*
- Table 3: *Hispanic, Latino, or Spanish Origin of Persons Age 55 and Over Living in a Condominium*
- Table 4: *Mortgage Status of Households of Persons Age 55 and Over Living in a Condominium by Sex of Householder*
- Table 5: *Selected Monthly Owner Cost (SMOC) Burden by Mortgage Status of Households with Persons Age 55 and Over Living in a Condominium*
- Table 6: *Decade Housing Built of Persons Age 55 and Over Living in a Condominium*
- Table 7: *Household Size of Persons Age 55 and Over Living in a Condominium by Sex*
- Table 8: *Sex of Persons Age 55 and Over Living Alone in a Condominium*
- Table 9: *Physical, Mental, or Sensory Difficulty of Persons Age 55 and Over Living in a Condominium*

See Part Four of the Fact Book 2014 for condominium unit owners 55+ data in each state and the District of Columbia.

Case No. 71325

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,
Appellant,

vs.

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE
BANK, N.A., a national association,
Respondent.

Electronically Filed
Jan 25 2017 02:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Judge
District Court Case No. District Court Case No. A-13-679329-C

JOINT APPENDIX VOLUME 1

Respectfully submitted by:

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SFR Investments Pool 1, LLC*

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	4	6/14/13	Affidavit of Service to Ana Torres	JA_0025
1	2	4/22/13	Affidavit of Service to First Horizon Home Loans	JA_0013
1	5	7/16/13	Application or Entry of Default Against Ana Torres	JA_0027
4	16	9/16/16	Case Appeal Statement	JA_0801
1	1	4/2/13	Complaint	JA_0001
1	6	4/30/14	Default Against Ana Torres	JA_0032
1	3	5/13/13	First Horizon Home Loans Answer to Complaint	JA_0015
1&2	7	3/2/16	First Horizon Home Loans Motion for Summary Judgment	JA_0037
3	11	3/21/16	First Horizon Home Loans Opposition to SFR's Motion for Summary Judgment	JA_0569
4	15	9/16/16	Notice of Appeal	JA_0797
4	14	8/19/16	Notice of Entry of Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0786
3	9	3/3/16	Notice on Hearing on SFR's Motion for Summary Judgment	JA_0543
4	13	8/17/16	Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0779
2&3	8	3/2/16	SFR's Motion for Summary Judgment	JA_0361

3	10	3/21/16	SFR's Opposition to First Horizon Home Loans Motion for Summary Judgment	JA_0546
3&4	12	3/29/16	SFR's Reply in Support of Motion for Summary Judgment	JA_0699
4	17	6/21/16	Transcript of Proceedings Motion for Summary Judgment	JA_0807
4	18	9/13/16	Transcript of Proceedings Status Check	JA_0873

CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	4/2/13	Complaint	JA_0001
1	2	4/22/13	Affidavit of Service to First Horizon Home Loans	JA_0013
1	3	5/13/13	First Horizon Home Loans Answer to Complaint	JA_0015
1	4	6/14/13	Affidavit of Service to Ana Torres	JA_0025
1	5	7/16/13	Application or Entry of Default Against Ana Torres	JA_0027
1	6	4/30/14	Default Against Ana Torres	JA_0032
1&2	7	3/2/16	First Horizon Home Loans Motion for Summary Judgment	JA_0037
2&3	8	3/2/16	SFR's Motion for Summary Judgment	JA_0361
3	9	3/3/16	Notice on Hearing on SFR's Motion for Summary Judgment	JA_0543
3	10	3/21/16	SFR's Opposition to First Horizon Home Loans Motion for Summary Judgment	JA_0546
3	11	3/21/16	First Horizon Home Loans Opposition to SFR's Motion for Summary Judgment	JA_0569
3&4	12	3/29/16	SFR's Reply in Support of Motion for Summary Judgment	JA_0699
4	13	8/17/16	Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0779

4	14	8/19/16	Notice of Entry of Order Granting First Horizon Home Loans Motion for Summary Judgment and Denying SFR's Motion for Summary Judgment	JA_0786
4	15	9/16/16	Notice of Appeal	JA_0797
4	16	9/16/16	Case Appeal Statement	JA_0801
4	17	6/21/16	Transcript of Proceedings Motion for Summary Judgment	JA_0807
4	18	9/13/16	Transcript of Proceedings Status Check	JA_0873

TAB 1

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): SFR INVESTMENTS
POOL1, LLC

Attorney (name/address/phone):
Howard C. Kim, Esq., Diana S. Cline, Esq., and Victoria L.
Hightower; Howard Kim and Associates, 400 North
Stephanie St., Suite 160, Henderson, Nevada 89014; (702)
485-3300

Defendant(s) (name/address/phone):

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST
TENNESSEE BANK, A NATIONAL ASSOCIATION; ANA
TORRES, an individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<p style="text-align: center;">Negligence</p> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

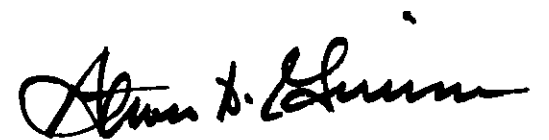
- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

03/26/2013

/s/ Diana S. Cline

Date

Signature of initiating party or representative



CLERK OF THE COURT

1 **COMP**
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Attorneys for Plaintiff

9
 10 **DISTRICT COURT**
 11 **CLARK COUNTY, NEVADA**

12 SFR INVESTMENTS POOL 1, LLC a Nevada
 limited liability company,

13 Plaintiff,

14 FIRST HORIZON HOME LOANS, A
 15 DIVISION OF FIRST TENNESSEE BANK, A
 16 NATIONAL ASSOCIATION; ANA TORRES,
 an individual; DOES I through X; and ROE
 17 CORPORATIONS I through X, inclusive,

18 Defendants.

Case No. A - 1 3 - 6 7 9 3 2 9 - C

Dept. No. XXVI

COMPLAINT

Arbitration Exemptions:

1. Action for Declaratory Relief
2. Action Concerning Real Property

19
 20 Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR”), by and through its attorneys of
 21 records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and
 22 requests injunctive relief against the above named defendants as follows:

23 ///

24 ///

25 ///

26 ///

27 ///

28

HOWARD KIM & ASSOCIATES
 400 N. STEPHANIE ST, SUITE 160
 HENDERSON, NEVADA 89014
 (702) 485-3300 FAX (702) 485-3301

1 **I. PARTIES**

2 1. Plaintiff is a Nevada limited liability company with its principal place of business in
3 Clark County, Nevada and the current title owner of the property commonly known as **5069**
4 **Midnight Oil Drive, Las Vegas, NV 89122; Parcel No. 161-26-111-017** (the “Property”).

5 2. Upon information and belief, Defendant FIRST HORIZON HOME LOANS, A
6 DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION, (“First
7 Horizon”), is a foreign entity that may claim an interest in the Property via a 2013 Trustee’s
8 sale.

9 3. Upon information and belief, Defendant Ana Torres is an individual residing in Nevada
10 and the former title owner of the Property.

11 4. Upon information and belief, each of the defendants sued herein as DOES I through X,
12 inclusive claim an interest in the Property or are responsible in some manner for the events and
13 action that plaintiff seeks to enjoin; that when the true names capacities of such defendants
14 become known, plaintiff will ask leave of this Court to amend this complaint to insert the true
15 names, identities and capacities together with proper charges and allegations.

16 5. Upon information and belief, each of the defendants sued herein as ROES
17 CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in
18 some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true
19 names capacities of such defendants become known, plaintiff will ask leave of this Court to
20 amend this complaint to insert the true names, identities and capacities together with proper
21 charges and allegations.

22 **II. GENERAL ALLEGATIONS**

23 ***Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien***

24 6. Plaintiff acquired the Property on March 6, 2013, by successfully bidding on the Property
25 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“HOA
26 foreclosure sale”). Since the HOA foreclosure sale, Plaintiff has expended additional funds and
27 resources in relation to the Property.

28 7. On or about March 18, 2013, the resulting foreclosure deed was recorded in the Official

1 Records of the Clark County Recorder as Instrument Number 201303180003508 (“HOA
2 Foreclosure Deed”).

3 8. The foreclosure sale was conducted by Alessi & Koenig, LLC, agent for Squire Village
4 at Silver Springs Community Association (“Squire Village HOA”), pursuant to the powers
5 conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the
6 Squire Village HOA governing documents (CC&R’s) and a Notice of Delinquent Assessment
7 Lien, recorded on February 22, 2012 in the Official Records of the Clark County Recorder as
8 Instrument Number 201202220001525 (“HOA Lien”).

9 9. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all
10 requirements of law, including but not limited to, recording and mailing of copies of Notice of
11 Delinquent Assessment and Notice of Default, and the recording, posting and publication of the
12 Notice of Sale.

13 10. Plaintiff was not the only bidder to attend the HOA foreclosure sale.

14 11. Plaintiff’s winning bid was in excess of the amount included in the HOA’s notice of
15 foreclosure sale as due and owing on the HOA Lien.

16 12. Pursuant to NRS 116.3116(2), the entire HOA Lien

17 is prior to all other liens and encumbrances of unit except:

18 (a) Liens and encumbrances recorded before the recordation of the declaration
19 and, in a cooperative, liens and encumbrances which the association creates,
assumes or takes subject to;

20 (b) A first security interest on the unit recorded before the date on which the
assessment sought to be enforced became delinquent or, in a cooperative, the first
21 security interest encumbering only the unit’s owner’s interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

22 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

23 13. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even
24 a first security interest in the Property:

25 [the HOA Lien] is also prior to all security interests described in paragraph (b) to
26 the extent of any charges incurred by the association on a unit pursuant to NRS
116.310312 and to the extent of the assessments for common expenses based on
27 the periodic budget adopted by the association pursuant to NRS 116.3115 which
would have become due in the absence of acceleration during the 9 months
28 immediately preceding institution of an action to enforce the lien[.]

1 14. Upon information and belief, the HOA took the necessary action to trigger the super-
2 priority portion of the HOA Lien.

3 15. Upon information and belief, no party still claiming an interest in the Property recorded a
4 lien or encumbrance prior to the declaration creating Squire Village HOA.

5 16. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount
6 necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

7 17. Upon information and belief, Squire Village HOA or its agent Alessi & Koenig, LLC
8 distributed or should have distributed the excess funds to lien holders in order of priority
9 pursuant to NRS 116.3114(c).

10 18. Upon information and belief, Defendants had actual or constructive notice of the HOA
11 Lien, including the super-priority portion of the HOA Lien.

12 19. Upon information and belief, Defendants knew or should have known that the foreclosure
13 of the HOA Lien, including the super-priority portion of the HOA Lien, would extinguish their
14 security and ownership interests in the Property.

15 20. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity
16 paid the full amount of delinquent assessments described in the HOA Lien and the Notice of
17 Default.

18 21. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity
19 paid the super-priority portion of the HOA Lien representing 9 months of assessments for
20 common expenses based on the periodic budget adopted by the association which would have
21 become due in the absence of acceleration for the relevant time period.

22 22. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff "without equity
23 or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
24 owner, his or her heirs and assigns, and **all other persons.**"

25 ***Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien***

26 23. Upon information and belief, Defendant First Horizon obtained title to the Property on
27 February 26, 2013 at a non-judicial foreclosure sale pursuant to the terms of a deed of trust and
28 recorded against the Property on or about March 7, 2013 in the Official Records of the Clark

1 County Recorder as Instrument No. 201303070003168. (“Bank foreclosure sale”).

2 24. Upon acquiring the Property, First Horizon failed to satisfy the HOA Lien.

3 25. Defendant First Horizon’s ownership interest in the Property was extinguished by the
4 foreclosure of the HOA Lien.

5 26. Any interest in the Property via a deed of trust or other non-governmental lien was either
6 extinguished by the Bank foreclosure sale or foreclosure of the super-priority portion of the HOA
7 Lien.

8 27. Defendant Ana Torres’ ownership interest in the Property was extinguished by
9 foreclosure of the HOA lien.

10 **III. FIRST CLAIM FOR RELIEF**

11 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.*
12 against First Horizon Home Loans and Ana Torres)**

13 28. Plaintiff repeats and realleges the allegations of paragraphs 1-27 as though fully set forth
14 herein and incorporate the same by reference.

15 29. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the
16 Plaintiff’s rights and interests in the Property and to resolve the Defendants’ adverse claims in
17 the Property.

18 30. Plaintiff acquired the Property on March 6, 2013 by successfully bidding on the Property
19 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the
20 resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 18, 2013.

21 31. Ana Torres, as previous title owner of the Property may assert a claim adverse to
22 Plaintiff.

23 32. Defendant First Horizon as previous title owner of the Property may assert a claim
24 adverse to Plaintiff.

25 33. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like
26 all foreclosure sales, extinguishes the title owner’s interest in the Property and all junior liens and
27 encumbrances, including deeds of trust.

28 34. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority
over all liens and encumbrances on the Property except for: (1) liens and encumbrances recorded

1 before the recordation of the declaration and (2) liens for real estate taxes and other
2 governmental assessments or charges.

3 35. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect
4 their interests in the Property, if any legitimately existed.

5 36. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is
6 the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
7 HOA foreclosure sale extinguished Defendants' ownership and security interests in the Property;
8 and (4) Plaintiff's rights and interest in the Property are superior to any adverse interest claimed
9 by Defendants.

10 37. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

11 **V. SECOND CLAIM FOR RELIEF**
12 **(Unjust Enrichment against First Horizon and Ana Torres)**

13 38. Plaintiff repeats and realleges the allegations of paragraphs 1- 37 as though fully set forth
14 herein and incorporate the same by reference.

15 39. Plaintiff has expended funds and resources in connection with the acquisition and
16 maintenance of the Property.

17 40. Defendants will benefit from the funds and resources expended by Plaintiff.

18 41. Should Plaintiff's quiet title claim be denied, Defendants will have been unjustly
19 enriched by the funds and resources expended by Plaintiff.

20 42. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the
21 Property and the benefit of the funds and resources Plaintiff expended on the Property.

22 43. Plaintiff has been required to hire attorneys to protect its rights in the Property and to
23 pursue this action.

24 44. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

25 **VI. THIRD CLAIM FOR RELIEF**
26 **(Preliminary and Permanent Injunction against First Horizon)**

27 45. Plaintiff repeats and realleges the allegations of paragraphs 1- 44 as though fully set forth
28 herein and incorporate the same by reference.

46. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 6,

1 2013.

2 47. Defendant First Horizon may claim an interest in the Property through the First Horizon
3 Deed of Trust which was extinguished by the HOA foreclosure sale.

4 48. Defendants improperly proceeded with the sale or transfer of title to the Property and/or
5 eviction proceedings based on a purported transfer of title through the non-judicial foreclosure of
6 the First Horizon Deed of Trust.

7 49. Any non-judicial foreclosure sale based on the First Horizon Deed of Trust is invalid as
8 Defendants lost their interest in the Property, if any, at the HOA foreclosure sale.

9 50. Any further sale or transfer of title to the Property by Defendants is invalid because their
10 interest in the Property, if any, was extinguished by the HOA foreclosure sale.

11 51. Any attempt to take or maintain possession of the Property by Defendants is invalid
12 because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

13 52. On the basis of the facts described herein, Plaintiff has a reasonable probability of
14 success on the merits of its claims and has no other adequate remedies at law.

15 53. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
16 Defendants from beginning or continuing any eviction proceedings that would affect Plaintiff's
17 possession of the Property.

18 54. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
19 Defendants from any sale or transfer that would affect the title to the Property.

20 **VII. PRAYER FOR RELIEF**

21 Plaintiff requests judgment against Defendants as follows:

22 1. For a declaration and determination that SFR Investments Pool 1, LLC is
23 the rightful owner of title to the Property, and that Defendants be declared to have no
24 right, title or interest in the Property

25 2. For a preliminary and permanent injunction that Defendants are prohibited
26 from initiating or continuing eviction proceedings, sale or transfer of the Property;

27 3. For general and special damages in excess of \$10,000.00

28 4. For an award of attorney's fees and costs of suit; and

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

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5. For any further relief that the Court may deem just and proper.
DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

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IAFD
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HOWARD KIM & ASSOCIATES
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Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
A NATIONAL ASSOCIATION; ANA
TORRES, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.

Dept. No.

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
submitted for parties appearing in the above-entitled action as indicated below:

///

///

///

///

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

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SFR INVESTMENTS POOL 1, LLC \$270.00
TOTAL \$270.00

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
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Phone: (702) 485-3300
Fax: (702) 485-3301

Attorneys for Plaintiff

TAB 2

CLERK OF THE COURT

AFFT
Howard Kim & Associates, Attorneys at Law
Diana S. Cline, Esq.
400 N. Stephanie St., Suite 160
Henderson, NV 89014
State Bar No.: 10580
Attorney(s) for: Plaintiff(s)

**DISTRICT COURT
CLARK COUNTY NEVADA**

Case No.: **A-13-679329-C**

Dept. No.: **XXVI**

Date:

Time:

SFR Investments Pool 1, LLC a Nevada limited liability company
vs **Plaintiff(s)**
First Horizon Home Loans, A Division of First Tennessee Bank, a
National Association, et al.
Defendant(s)

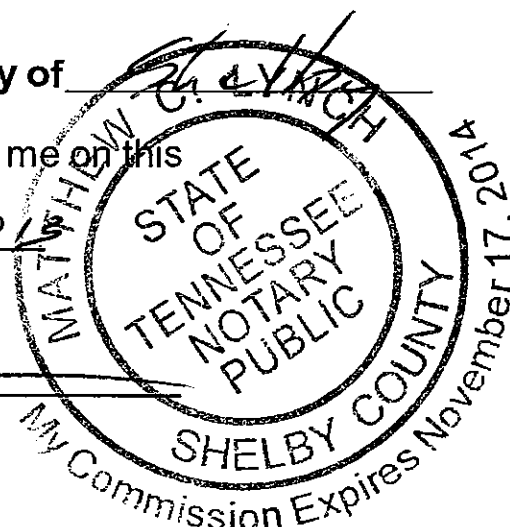
AFFIDAVIT OF SERVICE

Sue Lynch, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons: Complaint: Civil Cover Sheet: Initial Appearance Fee Disclosure: Notice of Lis Pendens on the 8th day of April, 2013 and served the same on the 9th day of April, 2013 at 9:39AM by serving the Defendant(s), First Horizon Home Loans, a Division of First Tennessee Bank, a National Association by personally delivering and leaving a copy at 3451 Prescott Rd., Memphis, TN 38118 with Katrina Lamar as Legal Assistant an agent lawfully designated by statute to accept service of process.

State of Tennessee, County of Shelby

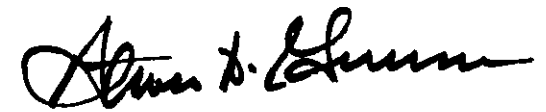
SUBSCRIBED AND SWORN to before me on this

12th day of April, 2013

Notary Public
Affiant: **Sue Lynch**

WorkOrderNo **1302810**

TAB 3



CLERK OF THE COURT

1 ANS
Abran E. Vigil, Esq.
2 Nevada Bar No. 7548
Edward Chang, Esq.
3 Nevada Bar No. 11783
BALLARD SPAHR LLP
4 100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106
5 Telephone: (702) 471-7000
Facsimile: (702) 471-7070
6 Email: vigila@ballardspahr.com
Email: change@ballardspahr.com

7
8 *Attorneys for First Horizon Home
Loans, a division of First Tennessee
Bank National Association*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Case No. A-13-679329-C

Dept. No. XXVI

13 Plaintiff,

14 vs.

15 FIRST HORIZON HOME LOANS, A
16 DIVISION OF FIRST TENNESSEE
BANK, A NATIONAL ASSOCIATION;
17 ANA TORRES, an individual; DOES I
through X; and ROE CORPORATIONS I
18 through X, inclusive,

19 Defendants.

20
21 FIRST HORIZON HOME LOANS' ANSWER TO PLAINTIFF'S COMPLAINT

22 Defendant First Horizon Home Loans, a division of First Tennessee Bank
23 National Association ("First Horizon") by and through its undersigned counsel,
24 responds to the plaintiff's complaint ("Complaint") as follows.

25 I. PARTIES

26 1. First Horizon is without sufficient information to admit or deny the
27 allegations contained in Paragraph 1 of the Complaint, and therefore denies them.

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 2. First Horizon admits that pursuant to the Trustee's Deed upon Sale
 2 dated February 27, 2013 and recorded March 7, 2013 as Instrument Number
 3 201303070003168 in the Official Records of Clark County Recorder's Office (the
 4 "Official Records"), First Horizon is the grantee of certain real property as described
 5 in the Trustee's Deed upon Sale. First Horizon Home Loans is a division of First
 6 Tennessee Bank National Association. First Tennessee Bank National Association is
 7 a national banking association organized under the laws of the United States with its
 8 home office in the state of Tennessee. First Horizon is without sufficient information
 9 to admit or deny the remaining allegations contained in Paragraph 2 of the
 10 Complaint, and therefore denies them.

11 3. First Horizon is without sufficient information to admit or deny the
 12 allegations contained in Paragraph 3 of the Complaint, and therefore denies them.

13 4. First Horizon is without sufficient information to admit or deny the
 14 allegations contained in Paragraph 4 of the Complaint, and therefore denies them.

15 5. First Horizon is without sufficient information to admit or deny the
 16 allegations contained in Paragraph 5 of the Complaint, and therefore denies them.

17 II. GENERAL ALLEGATIONS

18 6. First Horizon admits that pursuant to the Trustee's Deed upon Sale
 19 dated March 11, 2013 and recorded March 18, 2013 as Instrument Number
 20 201303180003508 in the Official Records ("HOA Foreclosure Deed"), plaintiff was the
 21 Grantee (Buyer) at public auction on March 6, 2013. First Horizon is without
 22 sufficient information to admit or deny the remaining allegations contained in
 23 Paragraph 6 of the Complaint, and therefore denies them.

24 7. First Horizon admits that the Trustee's Deed upon Sale was recorded
 25 March 18, 2013 as Instrument Number 201303180003508 in the Official Records.

26 8. First Horizon admits that the Notice of Delinquent Assessment (Lien)
 27 dated February 6, 2012 was recorded February 22, 2012 as Instrument Number
 28 201202220001525 in the Official Records ("HOA Lien"). First Horizon is without

1 sufficient information to admit or deny the remaining allegations contained in
2 Paragraph 8 of the Complaint, and therefore denies them.

3 9. The HOA Foreclosure Deed speaks for itself. First Horizon is without
4 sufficient information to admit or deny the remaining allegations contained in
5 Paragraph 9 of the Complaint, and therefore denies them.

6 10. First Horizon is without sufficient information to admit or deny the
7 allegations contained in Paragraph 10 of the Complaint, and therefore denies them.

8 11. The HOA Foreclosure Deed speaks for itself. First Horizon is without
9 sufficient information to admit or deny the remaining allegations contained in
10 Paragraph 11 of the Complaint, and therefore denies them.

11 12. Paragraph 12 calls for a legal conclusion to which no response is
12 necessary. First Horizon denies the remaining allegations contained in Paragraph 12
13 of the Complaint.

14 13. Paragraph 13 calls for a legal conclusion to which no response is
15 necessary. First Horizon denies the remaining allegations contained in Paragraph 13
16 of the Complaint.

17 14. First Horizon is without sufficient information to admit or deny the
18 allegations contained in Paragraph 14 of the Complaint, and therefore denies them.

19 15. First Horizon is without sufficient information to admit or deny the
20 allegations contained in Paragraph 15 of the Complaint, and therefore denies them.

21 16. First Horizon is without sufficient information to admit or deny the
22 allegations contained in Paragraph 16 of the Complaint, and therefore denies them.

23 17. First Horizon is without sufficient information to admit or deny the
24 allegations contained in Paragraph 17 of the Complaint, and therefore denies them.

25 18. First Horizon is without sufficient information to admit or deny the
26 allegations contained in Paragraph 18 of the Complaint, and therefore denies them.

27 19. First Horizon denies the allegations contained in Paragraph 19 of the
28 Complaint.

1 20. First Horizon is without sufficient information to admit or deny the
2 allegations contained in Paragraph 20 of the Complaint, and therefore denies them.

3 21. First Horizon is without sufficient information to admit or deny the
4 allegations contained in Paragraph 21 of the Complaint, and therefore denies them.

5 22. Paragraph 22 calls for a legal conclusion to which no response is
6 necessary. First Horizon is without sufficient information to admit or deny the
7 remaining allegations contained in Paragraph 22 of the Complaint, and therefore
8 denies them.

9 23. First Horizon admits that pursuant to the Trustee's Deed upon Sale
10 dated February 27, 2013 and recorded March 7, 2013 as Instrument Number
11 201303070003168 in the Official Records of Clark County Recorder's Office (the
12 "Official Records"), First Horizon is the grantee of certain real property as described
13 in the Trustee's Deed upon Sale. First Horizon was the highest bidder at public
14 auction on February 26, 2013. First Horizon is without sufficient information to
15 admit or deny the remaining allegations contained in Paragraph 23 of the Complaint,
16 and therefore denies them.

17 24. First Horizon is without sufficient information to admit or deny the
18 allegations contained in Paragraph 24 of the Complaint, and therefore denies them.

19 25. First Horizon denies the allegations contained in Paragraph 25 of the
20 Complaint.

21 26. First Horizon is without sufficient information to admit or deny the
22 allegations contained in Paragraph 26 of the Complaint, and therefore denies them.

23 27. First Horizon is without sufficient information to admit or deny the
24 allegations contained in Paragraph 27 of the Complaint, and therefore denies them.

25 **III. FIRST CLAIM FOR RELIEF**
26 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et.***
 ***seq.* against First Horizon Home Loans and Ana Torres)**

27 28. First Horizon repeats and realleges the answers contained within
28 paragraphs 1 through 27.

1 29. Paragraph 29 calls for a legal conclusion to which no response is
2 necessary. First Horizon is without sufficient information to admit or deny the
3 remaining allegations contained in Paragraph 29 of the Complaint, and therefore
4 denies them.

5 30. First Horizon admits that pursuant to the Trustee's Deed upon Sale
6 dated March 11, 2013 and recorded March 18, 2013 as Instrument Number
7 201303180003508 in the Official Records, plaintiff was the Grantee (Buyer) at public
8 auction on March 6, 2013. First Horizon is without sufficient information to admit or
9 deny the remaining allegations contained in Paragraph 30 of the Complaint, and
10 therefore denies them.

11 31. First Horizon is without sufficient information to admit or deny the
12 allegations contained in Paragraph 31 of the Complaint, and therefore denies them.

13 32. First Horizon admits the allegations contained in Paragraph 32 of the
14 Complaint.

15 33. Paragraph 33 calls for a legal conclusion to which no response is
16 necessary. First Horizon is without sufficient information to admit or deny the
17 remaining allegations contained in Paragraph 33 of the Complaint, and therefore
18 denies them.

19 34. Paragraph 34 calls for a legal conclusion to which no response is
20 necessary. First Horizon is without sufficient information to admit or deny the
21 remaining allegations contained in Paragraph 34 of the Complaint, and therefore
22 denies them.

23 35. First Horizon is without sufficient information to admit or deny the
24 allegations contained in Paragraph 35 of the Complaint, and therefore denies them.

25 36. First Horizon denies the allegations contained in Paragraph 36 of the
26 Complaint.

27 37. First Horizon denies the allegations contained in Paragraph 37 of the
28 Complaint.

1 V. SECOND CLAIM FOR RELIEF
2 (Unjust Enrichment against First Horizon and Ana Torres)

3 38. First Horizon repeats and realleges the answers contained within
4 paragraphs 1 through 37.

5 39. First Horizon is without sufficient information to admit or deny the
6 allegations contained in Paragraph 39 of the Complaint, and therefore denies them.

7 40. First Horizon is without sufficient information to admit or deny the
8 allegations contained in Paragraph 40 of the Complaint, and therefore denies them.

9 41. First Horizon denies the allegations contained in Paragraph 41 of the
10 Complaint.

11 42. First Horizon denies the allegations contained in Paragraph 42 of the
12 Complaint.

13 43. First Horizon denies the allegations contained in Paragraph 43 of the
14 Complaint.

15 44. First Horizon denies the allegations contained in Paragraph 44 of the
16 Complaint.

17 VI. THIRD CLAIM FOR RELIEF
18 (Preliminary and Permanent Injunction against First Horizon)

19 45. First Horizon repeats and realleges the answers contained within
20 paragraphs 1 through 44.

21 46. First Horizon admits that pursuant to the Trustee's Deed upon Sale
22 dated March 11, 2013 and recorded March 18, 2013 as Instrument Number
23 201303180003508 in the Official Records, plaintiff was the Grantee (Buyer) at public
24 auction on March 6, 2013. First Horizon is without sufficient information to admit or
25 deny the remaining allegations contained in Paragraph 46 of the Complaint, and
26 therefore denies them.

27 47. First Horizon admits that it claims an interest in the Property. First
28 Horizon denies that First Horizon's Deed of Trust was extinguished by the HOA
foreclosure sale. First Horizon is without sufficient information to admit or deny the

1 remaining allegations contained in Paragraph 47 of the Complaint, and therefore
2 denies them.

3 48. First Horizon denies the allegations contained in Paragraph 48 of the
4 Complaint.

5 49. First Horizon denies the allegations contained in Paragraph 49 of the
6 Complaint.

7 50. First Horizon denies the allegations contained in Paragraph 50 of the
8 Complaint.

9 51. First Horizon denies the allegations contained in Paragraph 51 of the
10 Complaint.

11 52. First Horizon denies the allegations contained in Paragraph 52 of the
12 Complaint.

13 53. First Horizon denies the allegations contained in Paragraph 53 of the
14 Complaint.

15 54. First Horizon denies the allegations contained in Paragraph 54 of the
16 Complaint.

17 **FIRST AFFIRMATIVE DEFENSE**

18 Plaintiff failed to state claims or causes of action upon which relief may be
19 granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Plaintiff's alleged damages are the result of its own acts or omissions.

22 **THIRD AFFIRMATIVE DEFENSE**

23 All possible affirmative defenses may not have been alleged herein insofar as
24 sufficient facts were not available after reasonable inquiry upon the filing of this
25 answer, therefore Defendants reserve the right to amend this answer to allege
26 additional affirmative defenses if subsequent investigation warrants.

27 WHEREFORE, First Horizon pray for the following relief:

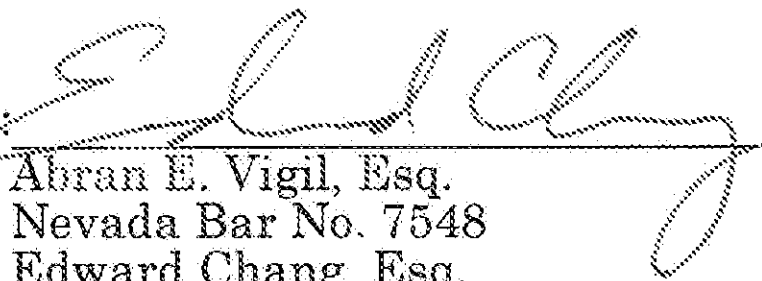
28 1. Plaintiff takes nothing by way of its Complaint;

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- 2. An award of First Horizon's reasonable attorneys' fees and costs; and
- 3. For such other and further relief as the Court may deem just and proper.

Dated: May 13, 2013.

BALLARD SPAHR LLP

By: 
 Abran E. Vigil, Esq.
 Nevada Bar No. 7548
 Edward Chang, Esq.
 Nevada Bar No. 11783
 100 North City Parkway, Suite 1750
 Las Vegas, Nevada 89106
 Telephone: (702) 471-7000

Attorneys for First Horizon Home Loans, a division of First Tennessee Bank National Association

BALLARD SPAHR LLP
 100 NORTH CITY PARKWAY, SUITE 1750
 LAS VEGAS, NEVADA 89106
 (702) 471-7000 FAX (702) 471-7070

CERTIFICATE OF SERVICE

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Pursuant to N.R.C.P. 5(b), I hereby certify that, on the 23rd day of May, 2013, a true and correct copy of the foregoing First Horizon Home Loan's Answer to Plaintiff's Complaint was served via U.S. Mail postage prepaid and addressed to the following:

Howard C. Kim, Esq.
Diana S. Cline, Esq.
Victoria L. Hightower, Esq.
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014

Attorneys for Plaintiff


An employee of BALLARD SPAHR LLP

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

TAB 4

1 AFFT
2 Howard Kim & Associates, Attorneys at Law
3 Diana S. Cline, Esq.
4 400 N. Stephanie St., Suite 160
5 Henderson, NV 89014
6 State Bar No.: 10580
7 Attorney(s) for: Plaintiff(s)

CLERK OF THE COURT

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

Case No.: A-13-679329-C

Dept. No.: XXVI

Date:

Time:

10 SFR Investments Pool 1, LLC a Nevada limited liability company
11 vs Plaintiff(s)

12 First Horizon Home Loans, A Division of First Tennessee Bank, a
13 National Association; et al.
14 Defendant(s)

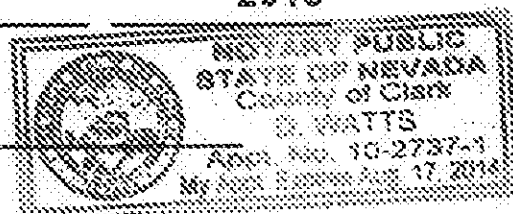
AFFIDAVIT OF SERVICE

15 I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:
18 Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Notice of Lis
19 Pendens on the 3rd day of June, 2013 and served the same on the 5th day of June, 2013 at 6:05 pm by delivering
20 and leaving a copy with the Defendant(s), Ana Torres, an individual at 3751 S. Nellis Blvd., Spc 45,
21 Las Vegas, NV 89121.

Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

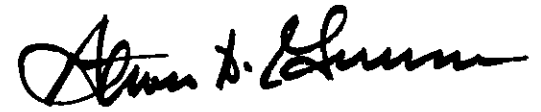
33 State of Nevada, County of Clark
34 SUBSCRIBED AND SWORN to before me on this
35 7th day of June 2013

36
Notary Public D. Watts



Affiant Joe Ricondo #: R-053662
Legal Process Service License # 604
WorkOrderNo 1304093

TAB 5



CLERK OF THE COURT

DFLT

1 HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
2 E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
3 Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
4 VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
5 E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
6 400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
7 Telephone: (702) 485-3300
Facsimile: (702) 485-3301
8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 SFR INVESTMENTS POOL 1, LLC, a
12 Nevada limited liability company,

13 Plaintiff,

14 vs.

15 FIRST HORIZON HOME LOANS, A
16 DIVISION OF FIRST TENNESSEE BANK,
A NATIONAL ASSOCIATION; ANA
17 TORRES, an individual; DOES I through X;
18 and ROE CORPORATIONS I through X,
inclusive,
19
20 Defendants.

Case No. A-13-679329-C

Dept. No. XXVI

**APPLICATION FOR ENTRY OF
DEFAULT AGAINST ANA TORRES**

21 Plaintiff hereby requests and directs the entry of default on Defendant Ana Torres, based
22 on the following.

23 It appearing from the files and records in the above-entitled action the Defendant, Ana
24 Torres, being duly served with a copy of the Summons, Complaint, and Notice of Lis Pendens on
25 the 5th day of June, 2013 (see proof of service, attached hereto as **Exhibit 1**), that more than
26 twenty (20) days, exclusive of the day of service, having expired since service upon Defendant,
27 that no answer or other response having been filed, and no further time having been granted, the
28 default of the above-named Defendant for failing to answer or otherwise plead to the Complaint

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

CLERK OF THE COURT

JUL 05 2013

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HENDERSON, NEVADA 89014
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is hereby entered.

The undersigned hereby requests and directs the entry of default.

HOWARD KIM & ASSOCIATES

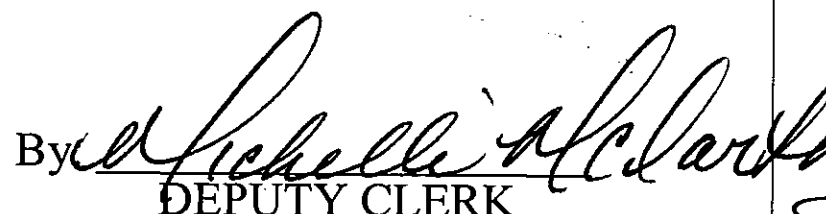
By: 

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
VICTORIA L. HIGHTOWER, ESQ.
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Attorneys for Plaintiff

STEVEN D. GRIERSON
CLERK OF THE COURT

CLERK OF THE COURT

By: 
DEPUTY CLERK

DATE **JUL 08 2013**

AL79329

MICHELLE MCCARTHY

EXHIBIT 1

1 AFFT
Howard Kim & Associates, Attorneys at Law
2 Diana S. Cline, Esq.
3 400 N. Stephanie St., Suite 160
Henderson, NV 89014
4 State Bar No.: 10580
Attorney(s) for: Plaintiff(s)
5

CLERK OF THE COURT

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

Case No.: A-13-679329-C

Dept. No.: XXVI

Date:

Time:

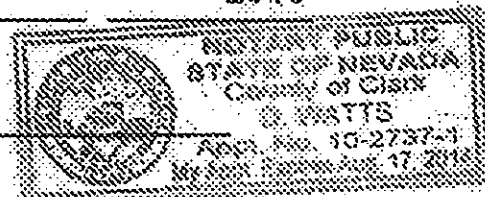
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9
10 SFR Investments Pool 1, LLC a Nevada limited liability company
vs Plaintiff(s)
11 First Horizon Home Loans, A Division of First Tennessee Bank, a
National Association; et al.
12 Defendant(s)
13

14 AFFIDAVIT OF SERVICE

15 I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:
18 Summons; Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure (NRS Chapter 19); Notice of Lis
19 Pendens on the 3rd day of June, 2013 and served the same on the 5th day of June, 2013 at 6:05 pm by delivering
20 and leaving a copy with the Defendant(s), Ana Torres, an individual at 3751 S. Nellis Blvd., Spc 45,
21 Las Vegas, NV 89121.
22
23
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30

31
32
33 State of Nevada, County of Clark
34 SUBSCRIBED AND SWORN to before me on this
35 7th day of June 2013

36
Notary Public D. Watts



Affiant Joe Ricondo #: R-053662
Legal Process Service License # 604
WorkOrderNo 1304093

Legal Process Service, 626 S. 8th Street, Las Vegas NV 89101 (702) 471-7255

TAB 6

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5 E-mail: katherine@hkimlaw.com
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6 1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
7 Telephone: (702) 485-3300
Facsimile: (702) 485-3301
8 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

9
10 SFR INVESTMENTS POOL 1, LLC, a
11 Nevada limited liability company,

Case No. A-13-679329-C

12 Plaintiff,

Dept. No. XXVI

13 vs.

DEFAULT AGAINST ANA TORRES

14 FIRST HORIZON HOME LOANS, A
DIVISION OF FIRST TENNESSEE BANK,
15 A NATIONAL ASSOCIATION; ANA
TORRES, an individual; DOES I through X;
16 and ROE CORPORATIONS I through X,
inclusive,

Defendants.

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19 on the following.

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23 the day of service, having expired since service upon Ana Torres, that no answer or other response
24 having been filed, and no further time having been granted, the default of the above-named
25 Defendant for failing to answer or otherwise plead to the Complaint is hereby entered.

26 ///

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

1 The undersigned hereby requests and directs the entry of default.

STEVEN D. GRIERSON
CLERK OF THE COURT

2 **HOWARD KIM & ASSOCIATES**

CLERK OF THE COURT

3
4 By: 

5 HOWARD C. KIM, ESQ.
6 Nevada Bar No. 10386
7 DIANA S. CLINE, ESQ.
8 Nevada Bar No. 10580
9 KATHERINE C.S. CARSTENSEN, ESQ.
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12 Henderson, Nevada 89014
13 (702) 485-3300
14 (702) 485-3301 (fax)
15 *Attorneys for Plaintiff*

By: 

DEPUTY CLERK

DATE

APR 25 2014

AL079329
(Duplicate)
MICHELLE MCCARTHY

HOWARD KIM & ASSOCIATES
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HENDERSON, NEVADA 89014
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EXHIBIT 1

CLERK OF THE COURT

1 **AFFT**
Howard Kim & Associates, Attorneys at Law
2 Diana S. Cline, Esq.
3 400 N. Stephanie St., Suite 160
Henderson, NV 89014
4 State Bar No.: 10580
5 Attorney(s) for: Plaintiff(s)

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

Case No.: A-13-679329-C

Dept. No.: XXVI

Date:

Time:

8
9
10 **SFR Investments Pool 1, LLC a Nevada limited liability company**
11 **vs** **Plaintiff(s)**
12 **First Horizon Home Loans, A Division of First Tennessee Bank, a**
13 **National Association; et al.**
14 **Defendant(s)**

AFFIDAVIT OF SERVICE

15 I, Joe Ricondo, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the
16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and
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Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

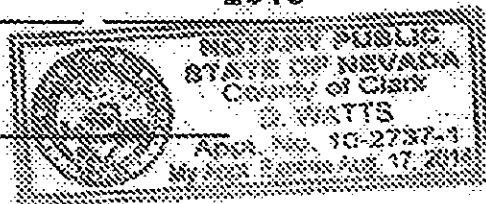
32
33 State of Nevada, County of Clark

34 SUBSCRIBED AND SWORN to before me on this

35 7th day of June 2013

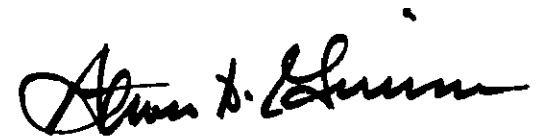
36

Notary Public D. Watts



Affiant Joe Ricondo # R-053662
Legal Process Service License # 604
WorkOrderNo 1304093

TAB 7



CLERK OF THE COURT

1 **MSJD**
 2 MELANIE D. MORGAN, ESQ.
 Nevada Bar No. 8215
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 5 Telephone: (702) 634-5000
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 7
 8 *Attorneys for First Horizon Home Loans*

9
 10 **EIGHTH JUDICIAL DISTRICT COURT**
 11 **CLARK COUNTY, NEVADA**

12 SFR INVESTMENTS POOL 1, LLC, a Nevada
 13 limited liability company,
 14
 Plaintiff,
 15
 v.
 16 FIRST HORIZON HOME LOANS, A
 DIVISION OF FIRST TENNESSEE BANK,
 17 N.A., a national association; ANA TORRES, an
 individual; DOES I through X; and ROE
 18 CORPORATIONS I through X, inclusive,
 Defendants.

Case No.: A-13-679329-C
 Dept. No. XXVI

**FIRST HORIZON HOME LOAN'S
 MOTION FOR SUMMARY JUDGMENT**

19
 20 First Horizon Home Loans (**First Horizon**) moves for summary judgment against SFR
 21 Investments Pool 1, LLC's (**SFR**) claims for unjust enrichment, quiet title, and declaratory relief.
 22
 23
 24
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 28

AKERMAN LLP
 1160 Town Center Drive, Suite 330
 LAS VEGAS, NEVADA 89144
 TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **NOTICE OF MOTION**

2 TO: ALL INTERESTED PARTIES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that the Court will hear **FIRST HORIZON HOME LOAN'S**

4 **MOTION FOR SUMMARY JUDGMENT** on the 05 day of APRIL, 2016, at the
5 hour of 9:30A .m., or as soon thereafter as counsel may be heard in Department I of the above-
6 entitled Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada.

7 DATED this 2nd day of March, 2016.

8 **AKERMAN LLP**

9
10 /s/ Melanie D. Morgan, Esq.

11 MELANIE D. MORGAN, ESQ.

12 Nevada Bar No. 8215

13 CHRISTINE M. PARVAN, ESQ.

14 Nevada Bar No. 10711

15 1160 Town Center Drive, Suite 330

16 Las Vegas, Nevada 89144

17 *Attorneys for First Horizon Home Loans*

MEMORANDUM OF POINTS AND AUTHORITIES**I.****INTRODUCTION**

This case is different. The HOA foreclosed on First Horizon, as owner of the property, based on stale, inaccurate foreclosure notices only applicable to the former owner. The HOA violated its own CC&Rs and every non-judicial foreclosure provision of NRS Chapter 116 in doing so. Once First Horizon became owner through its foreclosure on its deed of trust, all of the HOA foreclosure notices to the former owner were obsolete and inaccurate. First Horizon is entitled to notice and an opportunity to be heard. SFR's theory in this case, of foreclosure without notice, based on the fig leaf of deed recitals, violates *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132 Nev. Adv. Opn. 5, 11 (2016). Summary judgment is warranted for First Horizon.

II.**PLAINTIFF'S ALLEGATIONS**

First Horizon owned the property at via a foreclosure sale on February 26, 2013. (Ex. A at ¶23). SFR alleges it purchased the property at a homeowner's association foreclosure sale that occurred on March 6, 2013. (*Id.* at ¶6). SFR asserts it paid a sufficient amount to pay the super priority portion of the homeowner's association lien and costs. (*Id.* at ¶16).

SFR does not allege that First Horizon, *as owner*, received a notice of delinquent assessment, a notice of default and election to sell, a notice of trustee's sale prior to First Horizon acquiring title. SFR does not allege that First Horizon, *as owner*, was in default on any assessments. SFR does not allege First Horizon was delinquent in any assessments demanded of First Horizon by the HOA. SFR does not allege that the HOA requested that First Horizon pay a super priority amount.

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III.

STATEMENT OF UNDISPUTED MATERIAL FACTS**A. Foreclosure on the Deed of Trust Occurred Prior to the HOA Foreclosure.**

Ana Torres (**Torres**) obtained title in June 2008. (**Ex. B**, Deed). Torres borrowed \$136,923 from First Horizon. (**Ex. C**, Deed of Trust). The loan was secured by a deed of trust recorded on July 25, 2008. (*Id.* at pg. 1). The loan is insured by the Federal Housing Administration, as is evident by the FHA Case Number (*Id.* at pg. 1) and the explanation of payments to HUD (*Id.* at pg. 3).

Torres defaulted on her home loan. A notice of default and election to sell was recorded on October 30, 2012. (**Ex. D**, NOD). A certificate of compliance with Nevada's Foreclosure Mediation Program was recorded on February 1, 2013. (**Ex. E**, Cert.). A notice of sale was recorded on February 7, 2013. (**Ex. F**, NOS). The notice of sale stated that the date for the public auction of the property was February 26, 2013. (*Id.*) The trustee's sale occurred on February 26, 2013, and the trustee's deed was recorded on March 7, 2013. (**Ex. G**, Trustee's Deed). First Horizon credit bid for the property and obtained it for \$151,283.09. (*Id.*)

B. Foreclosure on the HOA Lien Occurred Subsequent to the Deed of Trust Foreclosure.

The homeowners association, Squire Village at Silver Springs Community Association (**HOA**), through their collection agent, Alessi & Koenig (**Alessi**) recorded a notice of delinquent (lien) on March 22, 2012 (**Ex. H**, Notice of Lien). Alessi then recorded a notice of default and election to sell on April 20, 2012. (**Ex. I**, Notice of Default). Alessi recorded a notice of sale on February 5, 2013. (**Ex. J**) Alessi then purportedly sold the property to SFR on March 6, 2013. (**Ex. K**, Trustee's Deed). SFR paid \$7,000. (*Id.* at pg. 1).

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1 **C. The CC&Rs, Sec. 7.7, Prohibit Foreclosure Against First Horizon, the New Owner,**
2 **until First Horizon is Given Thirty Days' Notice of the Amount Owning.**

3 Section 7.7 of the CC&Rs is called "Rules Regarding Billing and Collection Procedures."

4 (Ex. L, CC&Rs at pg. 31). This section, in relevant part, provides as follows:

5 The failure of the Association to send a bill to a Member shall not
6 relieve any Member of his liability for any Assessment or charge
7 under this Declaration, but the Assessment Lien therefor shall not be
8 foreclosed as set forth Section 7.10 below until the Member has been
9 given not less than thirty (30) days written notice prior to such
10 foreclosure that that the Assessment or any installation thereof is or
11 will be due and of the amount owing.

12 (*Id.*).

13 **D. Alessi Would Have Postponed the Sale Had it Read First Horizon's Notice of Sale.**

14 David Alessi, testified as Alessi's person most knowledgeable. (Ex. M, Transcript of David
15 Alessi's Deposition). He testified as to Alessi's procedures where a lender forecloses and becomes
16 owner prior to a homeowner's association foreclosure:

17 Q. Okay. If Alessi had known that the lender had foreclosed days
18 before the HOA foreclosure sale, would it have moved forward
19 with the sale?

20 Ms. Ebron: Calls for speculation, incomplete hypothetical.

21 Mr. Loizzi: Join. Go Ahead.

22 A. I would answer the question that in general we would not.

23 Q. And why not.

24 A. Because there would have been a new – well, would have been
25 a trustee's deed recorded by the bank and we would have
26 known of the foreclosure and probably would have sought
27 payment by the bank of the amounts due. We probably would
28 have restarted the collection process if there had been a
trustee's deed recorded into the bank's name. That is my
recollection of our policy at that time.

(*Id.* at 49:9-25 and 50:1).¹

...

...

¹ The question that prompted Mr. Alessi to describe Alessi's collection policies where a new owner attains title was not objected to during the deposition.

1 **E. SFR Bought the Property for Less than 10% of the Property's Fair Market Value.**

2 First Horizon disclosed an appraisal expert in this case, Matthew Lubawy. (**Ex. N**). Lubawy
3 analyzed the property's fair market value on the date of the HOA's foreclosure. (*Id.* at
4 Lubawy00003). The appraised value was \$94,000. (*Id.*).

5 **IV.**

6 **REQUEST FOR JUDICIAL NOTICE**

7 1. The publicly recorded documents marked as **Exhibits B through L**. These
8 documents are public record and not subject to reasonable dispute. *See* NRS 47.130.

9 2. **Exhibits O through P**. Published Articles Concerning Planned Unit Communities in
10 the United States. *U.S. v. W.R. Grace*, 504 F.3d 745 (9th Cir. 2007); and

11 3. **Exhibits Q through R**: Legislative history compiled by Nevada's Legislative
12 Counsel Bureau AB 204 in 2009 and AB 221 in 1991. *Aramark Facility Servs. v. SEIU, Local 1877*,
13 530 F.3d 817, 826 n.4 (9th Cir. 2008).

14 **V.**

15 **LEGAL STANDARDS**

16 Under Rule 56, a motion for summary judgment should be granted "when the pleadings and
17 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that
18 the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev.
19 724, 729; 121 P.3d 1026, 1029, NRCP 56(c). Materiality is dependent on the underlying substantive
20 law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.*

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VI.

LEGAL DISCUSSION**A. SFR's Claims for Unjust Enrichment and Quiet Title/ Declaratory Relief All Fail under Nevada State Law.****1. Unjust Enrichment Fails – SFR Conferred No Benefit on First Horizon.**

The essential elements of unjust enrichment “are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit.” *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981). Here, SFR has provided no admissible evidence to demonstrate it conferred a benefit of any kind on First Horizon. This lack of evidence is fatal to SFR's unjust enrichment claim. First Horizon is entitled to summary judgment.

2. Quiet Title/Declaratory Relief Fails.**(a) HOA Foreclosure Sale is Void under the CC&Rs.**

CC&Rs run with the land and provide a burden and a benefit of rights to the property owner. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160-1161 (Nev. 2007). The burden of this association's CC&Rs is the obligation to pay assessments. The benefit of the CC&Rs is the HOA must comply with the notice provisions governing how the HOA enforces its right to collect assessments.

Here, the HOA's foreclosure collection activities were deficient under 7.7. The HOA had no power to foreclose against a member of the community without sending written notice to the community member. First Horizon was a member of HOA's community as of February 26, 2013 by virtue of foreclosure sale. (**Ex. G**, *supra*). SFR admitted as much in its complaint. (**Ex. A**, *supra*, at ¶23). First Horizon then is entitled to the benefits of its ownership. First Horizon is entitled under Section 7.7 to written notice of default and written notice of the amount supposedly due. (**Ex. L**, *supra*, at pg. 31). The HOA made these notice provisions mandatory by stating that the "Assessment Lien therefor shall not be foreclosed," if these notice provisions are not complied with by the HOA. (*Id.*) It is an undisputed material fact that the HOA did not comply with Section 7.7. The foreclosure sale is void.

1 The Court in *Shadow Wood Homeowners Assoc., et al. v. New York Comm. Bancorp.*, 132
2 Nev. Adv. Opn. 5, 11 (2016) correctly determined that the recitals as to statutory compliance are **not**
3 irrefutable conclusions. Nevada's Supreme Court in *Shadow Wood* specifically held that trial
4 court's retain equitable power to set aside a foreclosure sale. *Shadow Wood Homeowners Assoc.*,
5 132 Nev. Adv. Opn. at 14-15. The court correctly analogized foreclosures under NRS Chapter 116
6 to foreclosures under NRS Chapter 107. *Id.* at 14. "The conclusive recital provisions in NRS
7 107.030(8) have never been argued to carry the preemptive effect that [Appellants] attribute to NRS
8 116.31166." *Id.* at 12-13. So too the recitals in NRS 116.31166. Thus, a foreclosure cannot stand,
9 for example, where no default occurred, despite the recitals in the deed. *Id.* at 11.

10 Here, First Horizon was not in default of any obligation to pay assessments. The HOA's
11 CC&Rs mandated that First Horizon be given notice of the amount owed after First Horizon's
12 foreclosure sale and 30 days' notice in order to pay that amount. SFR, contrary to *Shadow Wood*, is
13 asking this Court to confirm a default by First Horizon where none exists. Summary judgment is
14 warranted.

15 A senior mortgagee, like First Horizon prior to February 26, 2013, has no obligation to pay
16 assessments prior to taking title. The CC&Rs provide that such assessments that became due prior
17 to First Horizon's foreclosure sale are the personal obligation of the former owner, Torres. (**Ex. L**,
18 *supra*, at pg. 33).² Chapter 116 certainly provides no such obligation. SFR certainly cites to no
19 statutory provision. No such requirement exists.

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26 ² Note, Section 7.8.3 is not a mortgage savings clause of the type ruled unenforceable in *SFR*. See *SFR*
27 *Investments Pool 1, LLC*, 130 Nev. Adv. Op. 75 at 23-24. Indeed, Section 7.8.3 recites NRS 116.3116(2).
28 Thus, the HOA, in contrast to the HOA in *SFR*, is not waiving its rights to a super priority of assessments.
Sections 7.7 and 7.8.3, when read together, provide a procedure for the HOA to collect the super priority lien
amount after the mortgagee's foreclosure through 7.7's notice procedure.

1 **(b) The Grossly Inadequate Price, Plus Lack of Notice, Justify Setting Aside**
2 **the HOA's Foreclosure Sale.**

3 The *Shadow Wood* court adopted the analysis of Restatement (Third) of Property: Mortgages
4 §8.3 (1997). *Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15. Section 8.3 provides:

5 (a) A foreclosure sale price obtained pursuant to a foreclosure
6 proceeding that is otherwise regularly conducted in compliance with
7 applicable law does not render the foreclosure defective **unless the**
8 **price is grossly inadequate.**

9 (b) Subsection (a) applies to both power of sale and judicial
10 foreclosure proceedings.

11 (Emphasis added).

12 The Restatement authors went on to define what it means by "grossly inadequate:"

13 "Gross inadequacy" cannot be precisely defined in terms of a specific
14 percentage of fair market value. Generally, however, a court is
15 warranted in invalidating a sale where the price is less than 20 percent
16 of fair market value and, absent other foreclosure defects, is usually
17 not warranted in invalidating a sale that yields in excess of that
18 amount. See Illustrations 1-5. **While the trial court's judgment in**
19 **matters of price adequacy is entitled to considerable deference, in**
20 **extreme cases a price may be so low (typically well under 20% of**
21 **fair market value) that it would be an abuse of discretion for the**
22 **court to refuse to invalidate it.**

23 *Id.* at cmt. b. (Emphasis added).
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1 Finally, the Restatement authors expressly embraced Nationstar's formula and method of
2 proving gross inadequacy:

3 This section articulates the traditional and widely held view that a
4 foreclosure proceeding that otherwise complies with state law may not
5 be invalidated because of the sale price unless that price is grossly
6 inadequate. **The standard by which “gross inadequacy” is**
7 **measured is the fair market value of the real estate.** For this
8 purpose the latter means, not the fair “forced sale” value of the real
estate, but the price which would result from negotiation and mutual
agreement, after ample time to find a purchaser, between a vendor who
is willing, but not compelled to sell, and a purchaser who is willing to
buy, but not compelled to take a particular piece of real estate.

9 *Id.* (Emphasis added). No one would be so daft as to argue a foreclosure sale should bring a fair
10 market value. Indeed, the Restatement's authors note that forced sales such as foreclosures typically
11 sell for less than fair market value in their introductory discussion in Section 8.3. *See* Restatement
12 (Third) of Property: Mortgages §8.3 cmt.a (1997). The point of the Restatement approach adopted
13 by the *Shadow Wood* court is to compare the fair market value of the property versus what it actually
14 sold for at the foreclosure sale. *Id.* at cmt. b, Illustration 2. If the forced sale price is less than 20%
15 of the fair market value, then the court should set aside the foreclosure sale as “grossly inadequate.”
16 *Id.*; *see also Shadow Wood Homeowners Assoc.*, 132 Nev. Adv. Opn. at 15.

17 The Court should note that the Restatement author's formula for arriving at “fair market
18 value” is identical to Nevada law under NRS §375.010(2), the statute that the Clark County Assessor
19 used to formulate the property's assessed value that appears on the trustee's deeds' declaration of
20 value page.

21 In *Shadow Wood*, the amount paid was 23 percent amount, which was, to quote the Court,
22 “not obviously inadequate.” However, in the instant matter, the sales price SFR was able to obtain
23 the Property for was less than 10% of appraised value. The Court will recall from the
24 Counter-motion that Defendant pointed out the following:

- 25
- 26 (1) The appraised value of the property was \$94,000;
 - 27 (2) The amount paid by plaintiff in the foreclosure auction was \$7,000.00.
- 28

1 SFR paid less than 10% of the fair market value of the Property. This percentage of the
2 property's fair market value is subject to judicial notice under NRS §47.130. This amount is a far
3 cry from the 20 percent mandated by Section 8.3 of the Restatement and the *Shadow Wood* case.

4 In addition, there was a procedural flaws in the foreclosure sale. **First**, the HOA did not
5 serve First Horizon with the notice required by Sec. 7.7 of the CC&Rs. **Second**, every HOA notice
6 prior to First Horizon's foreclosure sale instantly became meaningless or stale once First Horizon
7 foreclosed on February 26, 2013. First Horizon's foreclosure extinguished the sub-priority portion of
8 the HOA's lien. **Third**, Alessi testified it was its policy to restart the collection process where it
9 knows a bank has foreclosed. First Horizon's foreclosure at a public foreclosure sale was public
10 information in the notice of sale. Alessi simply did not read the notice of sale. The Court is
11 warranted under *Shadow Wood* to set aside the foreclosure sale on summary judgment.

12 **B. SFR's Claims for Unjust Enrichment and Quiet Title/ Declaratory Relief All Fail under**
13 **Federal Law.**

14 **1. HOA Foreclosure on First Horizon Without Actual Notice to First Horizon**
15 **Frustrates the Objectives of the Single Family Mortgage Insurance Program.**

16 Under the Supremacy Clause, state law that conflicts with federal law—including federal
17 regulations—is preempted. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Fid.*
18 *Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) (holding that federal
19 regulations have same preemptive force as federal statutes). Federal conflict preemption applies if
20 the challenged [state] law “stands as an obstacle to the accomplishment and execution of the full
21 purposes and objectives of Congress.” *Crosby*, 530 U.S. at 372–73 (quoting *Hines v. Davidowitz*,
22 312 U.S. 52, 67 (1941)). A state law stands as an “obstacle” to federal law, and is thus preempted
23 under the Supremacy Clause, whenever it conflicts, interferes, or is inconsistent with “the full
24 purposes and objectives of Congress.” *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000)
25 (quoting *Hines*, 312 U.S. at 67).

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1 Applying these principles immediately after the Nevada Supreme Court’s *SFR* decision,
2 Chief Judge Navarro of the U.S. District Court in Nevada held that, “[b]ecause a homeowners
3 association’s foreclosure under Nevada Revised Statute § 116.3116 on a Property with a mortgage
4 insured under the FHA insurance program would have the effect of limiting the effectiveness of the
5 remedies available to the United States, the Supremacy Clause bars such foreclosure sales.”
6 *Washington & Sandhill Homeowners Ass’n v. Bank of Am., N.A.*, 2014 WL 4798565, at *7 (D. Nev.
7 Sept. 25, 2014). Similarly, Judge Mahan of the U.S. District Court in Nevada held that “[a]llowing
8 an HOA foreclosure to wipe out a first deed of trust on a federally-insured property thus interferes
9 with the purposes of the FHA insurance program.” *Saticoy Bay LLC, Series 7342 Tanglewood Park*
10 *v. SRMOF II 2012-1, et al*, 2015 WL 1990076, at *4 (D. Nev. April 30, 2015). Because the deed of
11 trust was federally insured, Judge Mahan held that “the homeowners’ association sale in the instant
12 case is void.” *Id.* at *5.

13 In this case, as in *Washington & Sandhill* and *Saticoy Bay*, the HOA foreclosed on First
14 Horizon, as owner. First Horizon after it foreclosed on February 26, 2013 was then unable to convey
15 title to HUD, as is required under the Single Family Mortgage Insurance Program. *See* 24 CFR
16 §203.366. SFR's theory in this case is that First Horizon, once it became owner, was not entitled to
17 any notices under Chapter 116. HOA foreclosure without actual notice to First Horizon, as owner,
18 makes it impossible for First Horizon to convey title to HUD.

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1 **2. As Applied to the Unique Facts of This Case, NRS Chapter 116's Foreclosure**
2 **Scheme Violates First Horizon Federal Procedural Due Process Rights.**

3 **(a) Procedural Due Process Means Meaningful Notice and an a Meaningful**
4 **Opportunity to be Heard.**

5 Nevada's Legislature cannot enact a statute that strips First Horizon of its constitutional due
6 process rights. *See, e.g., Consolidated Edison Co. v. Pub. Serv. Comm'n*, 447 U.S. 530, 100 S. Ct.
7 2326, 65 L.Ed. 2d 319 (1980); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407,
8 55 L.Ed. 2d 707 (1978). Procedural due process means at a minimum notice and an opportunity to
9 be heard prior to the deprivation of the protected property interest. *Mullane v. Central Hanover*
10 *Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). The definition of
11 procedural due process is flexible and necessarily depends on the nature of the case. *Id.* at 314-315.
12 "Parties whose rights are to be affected are entitled to be heard." *Fuentes v. Shevin*, 407 U.S. 67, 80
13 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).

14 **(b) State Action is Met Here.**

15 There is no simple line between state action and private action. The Ninth Circuit has
16 recognized four different criteria, or tests, used to identify state action: "(1) public function; (2) joint
17 action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Sutton, Jr. v.*
18 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-836 (9th Cir. 1999). Regardless of the label
19 used, the challenged action must result from government policy. *Id.* at 835.

20 State action exists where the state has used coercive power, whether covert or overt, or
21 provided significant encouragement to the private actor such that the challenged action can be fairly
22 attributable to the state. *Blum v. Yaretsky*, 457 U.S. 991, 104, 102 S.Ct. 2777, 73 L.Ed.2d 534
23 (1982). The government compulsion test is met. The super priority portion of the HOA's lien that
24 survived First Horizon's because of a statutory right that did not exist at common law. The super
25 priority did not exist as a result of voluntary agreement as is typical of a debtor-creditor relationship.

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1 The state of Nevada has done more than acquiesce in the remedy of non-judicial foreclosure
2 to enforce a private bargain between two private parties. The contrast between *Flagg Brothers, Inc*
3 *v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) (warehouseman's lien statute) and
4 *Apao v. Bank of New York*, 324 F.3d 1091, 1094-1095 (9th Cir. 2003) (deed of trust foreclosure
5 statute) could not be more great. **First**, Nevada mandated the creation of this particular HOA, and
6 all HOAs in Nevada, because they govern common open space. **Second**, HOAs had supplanted
7 traditional state actors in providing services commonly enjoyed such as maintenance of private
8 streets, providing recreational resources, and maintenance of common areas such as street lights and
9 sidewalks. **Third**, the source of the super priority lien is not a private agreement. **Fourth**, Nevada
10 barred HOAs and deed of trust beneficiary's from subordinating the HOA's super priority lien.
11 **Fifth**, in 2009, Assemblyperson Spiegel stated that the super priority had to be lengthened to ensure
12 that the HOAs, who had supplanted local governments in providing services, did not fail. **Sixth**, the
13 scholarly authority concerning rise in the number of HOAs nationally can be explained in large part
14 because HOAs supplanted public actors in providing commonly enjoyed services at no cost to local
15 governments.

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1 The state is also intertwined with the creation of HOAs, the creation of HOA super priority,
2 and the requirement that super priority not be subject to subordination. Nationally, private
3 community associations have exploded in numbers over the past 40 years. In 1970, there were
4 approximately 10,000 community associations. (Ex. O, Community Ass'n Institute, *Community*
5 *Ass'n Fact Book*, p. 7 of 61 (2014)) Nationwide, there were 333,600 community associations
6 governing 66,000,000 Americans as of 2014. *Id.* The savings to local governments are because of
7 HOAs help explain the dramatic expansion:

8
9 Local government gets developments that are significantly self-
10 financing, often have additional amenities, and add to the local tax
11 base. At the same time, RCA development relieves local government
12 and, thereby, existing taxpayers of much of the responsibility for
13 financing infrastructure and services.

14 (Ex. P, Residential Community Associations: Private Governments in the Intergovernmental
15 System?, p. 5 (1989). Statistics may, in fact, underestimate, the savings to local government of the
16 privatization of government services:

17 Public finance statistics do not include estimates of how much money
18 RCAs are spending on "public" services, or of the precise extent to
19 which RCA members are subsidizing the public services provided to
20 non-RCA homeowners. The increasing number of RCA communities
21 and the fact that they are estimated to include as many as 29 million
22 people suggest that public finance statistics seriously understate
23 expenditures for community facilities and services. In all probability,
24 RCAs account for the most significant privatization of local
25 government responsibilities in recent times, as measured by the
26 amount of expenditure relief given to the public sector for capital
27 investment and operations.

28 *Id.* at p. 18. Recently, the Foundation for Community Research estimated the savings to local
government of services provided by homeowners associations as "between \$2 to \$4 billion a year by
minimizing the need for building and health code enforcement and other public safety services."
(Ex. O, *supra*, Community Association Fact Book, Community Services as an Association Core
Function, p. 26 (2014).

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Nevada adopted HOA super priority to serve a state interest. This is patent because the same assembly bill, AB 221, that created HOA super priority also mandated the creation of HOAs to govern the planned community's common open space. That Nevada's super priority is intended to serve a governmental purpose was made plain by AB 204 in 2009 when super priority was lengthened from 6 months to 9 months. Assembly Person Ellen Spiegel testified about the legislature's purpose in extending the period of priority in her March 6, 2009 testimony:

Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

(**Ex. Q**, Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Legislature, p. 34 (2009) (Statement of Assemblyperson Ellen Spiegel). Assemblyperson Spiegel then explained the legislature's policy goals in expanding the time period applicable to the super priority lien:

The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, **prevent cost-shifting from common-interest communities to local governments.**

(*Id.*; see also **Ex. R**, Document Submitted by Assemblyperson Spiegel in conjunction with her testimony on March 6, 2009, at pgs. U-3 and U-13). (Emphasis added).

In sum, Nevada is overtly involved every aspect of HOA super priority lien foreclosure. State action is met.

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1 **(c) Actual Notice is First Horizon's Due.**

2 The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the]
3 deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for
4 hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339
5 U.S. 306, 314 (1950) (emphasis added). An "elementary and fundamental requirement of due
6 process ... is notice reasonably calculated, *under all circumstances*, to apprise interested parties of
7 the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l*
8 *Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314)
9 (emphasis added). Put more simply, state action may not extinguish an interest in real property
10 unless the holder of that interest is afforded notice of that action.

11 **(d) HOA Deprived First Horizon of Actual Notice.**

12 First Horizon, as owner, did not receive any of the foreclosure notices required by NRS
13 Chapter 116. First Horizon did not receive a notice of delinquent assessment. NRS
14 116.31162(1)(a). First Horizon did not receive a notice of default and election to sell. NRS
15 116.31162(1)(b). First Horizon did not receive a notice of sale. NRS 116.31165.

16 The foreclosure notices sent to the former owner, Torres, were made inaccurate once First
17 Horizon became owner. First Horizon's February 26, 2013 foreclosure necessarily had the effect of
18 making the information contained in the prior foreclosure notices stale. First Horizon's February 26,
19 2013 foreclosure extinguished the sub priority piece of the HOA's lien. First Horizon received none
20 of the statutory notices that the former owner, Torres, received. First Horizon was deprived of the
21 opportunity to be heard and to pay the remaining portion of the HOA's lien.

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VII.

CONCLUSION

Based on the foregoing, this Court should grant summary judgment to First Horizon.

DATED this 2nd day of March, 2016.

AKERMAN LLP

/s/ Melanie D. Morgan, Esq.

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

CHRISTINE M. PARVAN, ESQ.

Nevada Bar No. 10711

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for First Horizon Home Loans

CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 2nd day of
3 March, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing
4 **FIRST HORIZON HOME LOAN'S MOTION FOR SUMMARY JUDGMENT**, in the
5 following manner:

6 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
7 document was electronically filed on the date hereof & served through the Notice Of Electronic
8 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
9 Service List.

10
11 Howard C. Kim, Esq.
12 Kim Gilbert Ebron
13 7625 Dean Martin Drive, Suite 110
14 Las Vegas, Nevada 89139

15 *Attorneys for Plaintiff*

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17
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21 */s/ Allen G. Stephens*

22

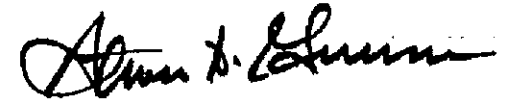
An employee of AKERMAN LLP

AKERMAN LLP

1160 Town Center Drive, Suite 330
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EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 **COMP**
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 400 N. Stephanie St, Suite 160
 6 Henderson, Nevada 89014
 Telephone: (702) 485-3300
 7 Facsimile: (702) 485-3301
 8 *Attorneys for Plaintiff*

9
 10 **DISTRICT COURT**
 11 **CLARK COUNTY, NEVADA**

12 SFR INVESTMENTS POOL 1, LLC a Nevada
 limited liability company,

Case No. A - 13 - 679329 - C

13
 14 Plaintiff,

Dept. No. XXVI

15 FIRST HORIZON HOME LOANS, A
 16 DIVISION OF FIRST TENNESSEE BANK, A
 NATIONAL ASSOCIATION; ANA TORRES,
 an individual; DOES I through X; and ROE
 17 CORPORATIONS I through X, inclusive,

COMPLAINT

Arbitration Exemptions:
 1. Action for Declaratory Relief
 2. Action Concerning Real Property

18 Defendants.

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 20
 21 Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of
 22 records, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title and
 23 requests injunctive relief against the above named defendants as follows:

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HOWARD KIM & ASSOCIATES
 400 N. STEPHANIE ST, SUITE 160
 HENDERSON, NEVADA 89014
 (702) 485-3300 FAX (702) 485-3301

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I. PARTIES

1. Plaintiff is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **5069 Midnight Oil Drive, Las Vegas, NV 89122; Parcel No. 161-26-111-017** (the "Property").

2. Upon information and belief, Defendant FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, A NATIONAL ASSOCIATION, ("First Horizon"), is a foreign entity that may claim an interest in the Property via a 2013 Trustee's sale.

3. Upon information and belief, Defendant Ana Torres is an individual residing in Nevada and the former title owner of the Property.

4. Upon information and belief, each of the defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that plaintiff seeks to enjoin; that when the true names capacities of such defendants become known, plaintiff will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

Plaintiff Acquired Title to the Property through Foreclosure of Super-Priority HOA Lien

6. Plaintiff acquired the Property on March 6, 2013, by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("HOA foreclosure sale"). Since the HOA foreclosure sale, Plaintiff has expended additional funds and resources in relation to the Property.

7. On or about March 18, 2013, the resulting foreclosure deed was recorded in the Official

1 Records of the Clark County Recorder as Instrument Number 201303180003508 (“HOA
2 Foreclosure Deed”).

3 8. The foreclosure sale was conducted by Alessi & Koenig, LLC, agent for Squire Village
4 at Silver Springs Community Association (“Squire Village HOA”), pursuant to the powers
5 conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the
6 Squire Village HOA governing documents (CC&R’s) and a Notice of Delinquent Assessment
7 Lien, recorded on February 22, 2012 in the Official Records of the Clark County Recorder as
8 Instrument Number 201202220001525 (“HOA Lien”).

9 9. As recited in the HOA Foreclosure Deed, the HOA foreclosure sale complied with all
10 requirements of law, including but not limited to, recording and mailing of copies of Notice of
11 Delinquent Assessment and Notice of Default, and the recording, posting and publication of the
12 Notice of Sale.

13 10. Plaintiff was not the only bidder to attend the HOA foreclosure sale.

14 11. Plaintiff’s winning bid was in excess of the amount included in the HOA’s notice of
15 foreclosure sale as due and owing on the HOA Lien.

16 12. Pursuant to NRS 116.3116(2), the entire HOA Lien

17 is prior to all other liens and encumbrances of unit except:

- 18 (a) Liens and encumbrances recorded before the recordation of the declaration
19 and, in a cooperative, liens and encumbrances which the association creates,
20 assumes or takes subject to;
21 (b) A first security interest on the unit recorded before the date on which the
22 assessment sought to be enforced became delinquent or, in a cooperative, the first
23 security interest encumbering only the unit’s owner’s interest and perfected before
24 the date on which the assessment sought to be enforced became delinquent; and
25 (c) Liens for real estate taxes and other governmental assessments or charges
26 against the unit or cooperative.

27 13. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even
28 a first security interest in the Property:

[the HOA Lien] is also prior to all security interests described in paragraph (b) to
the extent of any charges incurred by the association on a unit pursuant to NRS
116.310312 and to the extent of the assessments for common expenses based on
the periodic budget adopted by the association pursuant to NRS 116.3115 which
would have become due in the absence of acceleration during the 9 months
immediately preceding institution of an action to enforce the lien[.]

1 14. Upon information and belief, the HOA took the necessary action to trigger the super-
2 priority portion of the HOA Lien.

3 15. Upon information and belief, no party still claiming an interest in the Property recorded a
4 lien or encumbrance prior to the declaration creating Squire Village HOA.

5 16. Upon information and belief, Plaintiff's bid on the Property was in excess of the amount
6 necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.

7 17. Upon information and belief, Squire Village HOA or its agent Alessi & Koenig, LLC
8 distributed or should have distributed the excess funds to lien holders in order of priority
9 pursuant to NRS 116.3114(c).

10 18. Upon information and belief, Defendants had actual or constructive notice of the HOA
11 Lien, including the super-priority portion of the HOA Lien.

12 19. Upon information and belief, Defendants knew or should have known that the foreclosure
13 of the HOA Lien, including the super-priority portion of the HOA Lien, would extinguish their
14 security and ownership interests in the Property.

15 20. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity
16 paid the full amount of delinquent assessments described in the HOA Lien and the Notice of
17 Default.

18 21. Upon information and belief, prior to the HOA foreclosure sale, no individual or entity
19 paid the super-priority portion of the HOA Lien representing 9 months of assessments for
20 common expenses based on the periodic budget adopted by the association which would have
21 become due in the absence of acceleration for the relevant time period.

22 22. Pursuant to NRS 116.31166, the foreclosure sale vested title in Plaintiff "without equity
23 or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
24 owner, his or her heirs and assigns, and **all other persons.**"

25 ***Interests, Liens and Encumbrances Extinguished by the Super-Priority HOA Lien***

26 23. Upon information and belief, Defendant First Horizon obtained title to the Property on
27 February 26, 2013 at a non-judicial foreclosure sale pursuant to the terms of a deed of trust and
28 recorded against the Property on or about March 7, 2013 in the Official Records of the Clark

1 County Recorder as Instrument No. 201303070003168. ("Bank foreclosure sale").

2 24. Upon acquiring the Property, First Horizon failed to satisfy the HOA Lien.

3 25. Defendant First Horizon's ownership interest in the Property was extinguished by the
4 foreclosure of the HOA Lien.

5 26. Any interest in the Property via a deed of trust or other non-governmental lien was either
6 extinguished by the Bank foreclosure sale or foreclosure of the super-priority portion of the HOA
7 Lien.

8 27. Defendant Ana Torres' ownership interest in the Property was extinguished by
9 foreclosure of the HOA lien.

10 **III. FIRST CLAIM FOR RELIEF**

11 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.* and 116.3116, *et. seq.*
12 against First Horizon Home Loans and Ana Torres)**

13 28. Plaintiff repeats and realleges the allegations of paragraphs 1-27 as though fully set forth
14 herein and incorporate the same by reference.

15 29. Pursuant to NRS 30.010, *et. seq.*, this Court has the power and authority to declare the
16 Plaintiff's rights and interests in the Property and to resolve the Defendants' adverse claims in
17 the Property.

18 30. Plaintiff acquired the Property on March 6, 2013 by successfully bidding on the Property
19 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the
20 resulting HOA Foreclosure Deed vesting title in Plaintiff was recorded on March 18, 2013.

21 31. Ana Torres, as previous title owner of the Property may assert a claim adverse to
22 Plaintiff.

23 32. Defendant First Horizon as previous title owner of the Property may assert a claim
24 adverse to Plaintiff.

25 33. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like
26 all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and
27 encumbrances, including deeds of trust.

28 34. Pursuant to NRS 116.3116(2), the super-priority portion of the HOA Lien has priority
over all liens and encumbrances on the Property except for: (1) liens and encumbrances recorded

1 before the recordation of the declaration and (2) liens for real estate taxes and other
2 governmental assessments or charges.

3 35. Defendants were duly notified of the HOA foreclosure sale and failed to act to protect
4 their interests in the Property, if any legitimately existed.

5 36. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1) Plaintiff is
6 the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
7 HOA foreclosure sale extinguished Defendants' ownership and security interests in the Property;
8 and (4) Plaintiff's rights and interest in the Property are superior to any adverse interest claimed
9 by Defendants.

10 37. Plaintiff seeks an order from the Court quieting title to the Property in favor of Plaintiff.

11 **V. SECOND CLAIM FOR RELIEF**
12 **(Unjust Enrichment against First Horizon and Ana Torres)**

13 38. Plaintiff repeats and realleges the allegations of paragraphs 1- 37 as though fully set forth
14 herein and incorporate the same by reference.

15 39. Plaintiff has expended funds and resources in connection with the acquisition and
16 maintenance of the Property.

17 40. Defendants will benefit from the funds and resources expended by Plaintiff.

18 41. Should Plaintiff's quiet title claim be denied, Defendants will have been unjustly
19 enriched by the funds and resources expended by Plaintiff.

20 42. Plaintiff will be damaged if Defendants are allowed to both retain their interests in the
21 Property and the benefit of the funds and resources Plaintiff expended on the Property.

22 43. Plaintiff has been required to hire attorneys to protect its rights in the Property and to
23 pursue this action.

24 44. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

25 **VI. THIRD CLAIM FOR RELIEF**
26 **(Preliminary and Permanent Injunction against First Horizon)**

27 45. Plaintiff repeats and realleges the allegations of paragraphs 1- 44 as though fully set forth
28 herein and incorporate the same by reference.

46. Plaintiff properly acquired title to the Property at the HOA foreclosure sale on March 6,

1 2013.

2 47. Defendant First Horizon may claim an interest in the Property through the First Horizon
3 Deed of Trust which was extinguished by the HOA foreclosure sale.

4 48. Defendants improperly proceeded with the sale or transfer of title to the Property and/or
5 eviction proceedings based on a purported transfer of title through the non-judicial foreclosure of
6 the First Horizon Deed of Trust.

7 49. Any non-judicial foreclosure sale based on the First Horizon Deed of Trust is invalid as
8 Defendants lost their interest in the Property, if any, at the HOA foreclosure sale.

9 50. Any further sale or transfer of title to the Property by Defendants is invalid because their
10 interest in the Property, if any, was extinguished by the HOA foreclosure sale.

11 51. Any attempt to take or maintain possession of the Property by Defendants is invalid
12 because their interest in the Property, if any, was extinguished by the HOA foreclosure sale.

13 52. On the basis of the facts described herein, Plaintiff has a reasonable probability of
14 success on the merits of its claims and has no other adequate remedies at law.

15 53. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
16 Defendants from beginning or continuing any eviction proceedings that would affect Plaintiff's
17 possession of the Property.

18 54. Plaintiff is entitled to a preliminary injunction and permanent injunction prohibiting
19 Defendants from any sale or transfer that would affect the title to the Property.

20 **VII. PRAYER FOR RELIEF**

21 Plaintiff requests judgment against Defendants as follows:

22 1. For a declaration and determination that SFR Investments Pool 1, LLC is
23 the rightful owner of title to the Property, and that Defendants be declared to have no
24 right, title or interest in the Property

25 2. For a preliminary and permanent injunction that Defendants are prohibited
26 from initiating or continuing eviction proceedings, sale or transfer of the Property;

27 3. For general and special damages in excess of \$10,000.00

28 4. For an award of attorney's fees and costs of suit; and

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5. For any further relief that the Court may deem just and proper.

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
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HOWARD KIM & ASSOCIATES
400 N. STEPHANIE ST, SUITE 160
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(702) 485-3300 FAX (702) 485-3301

1 **IAFD**
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12 400 N. Stephanie St, Suite 160
13 Henderson, Nevada 89014
14 Telephone: (702) 485-3300
15 Facsimile: (702) 485-3301
16 *Attorneys for Plaintiff*

DISTRICT COURT
CLARK COUNTY, NEVADA

13 SFR INVESTMENTS POOL 1, LLC a
14 Nevada limited liability company,
15
16 Plaintiff,
17
18 FIRST HORIZON HOME LOANS, A
19 DIVISION OF FIRST TENNESSEE BANK,
20 A NATIONAL ASSOCIATION; ANA
21 TORRES, an individual; DOES I through X;
22 and ROE CORPORATIONS I through X,
23 inclusive,
24
25 Defendants.

Case No.
Dept. No.
**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

21 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
22 submitted for parties appearing in the above-entitled action as indicated below:

23 ///
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27 ///
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HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

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SFR INVESTMENTS POOL 1, LLC \$270.00

TOTAL **\$270.00**

DATED April 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301

Attorneys for Plaintiff

EXHIBIT B

EXHIBIT B

20080725-0003027

I hereby affirm that this document submitted for recording does not contain a social security number.

Fee: \$17.00 RPTT: \$724.20
N/C Fee: \$25.00

07/25/2008 12:47:16
T20080155742

Requestor:
RECORD SEARCHING SERVICES

Debbie Conway BRT
Clark County Recorder Pgs: 5

Deborah Kiss
Signature DEBORAH KISS
Printed name & title AUDITOR

C5-1

APN# 161-26-111-017 ① 9

Recording Requested By: CHICAGO TITLE

Name: CHICAGO TITLE/SERVICELINK DIVISION

Address: 400 CORPORATION DRIVE

City/State/Zip: ALIQUIPPA, PA 15001

Document Title: SPECIAL WARRANTY DEED

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from of document), Book recorded County Recorder office.	Page (date) in the	Document #	(type
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If Surveyor, please provide name and address.

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

NV Affirmation cover Sheet - 2/06

VMP © -368C(NV) (0602)

SFR_000066

**PROPERTY
TAX ID#
161-26-111-017**

[this space for recording information]

After Recording Return to:

Loan No. 331627256
SL# 1548917
ServiceLink
4000 Industrial Blvd
Aliquippa, PA 15001

Mail Tax Statements To:
Ana Torres
5069 Midnight Oil Drive
Las Vegas, Nevada 89122

Property Address:

5069 Midnight Oil Drive
Las Vegas, Nevada 89122

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED, executed this 13 day of June 2008, by FEDERAL HOME LOAN MORTGAGE CORPORATION, with a business address of 5000 Plano Parkway, Carrollton, Texas 75010, hereinafter called **GRANTOR**, grants to ANA TORRES, a single woman, residing at 5069 Midnight Oil Drive, Las Vegas, Nevada 89122, hereinafter called **GRANTEE**:

Wherever used herein the terms "GRANTOR" AND "GRANTEE" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.

Witnessed: That GRANTOR, for and in consideration of the sum of ONE HUNDRED FORTY TWO THOUSAND and 00/100 DOLLARS (\$142,000.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells aliens, remiss, releases, conveys and confirms unto the GRANTEE, all that certain land, situated in Clark County, Nevada, viz:

PARCEL I:

LOT FORTY-SIX (46) OF SILVER SPRINGS - UNIT A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 36, AND AS AMENDED BY CERTIFICATE OF AMENDMENTS RECORDED APRIL 27, 2001 IN BOOK 20010427 AS DOCUMENT NO. 00272 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT UPON AND OVER THAT PORTION OF SAID SUBDIVISION DELINEATED ON PLATS AS "PRIVATE STREET AND P.U.E. AND COMMON ELEMENT LOTS" AND AS FURTHER DESCRIBED IN THE COVENANTS, CONDITIONS AND RESTRICTION RECORDED SEPTEMBER 17, 2001 IN BOOK 2001 AS DOCUMENT NO. 01331 OF OFFICIAL RECORDS AND AS SAME MAY BE AMENDED FROM TIME TO TIME.

THIS CONVEYANCE IS MADE SUBJECT TO ALL RESTRICTIONS, EASEMENTS, RIGHTS OF WAY, COVENANTS AND CONDITIONS CONTAINED IN THE DEEDS FORMING THE CHAIN OF TITLE TO THIS PROPERTY.

SOURCE OF TITLE IS BOOK _____, PAGE _____ /INSTRUMENT NO. 2008
0109-0002440 (RECORDED 1-9-08)

PROPERTY ADDRESS: 5069 Midnight Oil Drive, Las Vegas, Nevada 89122
The legal description was obtained from a previously recorded instrument.

- SUBJECT TO:**
1. TAXES FOR THE FISCAL YEAR 2008-2009
 2. COVENANTS, CONDITIONS, RESERVATIONS, RIGHTS, RIGHTS OF WAY AND EASEMENTS NOW OF RECORD.

This deed warrants title only against claims held by, through, or under the grantor, or against encumbrances made or suffered by the grantor, and it cannot be held to warrant title generally against all persons.

Grantor does further covenant and bind itself, and its successors and assigns to warrant and forever defend the title to the property to the said Grantee against the lawful claims of all persons claiming by, through or under the Grantor, but no further or otherwise.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; and that said land is free of all encumbrances.

WITNESS the following signature and seal this 13 day of June, 2008.

ATTEST

Stephanie Babik
First Witness

Stephanie Babik
Print Name

Deborah Kiss
Second Witness

Deborah Kiss
Print Name

STATE OF PA }

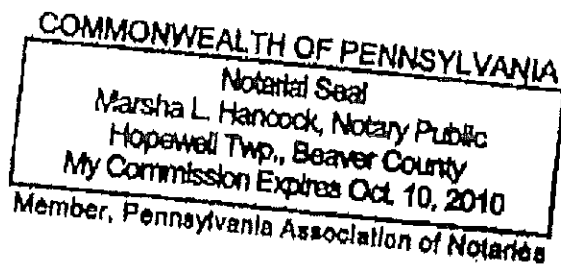
FEDERAL HOME LOAN MORTGAGE CORPORATION by Chicago Title Insurance Company doing business as ServiceLink as Attorney-in-Fact

BY: [Signature]
Sheri L. Yoho

ITS: VP
It's Attorney-in-fact, pursuant to Power of Attorney recorded on 06/28/2007 in Official Records as Document No. 20070628-0003276 of the Public Records of Clark County.

COUNTY OF Beaver }

ACKNOWLEDGED BEFORE ME, on this 13 day of June, 2008, the undersigned authority, personally appeared Sheri L. Yoho, who is the VP of Chicago Title Insurance Company doing business as ServiceLink as Attorney-in-Fact for FEDERAL HOME LOAN MORTGAGE CORPORATION, and is appearing on behalf of said corporation, with full authority to act for said corporation in this transaction, who is known to me or has shown _____ as identification, who after being by me first duly sworn, deposes and says that he/she has the full legal authority to sign this deed on behalf of the aforementioned corporation.



[Signature]
NOTARY PUBLIC
My Commission Expires 10-10-10
Marsha L Hancock

The preparer has not had any contact with the Grantor(s) nor Grantee(s) herein No title search was performed on the subject property by the preparer. The preparer of this deed makes no representation as to: the status of the title; property use; any zoning regulations concerning described property herein conveyed; or any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantor/Grantee and /or their agents, no boundary survey was made at the time of this conveyance. **PREPARER NOT RESPONSIBLE FOR CLOSING**

Prepared under the supervision of:
P. Desantis, Esq.
By: Law's Specialty Group, Inc.
235 West Brandon Blvd., #191 Brandon, Florida 33511

1-866-755-6300

STATE OF NEVADA DECLARATION OF VALUE

FOR RECORDERS OPTIONAL USE ONLY	
Document/Instrument#:	
Book:	Page:
Date of Recording:	
Notes:	<i>AV</i>

1. Assessor Parcel Number (s)

a) 161-26-111-017
 b) _____
 c) _____
 d) _____

2. Type of Property:

a) <input type="checkbox"/>	Vacant Land	b) <input checked="" type="checkbox"/>	Single Fam Res.
c) <input type="checkbox"/>	Condo/Twnhse	d) <input type="checkbox"/>	2-4 Plex
e) <input type="checkbox"/>	Apt. Bldg.	f) <input type="checkbox"/>	Comm'l/Ind'l
g) <input type="checkbox"/>	Agricultural	h) <input type="checkbox"/>	Mobile Home
i) <input type="checkbox"/>	Other		

3. Total Value/Sales Price of Property:

	\$	<u>142 000.00</u>
Deed in Lieu of Foreclosure Only (value of property)	\$	<u>0</u>
Transfer Tax Value:	\$	<u>142000.00</u>
Real Property Transfer Tax Due:	\$	<u>724.20</u>

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature *[Signature]* Capacity grantor
 Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Federal Home Loan Mortgage
 Address: 5000 Reno Pkwy
 City: Carrollton
 State: TX Zip: 75010

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Ana Torres
 Address: 5069 midnight Oil Drive
 City: Las Vegas
 State: NV Zip: 89122

COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: ServiceLink Escrow # 1548917
 Address: 400 Corporation Drive
 City: Alliquippa State: PA Zip: 15001

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

SFR_000070

EXHIBIT C

EXHIBIT C



Fee: \$25.00
N/C Fee: \$25.00

07/25/2008 12:47:16

07/25/2008 12:47:16

T20080155742

Requestor:

RECORD SEARCHING SERVICES

Debbie Conway BRT

Clark County Recorder Pgs: 13

I hereby affirm that this document submitted for recording does not contain a social security number.

Deborah Kiss
Signature DEBORAH KISS
Printed name & title AUDITOR

APN# 161-26-111-017 (2)

10 (C13)

Recording Requested By: CHICAGO TITLE

Name: CHICAGO TITLE/SERVICELINK DIVISION

Address: 400 CORPORATION DRIVE

City/State/Zip: ALIQUIPPA, PA 15001

Document Title: DEED OF TRUST

If legal description is a metes & bounds description furnish the following information:

Legal Description obtained from of document), Book recorded County Recorder office.	Page (date) in the	Document #	(type
--	-----------------------	------------	-------

If Surveyor, please provide name and address.

This page added to provide additional information required by NRS 111.312 Sections 1-4.
(Additional recording fee applies)

This cover page must be typed.

NV Affirmation cover Sheet - 2/06

VMP © -368C(NV) (0602)

FHHL0004

Assessor's Parcel Number:
 Assessor's Parcel Number:
 County: 161-26-111-017 City: N/A
 Return To: ~~FHHL - POST CLOSING MAIL ROOM~~
 Chicago Title/Service Link Division
 1555 ~~N WALNUT HILL LN #200 MC 6712~~
 IRVING, TX 75038
 400 Corporation Drive 1548917
 Alliquippa PA 15001
 Prepared By: FIRST HORIZON HOME LOANS,
 A DIVISION OF FIRST TENNESSEE BANK N.A.
 7375 PRAIRIE FALCON DR STE 120
 LAS VEGAS, NV 89128

Recording Requested By:
 FIRST HORIZON HOME LOANS
 4000 HORIZON WAY
 IRVING, TX 75063

[Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No. 332-4647084-703

MIN 100085200641519139

THIS DEED OF TRUST ("Security Instrument") is made on July 15, 2008
 The Grantor is ANA TORRES, An Unmarried Woman

("Borrower"). The trustee is ~~DL SERVICE LINK~~ United Title of Nevada
 3980 Howard Hughes Pkwy Las Vegas NV 89109

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A., ("Lender")
 0064151913

FHA Nevada Deed of Trust with MERS - 4/96

~~VMP~~ 4N(NV) (0510) Amedued 2/98

Page 1 of 9 Initials: DET

VMP Mortgage Solutions, Inc.



FHHL0005

is organized and existing under the laws of **THE UNITED STATES OF AMERICA**
and whose address is **4000 HORIZON WAY,**
IRVING, TEXAS 75063

Borrower owes Lender the principal sum of
ONE HUNDRED THIRTY SIX THOUSAND NINE HUNDRED TWENTY THREE & 00/100
Dollars (U.S. \$ **136,923.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"),
which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
AUGUST 1, 2038

This Security Instrument secures to Lender: (a) the repayment of the
debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security
Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument
and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power
of sale, the following described property located in **Clark**
County, Nevada:

**All that tract or parcel of land as shown on Schedule "A" attached
hereto which is incorporated herein and made a part hereof.**

which has the address of **5069 MIDNIGHT OIL DRIVE** [Street]
LAS VEGAS [City], Nevada **89122** [Zip Code]
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,
appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also
be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the
"Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by
Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for
Lender and Lender's successors and assigns), has the right to exercise any or all of those interests, including,
but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender
including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has
the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of
record. Borrower warrants and will defend generally the title to the Property against all claims and demands,
subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform
covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real
property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

- 1. Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of,
and interest on, the debt evidenced by the Note and late charges due under the Note.
- 2. Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each
monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum
for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or
ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In

0064151913
VMP-4N(NV) (0510)

Initials: RET

any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later

Initials: AGT

sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C.

1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums

secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

Initials: *AGT*

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by applicable law to Borrower and to the persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ _____ dollars not to exceed the maximum allowable per HUD.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Planned Unit Development Rider
- Growing Equity Rider
- Graduated Payment Rider
- Other [specify]

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VMP-4N(NV) (0510)

Initials: AGT

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Ana Gloria Torres (Seal)
ANA TORRES -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower


_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

0064151913

 4N(NY) (0510)

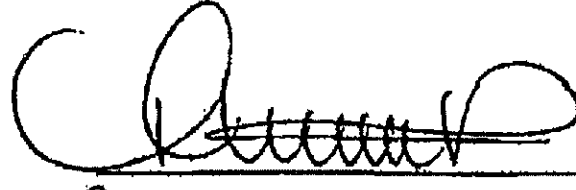
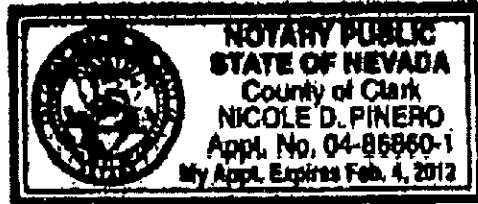
STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on
ANA TORRES

07-16-08

by



Nicole D Pinero

Mail Tax Statements To:

TOTAL MORTGAGE SOLUTIONS, LP
1555 W. WALNUT HILL LANE, SUITE 200A
IRVING, TX 75038

PLANNED UNIT DEVELOPMENT RIDER

0064151913

FHA Case No.
332-4647084-703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of July 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK N.A. ("Lender") of the same date and covering the Property described in the Security Instrument and located at:

5069 MIDNIGHT OIL DRIVE, LAS VEGAS, NV 89122

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

SILVER SPRINGS- UNIT A

[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned

FHA Multistate PUD Rider - 10/95

VMP-589U (0402)

Page 1 of 2 Initials: *AGT*

VMP Mortgage Solutions, Inc.

(800)521-7291



FHHL0014

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and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Ana Gloria Torres (Seal) _____ (Seal)
 ANA TORRES -Borrower -Borrower

_____ (Seal) _____ (Seal)
 -Borrower -Borrower

_____ (Seal) _____ (Seal)
 -Borrower -Borrower

_____ (Seal) _____ (Seal)
 -Borrower -Borrower

0064151913

VMP-589U (0402)

Exhibit "A"
Exhibit "A"
Legal Description

All that certain parcel of land situated in the County of Clark, State of Nevada, being known and designated as follows:

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendments recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restriction recorded September 17, 2001 in Book 2001 as Document No. 01331 of Official Records and as same may be amended from time to time.

Tax ID: 161-26-111-017

1548917 - 1

EXHIBIT D

EXHIBIT D

Inst #: 20121030002798

Fees: \$224.00

N/C Fee: \$0.00

10/30/2012 11:25:50 AM

Receipt #: 1362782

Requestor:

PREMIER AMERICAN TITLE

Recorded By: STN Pgs: 8

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 12-00029-NS-NV
Title Order No. : 61200062

APN: 161-26-111-017

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 07/15/2008, executed by ANA TORRES, AN UNMARRIED WOMAN, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A., ITS SUCCESSORS AND ASSIGNS as beneficiary recorded 07/25/2008 as Instrument No. 20080725-0003028 (or Book, Page) of the Official Records of CLARK County, NV. Said obligations including ONE NOTE FOR THE ORIGINAL sum of \$136,923.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

The installments of principal and interest which became due on 09/01/2011 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

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Notice of Default and Election to Sell Under Deed of Trust
NDSC File No.: 12-00029-NS-NV
Page 2

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Nationstar Mortgage, LLC
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone 602/264-6101 Sales Website: www.ndscorp.com/sales/

Loss Mitigation Contact: Michael Nguyen / 8888115281 Ext 73062
michael.nguyen@NationstarMail.com

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at:
<http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

The Property Address: 5069 MIDNIGHT OIL DRIVE , LAS VEGAS NV 89122

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

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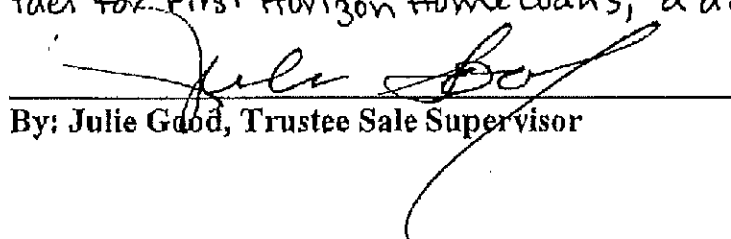
JA_0090

Notice of Default and Election to Sell Under Deed of Trust
NDSC File No.: 12-00029-NS-NV
Page 3

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated : October 29, 2012

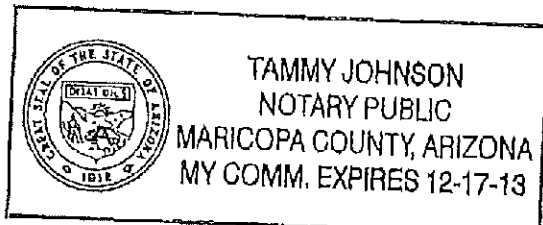
National Default Servicing Corporation, As Trustee for Nationstar Mortgage, LLC, as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association


By: Julie Good, Trustee Sale Supervisor

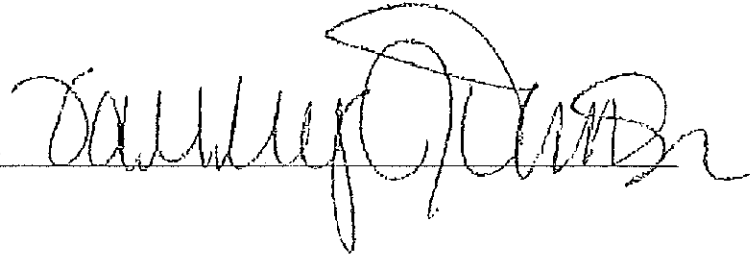
State of: Arizona
County of: Maricopa

On October 29, 2012, before me, the undersigned, a Notary Public for said State, personally appeared Julie Good personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature



This is an attempt to collect a debt and any information obtained will be used for that purpose.

SFR_000091

JA_0091

TS No: 12-00029-NS-NV
APN: 161-26-111-017

AB284 Affidavit

**AFFIDAVIT OF AUTHORITY TO EXERCISE THE
POWER OF SALE**

Borrower/Trustor:

ANA TORRES, A SINGLE WOMAN

Trustee Address:

7720 N. 16th Street, Suite 300
Phoenix AZ 85020

Property Address:

5069 MIDNIGHT OIL DRIVE
LAS VEGAS NV 89122

Deed of Trust Document Instrument
Number

20080725-0003028

STATE OF TEXAS)

) ss:

COUNTY OF DENTON)

The Affiant, Blaze Randazzo, being first duly sworn upon oath, attest that I am an individual over the age of eighteen years and an employee of NATIONSTAR MORTGAGE LLC and am employed in the capacity of Limited Vice President. I have obtained personal knowledge of the information stated herein based upon my review of loan servicing records, and/or recorded documents or public records. I am familiar with the manner that the records are kept and maintained by employees of Nationstar Mortgage LLC.

To the best of my knowledge, the following is true and accurate:

- A. All records have been maintained in the ordinary course of business, updated at, or near the time of the events recorded and/or described therein;
- B. First Horizon Home Loans, a division of First Tennessee Bank, National Association is the current Beneficiary of the Deed of Trust or the authorized representative of the Beneficiary of the Deed of Trust described above, and described in the Notice of Default and Election to Sell to which this affidavit is attached;

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C. Pursuant to NRS 107.080(c):

1. The full name and business address of the current Trustee or the Trustee's representative or assignee is:

<u>National Default Servicing Corporation</u>	<u>7720 N. 16th Street, Suite 300</u>
Full Name	Phoenix, Maricopa County, AZ 85020
	Street, City, County, State, Zip

The full name and business address of the current holder (or constructive holder) of the Note secured by the Deed of Trust is:

<u>First Horizon Home Loans, a division of</u>	<u>4000 Horizon Way, Irving, Dallas County,</u>
<u>First Tennessee Bank, National</u>	<u>TX 75063</u>
<u>Association</u>	
Full Name	Street, City, County, State, Zip

The full name and business address of the current Beneficiary of record of the Deed of Trust is:

<u>First Horizon Home Loans, a division of</u>	<u>4000 Horizon Way, Irving, Dallas County,</u>
<u>First Tennessee Bank, National</u>	<u>TX 75063</u>
<u>Association</u>	
Full Name	Street, City, County, State, Zip

The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

<u>Nationstar Mortgage LLC</u>	<u>350 Highland Drive, Lewisville, Denton</u>
Full Name	<u>County, TX 75067</u>
	Street, City, County, State, Zip

2. The full name and last known business address of the current and every prior known Beneficiary of the Deed of Trust, is:

<u>First Horizon Home Loans, a division of</u>	<u>4000 Horizon Way, Irving, Dallas County,</u>
<u>First Tennessee Bank, National</u>	<u>TX 75063</u>
<u>Association</u>	
Full Name	Street, City, County, State, Zip

(List additional known Beneficiaries in the same format)

<u>First Horizon Home Loans, a division of</u>	<u>4000 Horizon Way, Irving, Dallas County,</u>
<u>First Tennessee Bank, National</u>	<u>TX 75063</u>
<u>Association</u>	
Full Name	Street, City, County, State, Zip

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Mortgage Electronic Registration
Systems, Inc., as nominee for First
Horizon Home Loans, a division of First
Tennessee Bank, National Association

1818 Library Street, Suite 300, Reston,
Fairfax County, VA 20190

Full Name

Street, City, County, State, Zip

3. The Beneficiary, successor in interest of the Beneficiary has actual or constructive possession of the note secured by the Deed of Trust.

4. The Trustee has been authorized to exercise the power of sale under Chapter 107 of NRS with respect to the property encumbered by the Deed of Trust, pursuant to the instruction of the Beneficiary of record (or the authorized representative of the same) and the current holder of the Note secured by the Deed of Trust (or the authorized representative of the same).

5. The following is information regarding the amount in default, the principal amount secured by the Deed of Trust, a good faith estimate of fees imposed and to be imposed because of the default and the costs and fees charged to the Debtor in connection with the exercise of the power of sale:

I. ACTUAL

Original Principal Balance	\$136,923.00	
Current Unpaid Principal Balance		\$132,014.81
Amount of Missed Payment (PITI)	\$13,017.90	
# of Payments:8	\$1,003.80	
# of Payments:5	\$997.50	
Interest Rate at 6.50% from 8/1/11 to 9/4/12 (14 Months at \$715.08 Per Month)		\$10,011.12

Actual Fees Charged:

Late Charges	\$0.00
NSF Fees	\$0.00
Attorney's Fees	\$0.00
Foreclosure or Trustee Fees	\$0.00
Legal Costs (Non-Judicial Foreclosure)	\$0.00
Legal Costs	\$0.00
Title Costs	\$0.00
Recorder Costs	\$0.00
Appraisal or BPO Costs	\$0.00
Property Inspection Costs	\$96.00
Tax Advances	\$472.25
Home Owners Insurance Advances	\$249.00
Mortgage Insurance	\$699.26
HOA Advances	\$0.00

SFR_000094

Other	\$0.00
Suspense	\$0.00
Total	\$143,542.44

ESTIMATE

II. Good faith estimate of all fees and costs to be imposed by the Beneficiary or its representative because of the default is **\$8,400.00**.

III. Good faith estimate of the total costs and fees to be imposed in connection with the exercise of the power of sale is **\$2,830.95**.

6. Exhibit "A" contains the date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

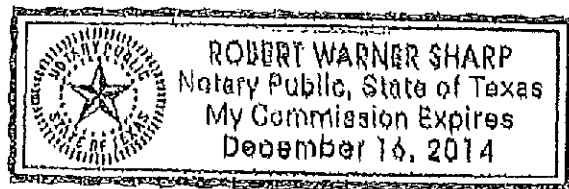
Dated this 6 day of September, 2012.
 Affiant Name: Blaze Randazzo title - ~~Assistant Secretary~~^{OR} Limited vice president
 Signature: [Signature] 9/6/12 (RWS)

Nationstar Mortgage LLC as attorney in fact for First Horizon Home Loans, a division of First Tennessee Bank, National Association.

STATE OF Texas)
) ss:
 COUNTY OF Denton)

On this 6th day of September, 2012, personally appeared before me, a Notary Public, in and for said County and State, Blaze Randazzo, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Signature]
 NOTARY PUBLIC IN AND FOR
 SAID COUNTY AND STATE



SFR_000095

Exhibit "A"

TS #: 12-00029-NS-NV
Title Order # 61200062

Subject Deed of Trust Information:

Deed of Trust Dated: July 15, 2008

Deed of Trust Recorded: 07-25-2008 as 20080725-0003028, Official Records

Original Loan Amount: \$136,923.00

Original Trustor:

Ana Torres, an Unmarried Woman

Original Beneficiary:

Mortgage Electronic Registration Systems, Inc. MERS, solely as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns

Original Trustee:

United Title of Nevada

Assignments:

The beneficial interest in the Deed of Trust was purportedly assigned by an assignment recorded 08-17-2012 as 201208170001261, of Official Records.

Assignor: Mortgage Electronic Registration Systems, Inc., as nominee for First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns

Assignee: First Horizon Home Loans, a Division of First Tennessee Bank, National Association

SFR_000096

JA_0096

EXHIBIT E

EXHIBIT E

APN: 161-26-111-017

Alt. APN:

Recording requested by:

National Default Servicing Corporation
7720 N 16 Street, Suite 300
Phoenix, AZ 85020

When recorded, mail to:

National Default Servicing Corporation
7720 N 16 Street, Suite 300
Phoenix, AZ 85020

Inst #: 201302010003558

Fees: \$17.00

N/C Fee: \$0.00

02/01/2013 03:13:13 PM

Receipt #: 1482964

Requestor:

PREMIER AMERICAN TITLE

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

61200062

CERTIFICATE

STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM

Property Owner(s):

Torres, Ana

Property Address:

5069 Midnight Oil Dr
Las Vegas, NV 89122

Clark Co.

Trustee: 12-0029-NS-NV

Instrument Number:

National Default Servicing Corporation
7720 N 16th St, Ste 300
Phoenix, AZ 85020

Deed of Trust Doc Number:
20080725-0003028

Book: Page:

- Mediation Waived:** The Beneficiary may proceed with the foreclosure process.
- Non-Applicable Property:** The Beneficiary may proceed with the foreclosure process.
- No Agreement:** A Foreclosure Mediation Conference was held on N/A. The parties were unable to agree to a resolution of this matter. The Beneficiary may proceed with the foreclosure process.
- Relinquish the Property:** A Foreclosure Mediation Conference was held on N/A. The parties agreed homeowner would voluntarily relinquish the property. The mediation required by law has been completed in this matter. The Beneficiary may proceed with the foreclosure process.
- Grantor Non-Compliance:** The Grantor or person who holds the title of record did not attend the Foreclosure Mediation Conference or failed to produce the necessary disclosure forms. The Beneficiary may proceed with the foreclosure process.
- Certificate Reissuance:** The Beneficiary may proceed with the foreclosure process.
- Court Ordered:** The Beneficiary may proceed with the foreclosure process.

NOD Date: 10-30-2013 Proof of Service Date: 11-07-2012

Certificate Issued Date: 01-11-2013

FMP CERT: 2013-01-11-0089

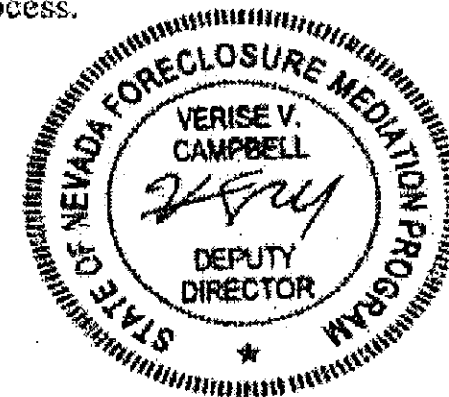


EXHIBIT F

EXHIBIT F

Inst #: 201302070001593

Fees: \$19.00

N/C Fee: \$0.00

02/07/2013 12:23:48 PM

Receipt #: 1488406

Requestor:

PREMIER AMERICAN TITLE

Recorded By: LEX Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 12-00029-NS-NV

Title Order No. : 61200062

APN No. : 161-26-111-017

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 07/15/2008 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY; IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Notice is hereby given that National Default Servicing Corporation as trustee (or successor trustee, or substituted trustee), pursuant to the Deed of Trust executed by ANA TORRES, AN UNMARRIED WOMAN, dated 07/15/2008 and recorded 07/25/2008 as Instrument No. 20080725-0003028 (or Book, Page) and Re-Recorded on 01/11/2013 as Instrument No. 201301110003297 (or Book, Page) for the reason of 'Correct legal' of the Official Records of CLARK County, State of NV, and pursuant to the Notice of Default and Election to Sell thereunder recorded 10/30/2012 as Instrument No. 201210300002798 (or Book, Page) of said Official Records.

Date and Time of Sale: 02/26/2013 at 10:00 A.M.

Place of Sale: At the front entrance to the Nevada Legal News 930 S. 4th St., Las Vegas, NV 89101

Property will be sold at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and more fully described in Exhibit "A" attached hereto and made a part hereof.

The street address and other common designation, if any of the real property described above is purported to be:

**5069 MIDNIGHT OIL DRIVE
LAS VEGAS, NV 89122**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publications of the Notice of Sale is \$148,344.78. The opening bid at the time of the sale may be more or less than this amount depending on the total indebtedness owed and /or the fair market of the property.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

SFR_000114

Page 2

Notice of Trustee's Sale

NDSC File No. : 12-00029-NS-NV

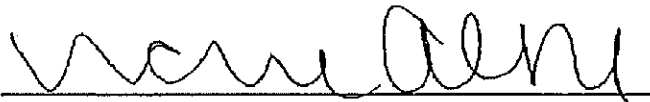
In addition to cash, the Trustee will accept cashier's checks drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right.

Said sale will be made, in an "as is" condition, without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid balance of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The lender is unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing said receipt.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

Date: 02/05/2013

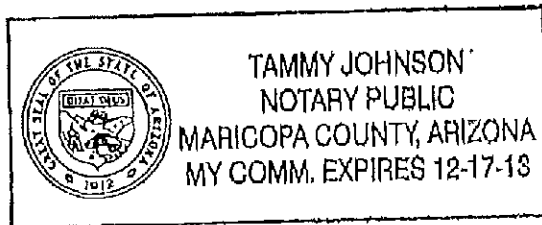
National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020
602-264-6101
Sales Line : 714-730-2727 Sales Website: www.ndscorp.com/sales

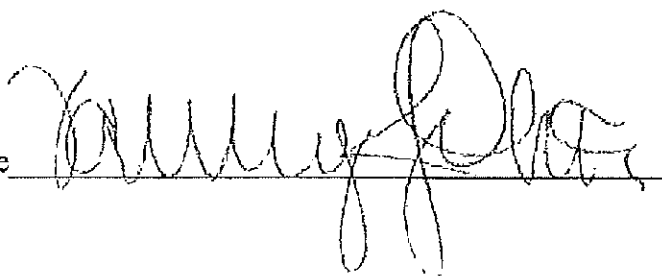
By: 
Nichole Alford, Trustee Sales Representative

State of: Arizona
County of: Maricopa

On 25, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Nichole Alford personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature 

SFR_000115

Exhibit A

NDSC Notice of Sale Addendum

NDSC No. : 12-00029-NS-NV
PROP. ADDRESS : 5069 MIDNIGHT OIL DRIVE
LAS VEGAS, NV 89122

COUNTY : CLARK

LEGAL DESCRIPTION :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

SFR_000116

EXHIBIT G

EXHIBIT G

Inst #: 201303070003168
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$772.65 Ex: #
03/07/2013 01:32:46 PM
Receipt #: 1525086
Requestor:
PREMIER AMERICAN TITLE
Recorded By: DHG Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067
FORWARD TAX STATEMENTS TO:
FIRST HORIZON HOME LOANS
350 Highland Drive
Lewisville, TX 75067

APN: 161-26-111-017

NDSC File No.: 12-00029-NS-NV
Loan No.: 0596965595
Title Order No.: 61200062

TRUSTEE'S DEED UPON SALE

Transfer Tax : \$ 772.65
The Grantee herein WAS the Beneficiary
The amount of the unpaid debt was \$151,283.09
The amount paid by the Grantee was \$151,283.09
The property is in the city of LAS VEGAS, County of CLARK, State of NV.

National Default Servicing Corporation, an Arizona Corporation, as the duly appointed Trustee (or successor Trustee or Substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without any covenant or warranty to :

FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, NATIONAL ASSOCIATION

herein called Grantee, the following described real property situated in CLARK County :

Parcel I:

Lot Forty-Six (46) of Silver Springs - Unit A, as shown by Map thereof on file in Book 91 of Plats, Page 36, and as amended by Certificate of Amendment recorded April 27, 2001 in Book 20010427 as Document No. 00272 in the Office of the County Recorder of Clark County, Nevada.

Parcel II:

A non-exclusive easement for ingress, egress and enjoyment upon and over that portion of said subdivision delineated on plats as "Private Street and P.U.E. and Common Element Lots" and as further described in the Covenants, Conditions and Restrictions recorded September 17, 2001 in Book 20010917 as Document No. 01331 of Official Records and as the same may be amended from time to time.

This conveyance is made pursuant to the powers conferred upon Trustee by said Deed of Trust executed by ANA TORRES, AN UNMARRIED WOMAN , as Trustor, recorded on 07/25/2008 as Instrument No. 20080725-0003028 (or Book, Page) and Re-Recorded on 01/11/2013 as Instrument No. 201301110003297 (or Book, Page) for the reason of 'Correct legal' of the Official Records of CLARK County, NV.

SFR_000117

Page 2
Trustee's Deed Upon Sale
NDSC File No.: 12-00029-NS-NV

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 02/26/13 Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, which amount was \$151,283.09.

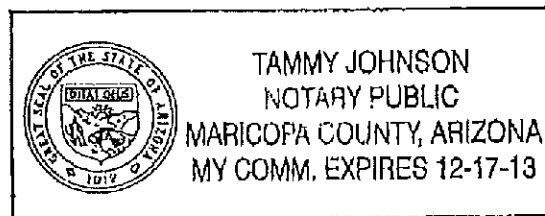
Dated : 2/27/13 National Default Servicing Corporation, an Arizona Corporation

By: Carmen Navejas
Carmen Navejas, Trustee Sales Officer

State of: Arizona
County of: Maricopa

On 2-27, 2013, before me, the undersigned, a Notary Public for said State, personally appeared Carmen Navejas personally known to me be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature Tammy Johnson

SFR_000118

JA_0105

STATE OF NEVADA
DECLARATION OF VALUE FORM

1 Assessor Parcel Number(s)
 a) 161-26-111-017
 b) _____
 c) _____
 d) _____

2 Type of Property:
 a) Vacant Land b) Single Fam. Res.
 c) Condo/Twnhse d) 2-4 Plex
 e) Apt. Bldg f) Comm'l/Ind'l
 g) Agricultural h) Mobile Home
 Other _____

FOR RECORDER'S OPTIONAL USE ONLY	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a Total Value/Sales Price of Property \$151,283.09
 b Deed in Lieu of Foreclosure Only (value of property) (_____)
 c Transfer Tax Value: \$151,283.09
 d Real Property Transfer Tax Due \$ 772.65

4. **If Exemption Claimed:**
 a Transfer Tax Exemption per NRS 375.090, _____
 b Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declare and acknowledges, under penalty of perjury, pursuant to NRS, 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Carmen Navejas
 Carmen Navejas, 12-00029-NS-NV

Capacity Grantor

Signature _____
SELLER (GRANTOR) INFORMATION

Capacity Grantee
BUYER (GRANTEE) INFORMATION

National Default Servicing Corp.
 7720 N. 16th Street, Suite 300
 Phoenix, AZ 85020

First Horizon Home Loans
 350 Highland Drive
 Lewisville TX 75067

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: _____ Escrow #: 61200062
 Address: Premier American Title Agency
 400 N. Stephanie St Suite 140
 City: Henderson, NV 89014 Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

SFR_000119

EXHIBIT H

EXHIBIT H

Inet #: 201202220001525
Fees: \$17.00
N/C Fee: \$0.00
02/22/2012 09:17:26 AM
Receipt #: 1073345
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 161-26-111-017

Trustee Sale # 30478-5069

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Squire Village at Silver Springs Community Association** has a lien on the following legally described property.


The property against which the lien is imposed is commonly referred to as **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122** and more particularly legally described as: **PLAT BOOK 91 PAGE 36 LOT 46 Book 91 Page 36** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **ANA TORRES**

The mailing address(es) is: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122**

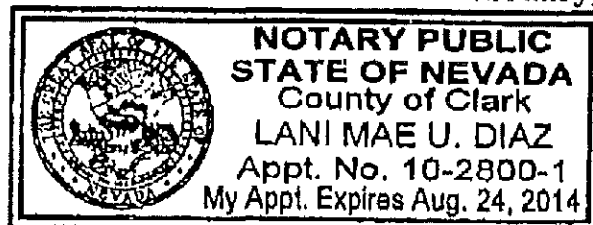
The total amount due through today's date is: **\$1,055.00**. Of this total amount **\$980.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **February 6, 2012**

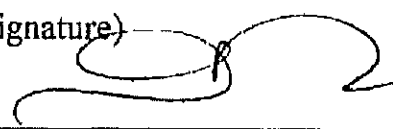
By: 
Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Squire Village at Silver Springs Community Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me February ¹⁷ 6, 2012

(Seal)



(Signature)


NOTARY PUBLIC

SFR_000084

JA_0108

EXHIBIT I

EXHIBIT I

Inst #: 201204200000434
Fees: \$17.00
N/C Fee: \$0.00
04/20/2012 08:27:12 AM
Receipt #: 1138966
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SAO Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 161-26-111-017

Trustee Sale No. 30478-5069

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$2,089.00** as of **March 28, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Squire Village at Silver Springs Community Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on as document number , of Official Records in the County of **Clark**, State of Nevada. Owner(s): **ANA TORRES**, of **PLAT BOOK 91 PAGE 36 LOT 46**, as per map recorded in Book **91**, Pages **36**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated , on behalf of **Squire Village at Silver Springs Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **October 1, 2011** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **March 28, 2012**



Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Squire Village at Silver Springs Community Association**

SFR_000085

JA_0110

EXHIBIT J

EXHIBIT J

Inet #: 201302050002551
Fees: \$17.00
N/C Fee: \$0.00
02/05/2013 04:01:46 PM
Receipt #: 1486476
Requestor:
ALESSI & KOENIG LLC
Recorded By: CYV Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 161-26-111-017

TSN 30478-5069

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

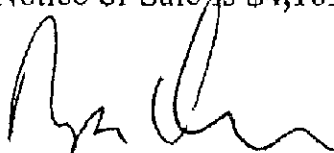
NOTICE IS HEREBY GIVEN THAT:

On **March 6, 2013**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **February 22, 2012**, as instrument number **0001525**, of the official records of **Clark County, Nevada**, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122**. The owner of the real property is purported to be: **ANA TORRES**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$4,109.00**. Payment must be in made in the form of certified funds.

Date: **January 16, 2013**



By: **Ryan Kerbow, Esq.** of Alessi & Koenig LLC on behalf of Squire Village at Silver Springs Community Association

SFR_000113

JA_0112

EXHIBIT K

EXHIBIT K

Inst #: 201303180003508
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$36.70 Ex: #
03/18/2013 03:14:46 PM
Receipt #: 1538706
Requestor:
ALESSI & KOENIG LLC
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
LAS VEGAS, NV 89119

A.P.N. No.161-26-111-017

TS No. 30478-5069

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**
The Foreclosing Beneficiary herein was: **Squire Village at Silver Springs Community Association**
The amount of unpaid debt together with costs: \$5,342.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$7,000.00
The Documentary Transfer Tax: \$35.70
Property address: **5069 MIDNIGHT OIL DR, LAS VEGAS, NV 89122-8124**
Said property is in [] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ANA TORRES**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001525**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC (Grantee)**, all its right, title and interest in the property legally described as: **SILVER SPRINGS-UNIT A LOT 46**, as per map recorded in **Book 91, Pages 36** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 6, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

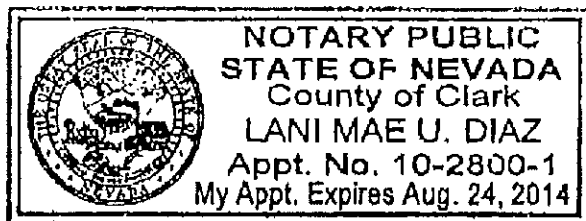
State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me

3/11/13

WITNESS my hand and official seal.
(Seal)

(Signature)



SFR_000120

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
a. 161-26-111-017
b. _____
c. _____
d. _____


2. Type of Property:
a. Vacant Land b. Single Fam. Res.
c. Condo/Twnhse d. 2-4 Plex
e. Apt. Bldg f. Comm'/Ind'l
g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 7,000.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 7,000.00
d. Real Property Transfer Tax Due \$ 35.70

4. **If Exemption Claimed:**
a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor
Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)
Print Name: Alessi & Koenig LLC
Address: 9500 W Flamingo Rd., Ste. 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)
Print Name: SFR Investments Pool 1, LLC
Address: 5030 Paradise Road, St. B-214
City: Las Vegas
State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
Print Name: Alessi & Koenig LLC
Address: 9500 W Flamingo Rd., Ste. 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

SFR_000121

EXHIBIT L

EXHIBIT L

APNs: 161-26-111-015 thru 030
161-26-111-039 thru 044

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WHEN RECORDED, RETURN TO:

Steven L. Lisker
Bryan Cave LLP
Two North Central Avenue
Suite 2200
Phoenix, Arizona 85004-4406



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SQUIRE VILLAGE AT SILVER SPRINGS, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SQUIRE VILLAGE AT SILVER SPRINGS, a planned community (this "Declaration") is made as of this 14th day of September, 2001, by Beaver Homes Holdings Corp., a Delaware corporation (the "Declarant").

ARTICLE I

DEFINITIONS

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Uniform Common-Interest Ownership Act, N.R.S. § 116-1101, et seq., as amended from time to time.

1.2 Defined Terms. The following capitalized terms shall have the general meanings described in the Act and for purposes of this Declaration shall have the specific meanings set forth below

1.2.1 "Act" means the Uniform Common-Interest Ownership Act, N.R.S. § 116-1101, et seq., as amended from time to time.

1.2.2 "Additional Property" means the real property located in Clark County, Nevada, which is described on Exhibit B attached to this Declaration, together with all buildings and other improvements located thereon.

1.2.3 "Architectural Committee" means the committee of the Association to be created pursuant to Section 6.11 of this Declaration.

1.2.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 6.11 of this Declaration, as amended or supplemented from time to time.

1.2.5 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.2.6 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

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1.2.7 "Assessment Lien" means the lien granted to the Association by the Act to secure the payment of Assessments, fines and other charges owed to the Association.

1.2.8 "Association" means Squire Village at Silver Springs Community Association, a Nevada nonprofit corporation, its successors and assigns.

1.2.9 "Board of Directors" means the Board of Directors of the Association.

1.2.10 "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.2.11 "Common Elements" means any real estate within the Community owned or leased by the Association, other than the Units.

1.2.12 "Common Expenses" means expenditures made by or financial liabilities of the Association, including (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon, including clustered mailboxes, private streets, gated entryways, street lights and recreational facilities; (ii) the cost of maintenance, repair and replacement of the parts of the Units for which the Association has the responsibility of maintaining; (iii) the cost of centrally metered utilities which serve the Units and or the Common Elements and the cost of trash removal for the Units if so elected by the Board of Directors; (iv) the cost of all obligations of the Association pursuant to the Easement and Maintenance Agreement; (v) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, the costs of bonding the members of the Board of Directors, and the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Association, including fees, charges and costs payable to any governmental entity pursuant to law; (vi) the costs of rendering to the Units' Owners all services required to be rendered by the Association under the Governing Documents; (vii) such amount as is established by the Association as a reserve for the cost of repair and replacement for the major components of the Common Elements, which may be used only for Common Expenses that involve major repairs or replacement, including repairing and replacing roads and sidewalks and which may not be used for daily maintenance; (viii) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (ix) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community for the common benefit of the Units' Owners.

1.2.13 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.14 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit by this Declaration.

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1.2.15 "Community" means the real property located in Clark County, Nevada, which is described in Exhibit A attached to this Declaration, together with all Improvements located thereon, and any portion of the Additional Property which is annexed by the Declarant pursuant to Section 2.8 of this Declaration, together with all Improvements located thereon.

1.2.16 "Declarant" means Beazer Homes Holdings Corp., a Delaware corporation, and its successors and any person or entity to whom it may transfer any Special Declarant's Right.

1.2.17 "Declarant Party" or "Declarant Parties" means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

1.2.18 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.2.19 "Developmental Rights" means any right or combination of rights reserved by the Declarant in this Declaration to do any of the following:

- (i) Add real estate to the Community;
- (ii) Create Units, Common Elements and Limited Common Elements within the Community;
- (iii) Subdivide Units or convert Units into Common Elements; or
- (iv) Withdraw real estate from the Community.

1.2.20 "Dewatering System" means the underground drainage pipes and other drainage facilities installed within the Common Elements, those portions of the Units encumbered by a "10' Dewatering Easement" as shown on the Plat and the Sterling Community.

1.2.21 "Dwelling" means any building, or portion of a building, situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence.

1.2.22 "Easement and Maintenance Agreement" means that certain Easement and Maintenance Agreement Recorded on September 14, 2001, in Book 20010914 as Instrument No. 001052, between and among the Association, the Sterling at Silver Springs Homeowners Association, a Nevada nonprofit corporation, Declarant and Plaster Development Company, Inc., a Nevada corporation, the declarant under that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463, as described in Section 3.8 of this Declaration.

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1.2.23 "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.2.24 "First Mortgagee" means the holder of any First Mortgage.

1.2.25 "Governing Documents" means this Declaration and the Articles, Bylaws, Rules and the Architectural Committee Rules.

1.2.26 "Identifying Numbers" means the number assigned to a particular Unit which identifies only that one Unit in the Community and which is shown on the Plat as a "Lot Number"

1.2.27 "Improvement" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Community, including buildings, basketball hoops and poles, play equipment, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

1.2.28 "Include" or "including" means include or including, without limitation.

1.2.29 "Limited Private Utility and Access Easement" means the easements shown on the Plat and described in Subsections 3.1.2 and 3.2.2 which provide for the placement of utilities within Units and vehicular and pedestrian ingress and egress to a Unit over a portion of one or more other Units

1.2.30 "Member" means any Person who is or becomes a member of the Association.

1.2.31 "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded and ending on the earlier of:

(i) Sixty (60) days after the conveyance of seventy-five percent (75%) of the Units that may be created to Units' Owners other than the Declarant; or

(ii) Five (5) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) Five (5) years after any right to add new Units was last exercised.

1.2.32 "Person" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

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1.2.33 "Plans" means the plans referred to in Subsection 5 of N.R.S. 116.2109, including drawings of improvements which are filed with agencies which issue permits but do not need to be Recorded

1.2.34 "Plat" means the Final Map of Silver Springs - Unit A, which plat has been Recorded in Book 91, page 36 of Plats, and any amendments, supplements or corrections thereto.

1.2.35 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit's Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant's Right.

1.2.36 "Recording" means placing an instrument of public record in the office of the County Recorder of Clark County, Nevada, and "Recorded" means having been so placed of public record.

1.2.37 "Resident" means each individual occupying or residing in any Unit.

1.2.38 "Rules" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.39 "Special Assessment" means any assessment levied against the Units pursuant to Section 7.4 of this Declaration.

1.2.40 "Special Declarant's Rights" means rights reserved for the benefit of the Declarant in this Declaration or by the Act to do any of the following:

- (i) Construct Improvements provided for in this Declaration or shown on the Plat or the Plans;
- (ii) Exercise any Developmental Right;
- (iii) Maintain sales offices, management offices, models and signs advertising the Community;
- (iv) Use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property;
- (v) Make the Community subject to a master association;
- (vi) Merge or consolidate the Community with another common-interest community of the same form of ownership; or

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(vii) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.41 "Sterling Community" means all real property located in Clark County, Nevada, lying within the Final Map of Silver Springs - Unit B, as shown by the plat Recorded in Book 85, page 96 of Plats, which has been encumbered by that certain Amended and Restated Declaration of Covenants, Conditions & Restrictions and Reservations of Easements for Sterling at Silver Springs Recorded on August 11, 1999, in Book 990811 as Instrument No. 01463.

1.2.42 "Unit" means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

1.2.43 "Unit's Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit's Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit's Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of a Unit, the fee simple title to which is vested in a trustee under a deed of trust, the Trustor shall be deemed to be the Unit's Owner. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit's Owner.

1.2.44 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of such neighboring property; provided, however, that an object shall not be considered as being Visible From Neighboring Property if the object is visible to a person six (6) feet tall, standing at ground level on any part of neighboring property only by such person being able to see the object through a wrought iron fence and such object would not be visible to such person if the wrought iron fence were a solid fence.

ARTICLE 2

SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION

OF PERCENTAGE INTERESTS, VOTES AND

COMMON EXPENSE LIABILITIES

2.1 Submission of Property. Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Act for the purpose of creating

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a planned community in accordance with the provisions of the Act and hereby declare that the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, and any part of the Additional Property annexed pursuant to Section 2.8 of this Declaration, together with all Improvements situated thereon and easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 Name of Planned Community. The name of the planned community created by this Declaration is Squire Village at Silver Springs.

2.3 Name of Association. The name of the Association is Squire Village at Silver Springs Community Association.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are as set forth on Exhibit A.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are as shown on the Plat.

2.5.2 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's votes in the Association and Common Expense Liabilities subject to and in accordance with the Act.

2.6 Allocation of Common Expense Liabilities. The liability for the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Expenses of the Association shall be 1/22. If the Community is expanded by the annexation of all or any part of the Additional Property pursuant to Section 2.8 of this Declaration, the votes in the Association and the liability for the Common Expenses of the Association shall be reallocated in the manner set forth in Subsection 2.8.1(iv) of this Declaration. The maximum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/22. The minimum possible percentage of Common Expense Liability allocable to a Unit is equal to 1/238. Nothing contained in this Section 2.6 shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under Articles 5, 7 and other provisions of this Declaration.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units in the Community. The votes in the Association shall be allocated equally among all the Units, with each Unit having one (1) vote.

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2.8 Expansion of the Planned Community.

2.8.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the planned community created by this Declaration, without the consent of any other Unit's Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the planned community by preparing and Recording in the records of every county in which any portion of the Community is located an amendment to this Declaration containing the following:

- (i) a legal description of the portion of the Additional Property being annexed;
- (ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit;
- (iii) a description of the Common Elements created;
- (iv) a reallocation to each Unit of a percentage liability in the Common Expenses of the Association and in the votes in the Association, all of which shall be allocated equally to each Unit; and
- (v) a description of any Developmental Rights reserved by the Declarant within the Additional Property being annexed.

2.8.2 Unless otherwise provided in the amendment adding Additional Property, the effective date for reallocating to each Unit a percentage undivided interest in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment annexing additional Units is Recorded in the records of every county in which any portion of the Community is located.

2.8.3 This option to expand the planned community shall expire seven (7) years from the date of the Recording of this Declaration.

2.8.4 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property submitted to the Community need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

2.8.5 There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

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2.8.6 The Additional Property, when and if added to the Community, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Governing Documents

2.8.7 Any Improvements placed, constructed, replaced, or reconstructed on the Additional Property will be consistent with the existing Units in the Community as to quality of construction.

2.8.8 Declarant reserves the right to create and develop, directly or through merchant builders to which the various Units may be conveyed, up to an aggregate maximum of two hundred thirty-eight (238) improved Units in the Community to wit: twenty-two (22) Units on the real property described in Exhibit A and two hundred sixteen (216) Units on the Additional Property described in Exhibit B, in the event Declarant exercises its right of annexation pursuant to the terms of this Declaration. Declarant makes no representations, assurances or warranties whatsoever that (i) all of such Units and Improvements will be created or developed, nor that the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is Recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the sequence, timing or location of further development; (iv) the use of any property subject to this Declaration will not be changed in the future. Unless otherwise expressly provided elsewhere herein, any "Developmental Rights" or "Special Declarant's Rights" (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Community or Additional Property at different times, and the exercise of such rights in a portion of the Community or Additional Property shall not necessitate the exercise of any such right in all or any portion of the remaining Community or Additional Property.

ARTICLE 3

EASEMENTS

3.1 Utility Easement.

3.1.1 There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements

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3.1.2 Limited Private Utility and Access Easements have been granted and conveyed on the Plat to the utility providers named therein over, under and across Units for the construction and maintenance of utilities together with the right of ingress and egress to such utilities.

3.2 Easements for Ingress and Egress.

3.2.1 There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Units' Owners and occupants of the Units and their guests, families, tenants and invitees.

3.2.2 Every Unit Owner, for the benefit of such Unit's Owner and occupants of the Unit and their guests, families, tenants and invitees, shall have a right and easement for ingress and egress for pedestrian and vehicular traffic over, through and across any Limited Private Utility and Access Easement necessary to gain access to the Unit's Owner's Unit, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Limited Private Utility and Access Easements, and

(ii) All rights and easements set forth in this Declaration and the Plat, including the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration.

A Unit's Owner's right and easement for ingress and egress as set forth in this Subsection 3.2.2 shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.3 Unit Owners' Easements of Enjoyment.

3.3.1 Every Unit's Owner shall have a right and easement of enjoyment in and to the Common Elements (including the right to use any private streets for ingress and egress to the Unit's Owner's Unit), which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements.

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(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Act and in Section 6.12 of this Declaration;

(iii) All rights and easements set forth in this Declaration, including the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration; and

(iv) The right of the Association to suspend the right of a Unit's Owner and any Resident of the Unit to use the Common Elements for any period during which the Unit's Owner or any Resident of the Unit is in violation of any provision of the Governing Documents, provided, however, that any such suspension shall not affect the easement granted pursuant to Section 3.2 of this Declaration nor the right of a Unit's Owner and such Unit's Owner's family, Residents and guests to use any private streets for ingress or egress to the Unit's Owner's Unit, including any area used for parking as permitted under this Declaration.

3.3.2 If a Unit is leased or rented, the lessee and the Residents residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit's Owner shall have no right to use the Common Elements until the termination or expiration of the lease, except for the right to use any private streets for ingress and egress to the Unit's Owner's Unit.

3.3.3 The guests and invitees of any Unit's Owner or other person entitled to use the Common Elements pursuant to Subsection 3.3.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.3.2 of this Declaration may use the Common Elements provided they are accompanied by a Unit's Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection 3.3.1 or 3.3.2 of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.3.4 A Unit's Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4 Declarant's Use for Sales And Leasing Purposes.

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, a design center, construction offices, model homes and parking areas (collectively, "Sales and Construction Facilities") throughout the Community and to maintain one or more advertising, identification or directional signs on the Common Elements. Declarant

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reserves the right to place Sales and Construction Facilities on any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate Sales and Construction Facilities to different locations within the Community. Upon the relocation of Sales and Construction Facilities from a portion of the Community constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as Declarant is marketing Units in the Community, Declarant shall have the right to restrict the use of the parking spaces, including the right to reserve such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.4.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Community any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.5 The Declarant reserves the right to allow the gated entrances to remain open during business and construction hours for the period of time necessary to sell and construct all Units and other Improvements in the Community.

3.5 Declarant's Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat, the Plans and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Community.

3.5.2 Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 The Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

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3.5.4 The Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant's Rights whether arising under the Act or reserved in this Declaration.

3.6 **Common Elements Easement in Favor of the Association.** The Common Elements shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.7 **Units Easement in Favor of Association.** The Units are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.7.1 For inspection of the Units in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

3.7.2 For inspection, maintenance, repair and replacement of the Common Elements situated in or accessible from such Units;

3.7.3 For inspection, maintenance, repair and replacement of those portions of Units to be maintained by the Association as set forth in Section 5.1 of this Declaration.

3.7.4 For correction of emergency conditions in one or more Units or casualties to the Common Elements or the Units.

3.7.5 For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Governing Documents and the Easement and Maintenance Agreement, and

3.7.6 For inspection, at reasonable times and upon reasonable notice to the Units' Owners, of the Units in order to verify that the provisions of the Governing Documents and the Easement and Maintenance Agreement are being complied with by the Units' Owners, their guests, tenants, invitees and the other occupants of the Units.

3.8 **Easement Over Common Elements and Units in Favor of Others.** Pursuant to the Easement and Maintenance Agreement, certain portions of the Common Elements and Units shall be subject to an easement in favor of the Sterling at Silver Springs Homeowners Association, a Nevada non-profit corporation, for the purpose of maintaining certain common improvements described in the Easement and Maintenance Agreement, including the Dewatering System, and allocating between the Community and the Sterling Community the cost of potable

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water delivered through two master water meters. The easements, rights and obligations granted and imposed by the Easement and Maintenance Agreement are incorporated herein and made a part hereof.

3.9 Easement Data. The Recording data, required to be contained herein pursuant to N.R.S. 116.2105(LRM), for any easements or licenses appurtenant to or included in this common-interest community or to which any portion of this common-interest community is or may become subject by means of a reservation of this Declaration is as follows: The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by the Plat is the same as the Recording data for the Plat.

3.10 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on the Common Elements or any Unit by a Unit's Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 Architectural Control.

4.1.1 All improvements constructed on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

4.1.2 No excavation or grading work shall be performed on any Unit without the prior written approval of the Architectural Committee.

4.1.3 No Improvement shall be constructed or installed on any Unit without the prior written approval of the Architectural Committee.

4.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme of any Unit, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

4.1.5 Any Unit's Owner desiring approval of the Architectural Committee for excavation or grading, or for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of such Unit, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other

work which the Unit's Owner desires to perform. Any Unit's Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Unit's Owner who had requested approval of such plans.

4.1.6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

4.1.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Unit's Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

4.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

4.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

4.1.10 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

4.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

4.1.12 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such

construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation

4.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee

4.3 Nuisances: Construction Activities No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Unit or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 Diseases and Insects No person shall permit any thing or condition to exist upon any Unit or other property which shall induce, breed or harbor infectious plant diseases or noxious insects

4.5 Repair of Building. No Dwelling, building or structure on any Unit shall be permitted to fall into disrepair and each such Dwelling, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling, building or structure is damaged or destroyed, then, subject to the approvals required by Section 4.1 of this Declaration, such Dwelling, building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.6 **Antennas** Except as permitted by law or as set forth in the Architectural Committee Rules, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including satellite or microwave dishes, shall be erected, used, or maintained on any Unit without the prior written approval of the Architectural Committee.

4.7 **Mineral Exploration** No Unit shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.8 **Trash Containers and Collection** No garbage or trash shall be placed or kept on any Unit, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Units and other property and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Unit. The Board of Directors shall have the right to contract with one or more third parties (including a municipality) for the collection of garbage, trash or recyclable materials for the benefit of the Units' Owners and Residents, with any costs to be Common Expenses or billed separately to the Units' Owners. The Board of Directors shall have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection.

4.9 **Clothes Drying Facilities** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Unit so as to be Visible From Neighboring Property.

4.10 **Utility Service** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Unit unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

4.11 **Overhead Encroachments** No tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

4.12 **Residential Use** All Dwellings shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Dwelling.