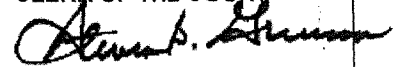


EXHIBIT 8

EXHIBIT 8



1 **NEO**
2 **SYLVESTER & POLEDNAK, LTD.**
3 **ALLYSON R. NOTO, ESQ.**
4 Nevada Bar No. 8286
5 **KELLY L. SCHMITT, ESQ.**
6 Nevada Bar No. 10387
7 1731 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 952-5200
10 Facsimile: (702) 952-5205
11 Email: allyson@sylvesterpolednak.com
12 Email: kelly@sylvesterpolednak.com
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **CELTIC BANK CORPORATION,**
12 **successor-in-interest to SILVER STATE**
13 **BANK by acquisition of assets from the**
14 **FDIC as Receiver for Silver State Bank, a**
15 **Utah banking corporation organized and in**
16 **good standing under the laws of the State of**
17 **Utah,**

16 **Plaintiff,**

17 **v.**

18 **VEGAS UNITED INVESTMENT SERIES**
19 **105, INC., a Nevada domestic corporation;**
20 **GIBSON ROAD, LLC, a Nevada limited**
21 **liability company; GIBSON BUSINESS**
22 **CENTER PROPERTY OWNER**
23 **ASSOCIATION, a Nevada non-profit**
24 **corporation; REPUBLIC SILVER STATE**
25 **DISPOSAL, INC. dba REPUBLIC**
26 **SERVICES OF SOUTHERN NEVADA, a**
27 **foreign corporation; DOE Individuals I**
28 **through X; and ROE Corporations and**
Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

26 **Defendants.**

Case No. A-15-728233-C
Dept. No. XXII

**NOTICE OF ENTRY OF ORDER AND
JUDGMENT RE: MEMORANDUM OF
COSTS AND DISBURSEMENTS**

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1 PLEASE TAKE NOTICE that an Order and Judgment re: Memorandum of Costs and
2 Disbursements was entered on the 2nd day of October, 2017. A copy which is attached hereto.

3 DATED this 3rd day of October, 2017.

4 SYLVESTER & POLEDNAK, LTD.

5
6 By /s/ Kelly L. Schmitt
7 Kelly L. Schmitt, Esq.
8 1731 Village Center Circle
9 Las Vegas, Nevada 89134
10 *Attorneys for Plaintiff*

11 **CERTIFICATE OF SERVICE**

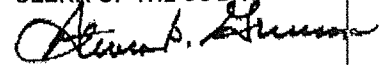
12 I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD.
13 and that on the 3rd day of October, 2017, I caused to be served a copy of the above-entitled
14 document on the party set forth below via the Court e-filing system where an email address is
15 provided and/or by depositing the same in the United States Mail, first class, postage prepaid,
16 addressed to those not electronically mailed as follows:

17 Roger P. Croteau, Esq.
18 Timothy E. Rhoda, Esq.
19 **ROGER P. CROTEAU & ASSOCIATES**
20 9120 W. Post Road, Suite 100
21 Las Vegas, Nevada 89148
22 Email: croteaulaw@croteaulawcom
23 *Attorneys for Defendant Vegas United*
24 *Investment Series 105, Inc.*

25 /s/ Kelly L. Easton
26 An employee of SYLVESTER & POLEDNAK, LTD.
27
28

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

Electronically Filed
10/2/2017 2:08 PM
Steven D. Grierson
CLERK OF THE COURT



ORDR
SYLVESTER & POLEDNAK, LTD.
ALLYSON R. NOTO, ESQ.
Nevada Bar No. 8286
KELLY L. SCHMITT, ESQ.
Nevada Bar No. 10387
1731 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 952-5200
Facsimile: (702) 952-5205
Email: allyson@sylvesterpolednak.com
Email: kelly@sylvesterpolednak.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CELTIC BANK CORPORATION,
successor-in-interest to SILVER STATE
BANK by acquisition of assets from the FDIC
as Receiver for Silver State Bank, a Utah
banking corporation organized and in good
standing under the laws of the State of Utah,

Plaintiff,

v.

VEGAS UNITED INVESTMENT SERIES
105, INC., a Nevada domestic corporation;
GIBSON ROAD, LLC, a Nevada limited
liability company; GIBSON BUSINESS
CENTER PROPERTY OWNER
ASSOCIATION, a Nevada non-profit
corporation; REPUBLIC SILVER STATE
DISPOSAL, INC. dba REPUBLIC
SERVICES OF SOUTHERN NEVADA, a
foreign corporation; DOE Individuals I
through X; and ROE Corporations and
Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

Defendants.

Case No. A-15-728233-C
Dept. No. XXII

**ORDER AND JUDGMENT RE:
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1
2 VEGAS UNITED INVESTMENT SERIES
105, INC., a Nevada corporation,

3 Counterclaimant,

4
5 v.

6 CELTIC BANK CORPORATION,
successor-in-interest to SILVER STATE
BANK by acquisition of assets from the FDIC
as Receiver for Silver State Bank, a Utah
banking corporation; GIBSON ROAD, LLC, a
Nevada limited liability company; DOE
Individuals I through XX; and ROE
Corporations I through XX,

9
10 Counter-Defendants.
11

12 Plaintiff CELTIC BANK CORPORATION, successor-in-interest to SILVER STATE
13 BANK by acquisition of assets from the FDIC as Receiver of Silver State Bank ("Plaintiff" or
14 "Celtic Bank"), filed its Memorandum of Costs and Disbursements on the 6th day of September,
15 2017, and Defendant VEGAS UNITED INVESTMENT SERIES 105, INC. ("Defendant") having
16 failed to retax costs during the prescribed period pursuant to NRS 18.110(4), the Court having
17 considered the papers and pleadings on file herein, the Court being fully advised in the premises,
18 and good cause appearing therefore:

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Memorandum
20 of Costs and Disbursements is GRANTED in its entirety.

21 ///

22
23
24 ///

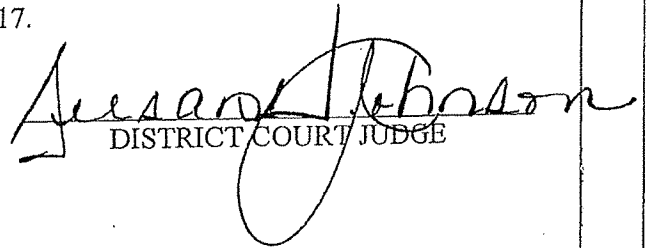
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26
27 ///

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

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IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that this Order shall reduce to Judgment in favor of Plaintiff and against Defendant in the amount of Ten Thousand, Four Hundred Forty-Two Dollars and 96/100 (\$10,442.96) for costs.

DATED this 29th day of September, 2017.


DISTRICT COURT JUDGE

Prepared and Submitted by:

SYLVESTER & POLEDNAK, LTD.

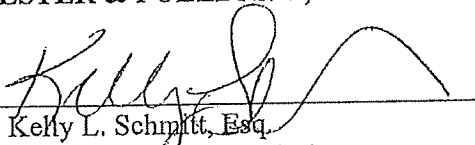
By: 
Kelly L. Schmitt, Esq.
1731 Village Center Circle
Las Vegas, NV 89134
Attorneys for Plaintiff

EXHIBIT 7

EXHIBIT 7



1 **NEOJ**
2 SYLVESTER & POLEDNAK, LTD.
3 ALLYSON R. NOTO, ESQ.
4 Nevada Bar No. 8286
5 KELLY L. SCHMITT, ESQ.
6 Nevada Bar No. 10387
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11 Email: allyson@sylvesterpolednak.com
12 Email: kelly@sylvesterpolednak.com
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CELTIC BANK CORPORATION,
12 successor-in-interest to SILVER STATE
13 BANK by acquisition of assets from the
14 FDIC as Receiver for Silver State Bank, a
15 Utah banking corporation organized and in
16 good standing under the laws of the State of
17 Utah,

15 Plaintiff,

16 v.

17 VEGAS UNITED INVESTMENT SERIES
18 105, INC., a Nevada domestic corporation;
19 GIBSON ROAD, LLC, a Nevada limited
20 liability company; GIBSON BUSINESS
21 CENTER PROPERTY OWNER
22 ASSOCIATION, a Nevada non-profit
23 corporation; REPUBLIC SILVER STATE
24 DISPOSAL, INC. dba REPUBLIC
25 SERVICES OF SOUTHERN NEVADA, a
26 foreign corporation; DOE Individuals I
27 through X; and ROE Corporations and
28 Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

26 Defendants.

Case No. A-15-728233-C
Dept. No. XXII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
JUDGMENT**

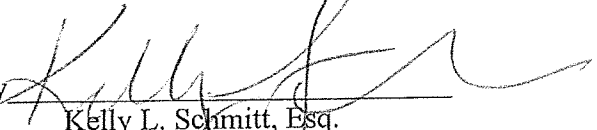
SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

PLEASE TAKE NOTICE that the Findings of Fact, Conclusion of Law and Judgment was entered on the 25th day of August, 2017. A copy which is attached hereto.

DATED this 5th day of September, 2017.

SYLVESTER & POLEDNAK, LTD.

By 
Kelly L. Schmitt, Esq.
1731 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD. and that on the 5th day of September, 2017, I caused to be served a copy of the above-entitled document on the party set forth below via the Court e-filing system where an email address is provided and/or by depositing the same in the United States Mail, first class, postage prepaid, addressed to those not electronically mailed as follows:

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
ROGER P. CROTEAU & ASSOCIATES
9120 W. Post Road, Suite 100
Las Vegas, Nevada 89148
Email: croteaulaw@croteaulaw.com
*Attorneys for Defendant Vegas United
Investment Series 105, Inc.*


An employee of SYLVESTER & POLEDNAK, LTD.

Steven D. Grierson

1 FFCL

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 CELTIC BANK CORPORATION,
6 successor-in-interest to SILVER STATE
7 BANK by acquisition of assets from the
8 FDIC as Receiver for Silver State Bank, a
9 Utah banking corporation organized and in
10 good standing with the laws of the State of
11 Utah,

12 Plaintiff,

13 Vs.

14 VEGAS UNITED INVESTMENT SERIES
15 105, INC., a Nevada domestic corporation;
16 GIBSON ROAD, LLC, a Nevada limited
17 liability company; GIBSON BUSINESS
18 CENTER PROPERTY OWNER
19 ASSOCIATION, a Nevada non-profit
20 corporation; REPUBLIC SILVER STATE
21 DISPOSAL, INC. dba REPUBLIC
22 SERVICES OF SOUTHERN NEVADA, a
23 foreign corporation; DOE Individuals I
24 through X; and ROE Corporations and
25 Organizations I through V, inclusive;

26 Defendants.

27 VEGAS UNITED INVESTMENT SERIES
28 105, INC., a Nevada corporation,

Counter-Claimant,

Vs.

CELTIC BANK CORPORATION,
successor-in-interest to SILVER STATE
BANK by acquisition of assets from the
FDIC as Receiver for Silver State Bank,

Counter-Defendant.

Case No. A-15-728233-C
Dept. No. XXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 VEGAS UNITED INVESTMENT SERIES
2 105, INC., a Nevada Corporation,

3 Third-Party Plaintiff,

4 Vs.

5 GIBSON ROAD, LLC, a Nevada limited
6 liability company; DOE individuals I
7 through XX; and ROE CORPORATIONS
8 I through XX,

Third-Party Defendants.¹

9 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

10 This matter came on for trial before the Court on the 9th, 10th and 11th day of August 2017
11 before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with
12 JUDGE SUSAN H. JOHNSON presiding; Plaintiff/Counter-Defendant CELTIC BANK
13 CORPORATION, as Successor-in-Interest to SILVERSTATE BANK appeared by and through its
14 attorneys, ALLYSON R. NOTO, ESQ. and KELLY L. SCHMIDT, ESQ. of the law firm,
15 SYLVESTER & POLEDNAK; and Defendant/Counter-Claimant VEGAS UNITED INVESTMENT
16 SERIES 105, INC. appeared by and through its attorney, ROGER P. CROTEAU, ESQ. of the law
17 firm, ROGER P. CROTEAU & ASSOCIATES. Having reviewed the papers and pleadings on file
18 herein, including the stipulated Joint Trial Exhibits 1 through 59, heard the testimonies of the
19 witnesses, to wit: BRIAN ZERN, JULIA SKINNER and CHARLES SCHMIDT, as well as
20 arguments of counsel, and taken this matter under advisement, this Court now makes the following
21 Findings of Fact and Conclusions of Law:
22
23
24
25
26

27 ¹As GIBSON ROAD, LLC is not listed as a plaintiff in the primary action, it is improper to classify the action
28 against it as a "counter-claim" or identify it as a "counter-defendant." Similarly, as this party is not listed as a party in
the primary action at all, GIBSON ROAD, LLC is best identified as a "third-party defendant" in a "third-party
complaint."

FINDINGS OF FACT

1
2 1. CELTIC BANK CORPORATION filed its Verified Complaint for Judicial
3 Foreclosure of Deed of Trust against VEGAS UNITED INVESTMENT SERIES 105, INC.,
4 GIBSON ROAD, LLC, GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION and
5 REPUBLIC SILVER STATE DISPOSAL, INC. on November 25, 2015.² On January 4, 2016,
6 VEGAS UNITED INVESTMENT SERIES 105, INC. filed its Answer and Counterclaim, asserting
7 two causes of action: (1) Quiet Title/Declaratory Relief, and (2) Slander of Title against CELTIC
8 BANK CORPORATION. The facts adduced through trial, most of which were stipulated by the
9 parties, are as follows:
10

11 2. On or about January 18, 2006, GIBSON ROAD, LLC borrowed \$748,000.00 from
12 Plaintiff/Counter-Defendant CELTIC BANK CORPORATION'S predecessor-in-interest, SILVER
13 STATE BANK to purchase certain non-residential real property, to wit: 181 North Gibson Road,
14 Henderson, Nevada.³ The property in question is located within what appears to be two common-
15 interest communities encompassing the same business or industrial park, i.e. GIBSON BUSINESS
16 PARK, PHASE ONE and GIBSON BUSINESS CENTER PROPERTY OWNERS ASSOCIATION,
17 both of which are governed by certain covenants, conditions and restrictions (also known as
18 "CC&Rs"). The CC&Rs include, *inter alia*, the requirement the associations' members pay
19 periodic assessments to benefit the business parks or common-interest communities.
20
21

22 3. As discussed *supra* and in more detail *infra*, there are actually two declarations of
23 covenants, conditions and restrictions recorded against the business park. The first declaration
24 entitled "Declaration of Protective Covenants, Conditions and Restrictions" for GIBSON
25

26 ²GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION disclaimed interest in the property,
27 and it was dismissed as a party to the lawsuit on June 1, 2016. REPUBLIC SILVER STATE DISPOSAL, INC. was
28 dismissed as a party on August 8, 2017. Defaults were entered against GIBSON ROAD, LLC. on February 5, 2016 and
April 29, 2016, respectively.

³Also see Stipulated Trial Exhibit 4, Promissory Note.

1 BUSINESS PARK, PHASE ONE was recorded by its then declarant, AMPAC DEVELOPMENT
2 COMPANY, and joining parties⁴ on or about September 11, 1989 for the purpose of developing the
3 premises into a commercial and industrial park.⁵ The parties to this lawsuit have referred to these
4 CC&Rs as the "1989 Master CC&Rs." The 1989 Master CC&Rs were amended by the October 24,
5 1994 recording of the "First Amendment to Declaration of Protective Covenants, Conditions and
6 Restrictions" for GIBSON BUSINESS PARK, PHASE ONE." The purpose of this recording was to
7 "amend the description of the land constituting the Premises for the purpose of withdrawing certain
8 acreage from the Premises due to changes in development plans for the affected area."⁶ The parties
9 have referred this document as the "1994 First Amendment." Approximately ten years later, on or
10 about March 18, 2004, the second set of CC&Rs, entitled "Declaration of Covenants, Conditions and
11 Restrictions for Gibson Business Center" was recorded against the business park already being
12 governed by the 1989 Master CC&Rs by a new declarant, GIBSON AMERICAN PACIFIC, LLC.
13 The parties here have referred to this recording as the "2004 CC&Rs."
14
15

16 4. To secure payment of the promissory note, GIBSON ROAD, LLC executed and
17 delivered a first deed of trust to SILVER STATE BANK on or about December 9, 2005, which was
18 recorded with the Clark County Recorder's Office on December 30, 2005, and encumbered the
19 subject property within the business park.⁷
20

21 5. On or about September 5, 2008, SILVER STATE BANK was closed by the Nevada
22 Financial Institutions Division, and the Federal Deposit Insurance Corporation (FDIC) was named
23 receiver for the bank. Approximately one year later, on September 24, 2009, the FDIC, as SILVER
24 ...
25

26 ⁴See Stipulated Trial Exhibit 1. The "joining parties" are identified as MARSHMELLOW LANE PARTNERS,
27 GIBSON BUSINESS PARK ASSOCIATION 1986-I, OCEAN SPRAY CRANBERRIES, INC., and PACIFIC
ENGINEERING & PRODUCTION COMPANY OF NEVADA.

28 ⁵See Stipulated Trial Exhibit 1, 1989 Master CC&Rs.

⁶See Stipulated Trial Exhibit 2, 1994 First Amendment.

⁷Also see Stipulated Trial Exhibit 5, Deed of Trust.

1 STATE BANK'S receiver, assigned the promissory note and Deed of Trust to CELTIC BANK
2 CORPORATION.⁸

3 6. Almost two years later, on August 23, 2011, RED ROCK FINANCIAL SERVICES,
4 the collection agent for GIBSON BUSINESS CENTER PROPERTY OWNERS ASSOCIATION,
5 recorded a Lien for Delinquent Assessments with the Clark County Recorder's Office purportedly
6 against the subject property, listing as its current owner: "Trustee Clark County Treasurer c/o
7 GIBSON ROAD, LLC." The assessment lien, however, did not specify the subject property as the
8 particular parcel to be liened; instead, the legal description contained within the Lien for Delinquent
9 Assessments was that of the *entire* business park.
10

11 7. The Lien for Delinquent Assessments also provided it was made "in accordance with
12 Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and
13 Restrictions, herein also called CC&Rs, recorded on 10/24/1994, in Book Number , as Instrument
14 Number 19940240000285 and including any and all Amendments and Annexations et seq. of
15 Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said
16 owner." However, a review of the Official Records of Clark County, Nevada shows there were no
17 CC&Rs recorded as Instrument Number 19940240000285.
18

19 8. While there is no CC&Rs recorded with Instrument Number 1994024000285, there is
20 the document recorded in 1994 as First Amendment to Declaration of Protective Covenants,
21 Conditions and Restrictions (again referred to as the "1994 First Amendment") by GIBSON
22 BUSINESS PARK, PHASE ONE with Instrument Number 199410240000285; this Instrument
23 number contains one additional number, i.e. "1," as the fifth digit, than the figure referred to within
24 the Lien for Delinquent Assessments recorded August 23, 2011. As noted above, this 1994 First
25 Amendment revises or amends that certain document titled "Declaration of Protective Covenants,
26
27

28 ⁸Also see Stipulated Trial Exhibit 7, Assignment of Deed of Trust.

1 Conditions and Restrictions" (again referred to as the "1989 Master CC&Rs) by GIBSON
2 BUSINESS PARK, PHASE ONE, recorded by the declarant, AMPAC DEVELOPMENT
3 COMPANY, in 1989 as Instrument Number 198909110000173.⁹

4 9. Neither the 1989 Master CC&Rs nor the 1994 First Amendment incorporate, refer to
5 or mention NRS Chapter 116 which was enacted December 31, 1991. There is no language
6 contained within the 1989 Master CC&Rs and its 1994 First Amendment to suggest a lien for
7 delinquent assessments has priority over the first security interest; if anything, its provisions state to
8 the contrary.¹⁰ The 2004 CC&Rs does mention NRS Chapter 116, although it specifies "[t]he Real
9 Property shall not be subject to the provisions of the Uniform Common Interest Ownership Act,
10 codified in Chapter 116 of the Nevada Revised Statutes ('NRS') except to the extent permitted under
11 NRS 278A.170." Like the 1989 Master CC&Rs, the 2004 CC&Rs contain a mortgage protection
12 clause as set forth in Article XIII.¹¹
13
14

15 10. On October 14, 2011, RED ROCK FINANCIAL SERVICES recorded a Notice of
16 Default. Notably, the Notice of Default referred to the recorded Lien for Delinquent Assessments
17

18 ⁹The "Declaration of Protective Covenants, Conditions and Restrictions" recorded in 1989 were also referred to
19 by the parties as the "1989 Master CC&Rs." The stated purchase of the 1994 First Amendment was to remove some of
20 the property originally encumbered by the Declarant identified in the 1989 Master CC&Rs. Notably, and as discussed
21 *infra*, the GIBSON BUSINESS CENTER PROPERTY OWNERS' ASSOCIATION was not created until approximately
22 March 17, 2004 when a second "Declaration of Covenants, Conditions and Restrictions" was recorded against the
23 business park or common-interest community. See Stipulated Trial Exhibit 3.

24 ¹⁰Section 8.09 of the 1989 Master CC&Rs provides as follows:

25 Liens to Secure Assessments. All Assessments, including interest and other amounts due
26 with respect to unpaid assessments, shall constitute, and shall be secured by, a separately valid and
27 existing lien on the portion of the Premises to which they relate, and upon all Improvements at any
28 time erected or constructed thereon. The provisions of Nev. Rev. Stat. Section 278A.170 are
incorporated herein by this reference.

Section 11.03 of the 1989 Master CC&Rs state in pertinent part:

Protection of Encumbrances. (a) No violation or breach of, or failure to comply with, any
provision of this Declaration, and no action to enforce any such provision, shall affect, defeat, render
invalid or impair the lien of any mortgage, deed of trust or other lien on any Lot or part of the Premises
taken in good faith and for failure; nor shall any violation, breach, failure to comply or action to
enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage,
deed of trust or other lien or title of any interest acquired by any purchaser upon foreclosure of any
such mortgage, deed of trust or other lien, or result in any liability, personal or otherwise, of any such
holder or purchaser.

¹¹See Stipulated Trial Exhibit 3, Bates No. CB000380, Article XIII, "Mortgage Protection Clause."

1 and included the incorrect legal description of the property to be liened and the erroneous Instrument
2 Number¹² described in Paragraphs 4 and 5 above. The Notice of Default was sent by certified mail,
3 return receipt requested, to CELTIC BANK CORPORATION and it was signed as received by the
4 Bank's employee.

5 11. On or about October 21, 2011, in conjunction with the Property Owners'
6 Association's impending foreclosure, RED ROCK FINANCIAL SERVICES obtained a Trustee's
7 Sale Guarantee¹³ from FIRST AMERICAN TITLE INSURANCE COMPANY.¹⁴ This Trustee's
8 Sale Guarantee identified, as one of its exceptions to title, that which related to the 1989 Master
9 CC&Rs; this exception, No. 7, provided as follows:

11 COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, ASSESSMENTS,
12 LIENS, CHARGES, TERMS AND PROVISIONS IN THE DOCUMENT RECORDED
13 SEPTEMBER 11, 1989 IN BOOK 890911 AS INSTRUMENT NO. 00173 OF OFFICIAL
14 RECORDS, WHICH PROVIDE THAT A VIOLATION THEREOF SHALL NOT DEFEAT
15 OR RENDER INVALID THE LIEN OF ANY FIRST MORTGAGE OR DEED OF TRUST
16 MADE IN GOOD FAITH AND FOR VALUE, BUT DELETING ANY COVENANT,
17 CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR
18 DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP,
19 FAMILIAL STATUS, OR NATIONAL ORIGIN, TO THE EXTENT SUCH
20 COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION
21 3604(c), OF THE UNITED STATES CODES. (Emphasis in original)

22 A similar exception, No. 8, was noted with respect to the 2004 CC&Rs. Other exceptions to title
23 identified within the Trustee's Sale Guarantee were issues related to unpaid property taxes and the
24 Deed of Trust recorded December 30, 2005 against the property and assigned to CELTIC BANK
25 CORPORATION on or about September 24, 2009.¹⁵

26 12. On or about December 21, 2011, RED ROCK FINANCIAL SERVICES sent what
27 appears to be a form letter to CELTIC BANK CORPORATION, indicating it was sending "this
28

¹²Also see Stipulated Trial Exhibit 10, Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments.

¹³The Trustee's Sale Guarantee was also identified as "TSG" by the parties and their lawyers.

¹⁴Also see Stipulated Trial Exhibit 11, Trustee's Sale Guarantee.

¹⁵See Stipulated Trial Exhibit 11, Trustee's Sale Guarantee, pp. 2-3, Exceptions Nos. 2 and 9.

1 notice" as a courtesy. The collection agent indicated "the above referenced homeowner"¹⁶ was
2 delinquent in paying "their "Homeowners Association assessments," and it set forth the procedures
3 followed thus far regarding the non-judicial foreclosure process. At that juncture, RED ROCK
4 FINANCIAL SERVICES stated it was "approximately 60 days into the mandatory 90-day waiting
5 period" between the recordation of Noticed of Default and Election to Sell and when it could
6 exercise its enforcement rights. As pertinent to the analysis here, the letter also stated: "The
7 Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage
8 Holder," which all parties agree was CELTIC BANK CORPORATION.
9

10 13. Approximately twenty (20) months later, on August 12, 2013, ASHLEY PANON,
11 Account Coordinator for RED ROCK FINANCIAL SERVICES, sent an electronic mail (also
12 referred to as "e-mail") to the Community Manager for the business park to "assist the Board of
13 Directors in making the decision of whether or not to proceed forward with foreclosure,..."¹⁷
14 Attached was a form outlining pertinent information such as (1) "A brief outline of the two (2)
15 possible outcomes of foreclosure. This will assist in making certain the Board is making an
16 informed decision and understands the Associations' responsibility[;]" and (2) "Mortgage
17 information obtained from the Title Report [or Trustee's Sale Guarantee]. This provides the Board
18 with an estimate of outstanding mortgages that may survive the association foreclosure." The
19 attached form indicated the balance due as of that date to the Association and its collection agent
20 was \$11,676.08. The two possible outcomes were:
21
22

- 23 1. The first possible outcome is when a 3rd Party steps in and purchases the
24 property at auction. This outcome will usually only occur if there is equity and/or no
25 mortgage. Under this outcome, the Association would be made whole.
26 ...

27 ¹⁶The "above referenced homeowner" was identified in the letter's "Re:" line as "181 N, Gibson Rd, (sic)
28 Henderson, NV 89014" and "Gibson Business Center Property Owners Association/R92471." See Stipulated Trial
Exhibit 12, p. 1 (Bates No. "Redrock 0312").

¹⁷See Stipulated Trial Exhibit 13.

1 2. The second possible outcome is that at auction no 3rd Party steps in which will
2 cause the property to revert to the Association. The Association would then be responsible
3 for collection costs, property tax and transfer tax. *The first mortgage would remain on the*
4 *property.* (Emphasis added)

5 The information "pulled" from the Title Report or Trustee's Sale Guarantee was:

6 **1st Mortgage: \$748,000.00**
7 **2nd Mortgage: NONE**
8 **Lender Foreclosure Activity: NONE**
9 (Emphasis in original)

10 The Community Manager was then asked to mark the Association's decision whether it desired to
11 proceed with foreclosure of "181 N Gibson Rd, (sic) Henderson, NV 89014."

12 14. Apparently, the Board of Directors elected to pursue non-judicial foreclosure as, on
13 February 26, 2014, its collection agent recorded and posted a Notice of Foreclosure Sale "Under the
14 Lien for Delinquent Assessments," indicating the association's foreclosure sale would take place on
15 March 21, 2014 at 10:00 a.m. at the front entrance of Nevada Legal News.¹⁸ This Notice also set
16 forth on page 2,¹⁹ "[t]he sale will be made without covenant or warranty, expressed or implied
17 regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or
18 unsecured liens or against all right, title and interest of the owner, without equity or right of
19 redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the
20 Declarations of Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number ,
21 as Instrument Number 19940240000285 of the Official Records in the Office of the Recorder and
22 any subsequent amendments or updates that may have been recorded." This Notice of Foreclosure
23 Sale was also sent, via certified mail, return receipt requested, to CELTIC BANK CORPORATION,
24 care of ROBERTA MERRYMAN, 340 East 400 South, Salt Lake City, Utah 84111, although the
25 Bank claims the notice was never received as it was sent to its former address.

26
27

¹⁸See Stipulated Trial Exhibit 15.

28 ¹⁹See Bates No. Redrock 0076.

1 15. The foreclosure sale took place on March 21, 2014, and CHARLES SCHMITDT was
2 the highest bidder at \$30,000.00 of the three (3) who attended. As a result of the association's
3 auction, the property title was vested in Defendant/Counter-Claimant VEGAS UNITED
4 INVESTMENT SERIES 105 of which MR. SCHMIDT is the sole shareholder.²⁰

5 16. MR. SCHMIDT claims he was a *bona fide* purchaser at the aforementioned
6 foreclosure sale, and entitled to rely upon the recitals contained in the Foreclosure Deed. Prior to
7 bidding on the property here, MR. SCHMIDT testified he did look at the public record by assessor
8 parcel number (or "APN") and owner. However, he did not review any of the CC&Rs recorded
9 against the property until approximately two weeks after the foreclosure sale. Whether his assertion
10 he is a *bona fide* purchaser is true, the evidence also showed MR. SCHMIDT was sophisticated. He
11 started purchasing real estate at both bank and association foreclosure sales since 2008, and by the
12 time this trial commenced, he admitted he has acquired over 100 properties either personally or
13 through controlled entities.

14 17. In the meantime, on June 3, 2013, the Clark County Treasurer placed a lien on the
15 subject property for past due taxes which was recorded in Book No. 20131226 as Instrument No.
16 00891 in the Official Records of the Clark County Recorder's Office. CELTIC BANK
17 CORPORATION sent various reminders to its borrower, GIBSON ROAD, LLC, concerning the
18 delinquent property taxes due in 2014.²¹

19 18. In addition to not paying the taxes and association assessments, GIBSON ROAD,
20 LLC also did not pay the monthly installments owing to CELTIC BANK CORPORATION under
21 ...

22 ...

23 ...

24
25
26
27 ²⁰See Stipulated Trial Exhibits 16 and 17 (Foreclosure Deed).

28 ²¹See Stipulated Trial Exhibit 19.

1 the promissory note. On March 2, 2015, CELTIC BANK CORPORATION recorded a Notice of
2 Default and Election to Sell under the Deed of Trust.²²

3 19. On April 30, 2015, ROGER P. CROTEAU, ESQ., counsel for VEGAS UNITED
4 INVESTMENT SERIES 105, sent a letter to CELTIC BANK CORPORATION,²³ indicating its
5 Notice of Default was invalid for a couple of reasons. *First*, the original Deed of Trust recorded
6 December 30, 2005 and described within the Notice of Default identified incorrect assessor parcel
7 numbers, meaning, in his view, the subject property was not secured by the Deed of Trust.²⁴ *Second*,
8 *even if* the Deed of Trust was properly recorded against the property, it was extinguished by the
9 association's foreclosure sale held in March 2014. According to CELTIC BANK CORPORATION,
10 MR. CROTEAU'S April 2015 letter was the first notice it received regarding the association's
11 intention to sell the property and ultimately, the foreclosure sale to VEGAS UNITED
12 INVESTMENT SERIES 105.
13

14 20. On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed against
15 the subject property, indicating \$14,149.45 in taxes, penalties, interest and costs were due.²⁵ This
16 Tax Trustee Deed deeded the subject property to the county in trust for GIBSON ROAD, LLC. On
17 October 29, 2015, CELTIC BANK CORPORATION paid the outstanding amount due to the Clark
18 County Treasurer, i.e. \$18,281.67. Such resulted in the Treasurer's re-conveyance of the deed to the
19 Bank's borrower, GIBSON ROAD, LLC, and such was recorded On November 5, 2015.²⁶
20

21 ...
22

23
24 ²²See Stipulated Trial Exhibit 20.

25 ²³See Stipulated Trial Exhibit 21.

26 ²⁴The correct assessor parcel number or APN for the subject property is 178-15-511-042. The APNs indicated
27 in the Deed of Trust recorded December 30, 2005 are 178-15-511-029, 178-15-511-030 and 178-15-511-031. JULIA
28 SKINNER, Senior Underwriter for National Commercial Services at FIRST AMERICAN TITLE COMPANY, who had
worked in the property title industry for over thirty (30) years, testified at trial the APNs set forth on the Deed of Trust
were changed over time. However, the alterations in the APNs did not affect whether the Deed of Trust was properly
recorded against the subject property.

²⁵See Stipulated Trial Exhibit 22.

²⁶See Stipulated Trial Exhibit 26.

CONCLUSIONS OF LAW

1
2 1. NRS 30.030 specifically provides the courts shall have the power to declare rights,
3 status and other legal relations whether or not further relief is or could be claimed. The court's
4 declaration may be affirmative or negative in form and effect; such declaration shall have the force
5 and effect of a final judgment or decree. NRS 40.010 provides "[a]n action may be brought by any
6 person against another who claims an estate or interest in real property adverse to the person
7 bringing the action, for the purpose of determining such adverse claim." As noted above, CELTIC
8 BANK CORPORATION seeks, by way of relief, to enforce its rights under the December 30, 2005
9 Deed of Trust and judicially foreclose upon the property. VEGAS UNITED INVESTMENT
10 SERIES 105 seeks declaratory relief and to quiet title, as well as damages for slander of title against
11 CELTIC BANK CORPORATION. Both parties claim their interest has first priority, and notably,
12 VEGAS UNITED INVESTMENT SERIES 105 claims the Bank's rights under the Deed of Trust
13 were extinguished by way of the Association's foreclosure sale. Before it determines whether
14 CELTIC BANK CORPORATION can enforce its rights under the Deed of Trust, it first determines
15 whether such rights, if any, were extinguished by the Association's foreclosure sale, and perhaps
16 more importantly, if NRS Chapter 116 applies in this case.

17
18
19 2. NRS Chapter 116 codifies the Uniform Common-Interest Ownership Act or UCIOA,
20 and applies to all common-interest communities created within the State of Nevada, subject to
21 certain exceptions. *See* NRS 116.1201(1). One of those exceptions is set forth in NRS
22 116.1201(2)(b). It states NRS Chapter 116 does not apply to "[a] planned community in which all
23 units are restricted exclusively to nonresidential use unless the declaration provides that this chapter
24 or a part of this chapter does apply to that planned community pursuant to NRS 116.12075." NRS
25 116.12075 states in pertinent part:
26 ...
27
28

116.12075. Applicability to nonresidential condominiums.

1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:

- (a) This entire chapter applies to the condominium;
- (b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS 116.3116 to 116.31167, inclusive, apply to the condominium; or
- (c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to the condominium.

Clearly, as set forth in NRS 116.1201 and 116.12075, NRS Chapter 116 does not apply to non-residential common-interest communities *except* to the extent set forth set forth by their CC&Rs. In this case, there is no question the subject property is non-residential and located within a business or industrial park. This Court therefore considers the terms set forth in the CC&Rs in determining whether exceptions exist for NRS Chapter 116 to apply here.

3. As noted above, there are two separate declarations of covenants, conditions and restrictions recorded against the subject property. The first CC&Rs, referred to as the 1989 Master CC&Rs was recorded over two years before NRS Chapter 116 was enacted on December 31, 1991. Neither the 1989 Master CC&Rs nor its 1994 First Amendment mentions NRS Chapter 116, much less indicates this statutory scheme, or any part thereof, applies to the subject property. Further, there is no language contained within the 1989 Master CC&Rs and its 1994 First Amendment to suggest a lien for delinquent association assessments has priority over the first security interest. While the 2004 CC&Rs does mention NRS Chapter 116, it also specifies “[t]he Real Property *shall not* be subject to the provisions of the Uniform Common Interest Ownership Act, codified in Chapter 116 of the Nevada Revised Statutes (‘NRS’) except to the extent permitted under NRS 278A.170.”²⁷ (Emphasis added)

²⁷The 1989 Master CC&Rs also addresses NRS 278A.170 in Section 8.09. See Stipulated Trial Exhibit 1, Bates No. CB000419; also see Footnote 10 *supra*.

1 4. Turning, then, to NRS 278A.170, it states:

2 The procedures for enforcing payment of an assessment for the maintenance of
3 common open space provided in NRS 116.3116 to 116.31168, inclusive, are also available to
4 any organization for the ownership and maintenance of common open space established
5 other than under this chapter or chapter 116 of NRS and entitled to receive payments from
6 owners of property for such maintenance under a recorded declaration of restrictions, deed
7 restriction, restrictive covenant or equitable servitude which provides that any reasonable and
8 ratable assessment thereon for the organization's cost of maintaining the common open space
9 constitutes a lien or encumbrance upon the property.

10 5. While NRS 278A.170 outlines the *procedures* for enforcing assessment payments for
11 the maintenance of "common open space" provided in NRS 116.3116 to 116.31168, it does not
12 state, substantively, the priority of the encumbrances upon the property and the exceptions thereto
13 outlined in NRS 116.3116 are to be applied. As pertinent here, NRS 278A.170 does not state the
14 association's assessments' lien charged for the nine-month period immediately preceding the action
15 is prior to any first-security interest. That is, while NRS 278A.170 provides, procedurally, the
16 association's assessments shall be enforced as provided in NRS 116.3116 to 116.31168, it does not
17 state the assessments, or any part thereof, shall take priority over any other liens.

18 6. As noted above, the CC&Rs also contain clauses which protect certain
19 encumbrances, which include mortgages and deeds of trust.²⁸ Specifically, "[n]o violation of any
20 provision of this Declaration, nor any remedy exercised hereunder, shall defeat or render invalid the
21 lien of any Mortgage made in good faith and for failure upon any portion of the Project, nor shall
22 any Lien created hereunder be superior to any such Mortgage unless such Lien shall have been
23 recorded in the Public Records prior to the recordation...of such Mortgage."²⁹ Further, "[n]o
24 violation or breach of, or failure to comply with, any provision of this Declaration, and no action to
25 enforce any such provision, shall affect, defeat, render invalid or impair the lien of any mortgage,
26 deed of trust or other lien on any Lot or part of the Premises taken in good faith and for value; nor

27

28 ²⁸See Stipulated Trial Exhibits 1, 1989 Master CC&Rs, Section 11.03, and 3, 2004 CC&Rs, Article XIII.

²⁹See Stipulated Trial Exhibit 3, 204 CC&Rs, Article XIII.

1 shall any violation, breach, failure to comply or action to enforce affect, defeat, render invalid or
2 impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or
3 any interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other
4 lien;....³⁰ In short, except to the extent the Association can utilize the procedures set forth in NRS
5 116.3116 to 116.31168 for collecting its assessment lien against a delinquent property owner, NRS
6 Chapter 116 does not apply with respect to establishing the priority of such debt, or any part thereof,
7 over the first-security interest held by CELTIC BANK CORPORATION. Further, as NRS Chapter
8 116 does not apply, this statutory scheme does not render invalid any provision of the two governing
9 documents. Cf. NRS 116.2103(1). Thus, if VEGAS UNITED INVESTMENT SERIES 105, INC.
10 purchased the property at the foreclosure sale, it took title subject to CELTIC BANK
11 CORPORATION'S Deed of Trust. Its acquisition of the Foreclosure Deed did not result in an
12 extinguishment of the first-security interest.
13
14

15 7. Notwithstanding the aforementioned, this Court notes it was CELTIC BANK
16 CORPORATION that satisfied the property tax lien, which resulted in a re-conveyance of the title to
17 its borrower, GIBSON ROAD, LLC. No evidence was presented to demonstrate VEGAS UNITED
18 INVESTMENT SERIES 105, INC. paid any property taxes. Further, GIBSON ROAD, LLC is
19 delinquent in paying the monthly installments toward the mortgage. The Bank is entitled to
20 judicially foreclose given its first-security interest recorded against the property. As it finds
21 CELTIC BANK CORPORATION'S Deed of Trust is superior to any Association liens, this Court
22 also concludes VEGAS UNITED INVESTMENT SERIES 105, INC. has not sustained its burden of
23 proving the elements of its Slander of Title claim by a preponderance of the evidence. Further,
24 given its conclusion regarding the priority of interests, this Court does not reach the remaining issues
25 concerning the fairness or commercial reasonableness of the Association's foreclosure sale.
26
27

28 ³⁰See Stipulated Trial Exhibit 1, 1989 Master CC&Rs, Section 11.03.

8. VEGAS UNITED INVESTMENT SERIES 105, INC. did raise the issue concerning the propriety of the Deed of Trust's recording against the correct property and the listing of three different assessor parcel numbers (APNs) therein. As testified by MS. SKINNER, the APNs set forth on the Deed of Trust were changed over time. However, the alterations in the APNs did not affect whether the Deed of Trust was properly recorded against the subject property. This Court found MS. SKINNER'S testimony to be credible, and CELTIC BANK CORPORATION met its burden of proof, by a preponderance of the evidence, its Deed of Trust was properly recorded against the subject property.

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED judgment is rendered in favor of CELTIC BANK CORPORATION as against VEGAS UNITED INVESTMENT SERIES 105, INC. with respect to its Complaint for Judicial Foreclosure. As GIBSON ROAD, LLC is a defaulting party, CELTIC BANK CORPORATION can judicially foreclose upon the property;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED judgment is rendered in favor of CELTIC BANK CORPORATION as against VEGAS UNITED INVESTMENT SERIES 105, INC. with respect to the Counter-Claim for quiet title/declaratory relief and slander of title. The Bank's first-security interest was not extinguished by the Association's foreclosure sale.

DATED this 25th day of August 2017.

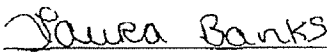
Susan H. Johnson
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, on the 25th day of August 2017, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT to the following counsel of record, and that first-class postage was fully prepaid thereon:

ALLYSON R. NOTO, ESQ.
KELLY L. SCHMITT, ESQ.
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1731 Village Center Circle
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Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com



Laura Banks, Judicial Executive Assistant

EXHIBIT 6

EXHIBIT 6



ORDR

SYLVESTER & POLEDNAK, LTD.

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CELTIC BANK CORPORATION,
successor-in-interest to SILVER STATE
BANK by acquisition of assets from the FDIC
as Receiver for Silver State Bank, a Utah
banking corporation organized and in good
standing under the laws of the State of Utah,

Plaintiff,

v.

VEGAS UNITED INVESTMENT SERIES
105, INC., a Nevada domestic corporation;
GIBSON ROAD, LLC, a Nevada limited
liability company; GIBSON BUSINESS
CENTER PROPERTY OWNER
ASSOCIATION, a Nevada non-profit
corporation; REPUBLIC SILVER STATE
DISPOSAL, INC. dba REPUBLIC
SERVICES OF SOUTHERN NEVADA, a
foreign corporation; DOE Individuals I
through X; and ROE Corporations and
Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

Defendants.

Case No. A-15-728233-C

Dept. No. XXII

**ORDER AND JUDGMENT RE:
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1
2 VEGAS UNITED INVESTMENT SERIES
3 105, INC., a Nevada corporation,

4 Counterclaimant,

5 v.

6 CELTIC BANK CORPORATION,
7 successor-in-interest to SILVER STATE
8 BANK by acquisition of assets from the FDIC
9 as Receiver for Silver State Bank, a Utah
banking corporation; GIBSON ROAD, LLC, a
Nevada limited liability company; DOE
Individuals I through XX; and ROE
Corporations I through XX,

10 Counter-Defendants.
11

12 Plaintiff CELTIC BANK CORPORATION, successor-in-interest to SILVER STATE
13 BANK by acquisition of assets from the FDIC as Receiver of Silver State Bank ("Plaintiff" or
14 "Celtic Bank"), filed its Memorandum of Costs and Disbursements on the 6th day of September,
15 2017, and Defendant VEGAS UNITED INVESTMENT SERIES 105, INC. ("Defendant") having
16 failed to retax costs during the prescribed period pursuant to NRS 18.110(4), the Court having
17 considered the papers and pleadings on file herein, the Court being fully advised in the premises,
18 and good cause appearing therefore:

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Memorandum
20 of Costs and Disbursements is GRANTED in its entirety.

21 ///

22
23
24 ///

25
26
27 ///

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that this Order
2 shall reduce to Judgment in favor of Plaintiff and against Defendant in the amount of Ten
3 Thousand, Four Hundred Forty-Two Dollars and 96/100 (\$10,442.96) for costs.

4 DATED this 29th day of September, 2017.

5
6 
DISTRICT COURT JUDGE

7
8
9 Prepared and Submitted by:

10
11 **SYLVESTER & POLEDNAK, LTD.**

12
13 By: 

Kelly L. Schmitt, Esq.
1731 Village Center Circle
Las Vegas, NV 89134
Attorneys for Plaintiff

EXHIBIT 5

EXHIBIT 5

Steven D. Grierson

1 FFCL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 CELTIC BANK CORPORATION,
6 successor-in-interest to SILVER STATE
7 BANK by acquisition of assets from the
8 FDIC as Receiver for Silver State Bank, a
9 Utah banking corporation organized and in
10 good standing with the laws of the State of
11 Utah,

12 Plaintiff,

13 Vs.

14 VEGAS UNITED INVESTMENT SERIES
15 105, INC., a Nevada domestic corporation;
16 GIBSON ROAD, LLC, a Nevada limited
17 liability company; GIBSON BUSINESS
18 CENTER PROPERTY OWNER
19 ASSOCIATION, a Nevada non-profit
20 corporation; REPUBLIC SILVER STATE
21 DISPOSAL, INC. dba REPUBLIC
22 SERVICES OF SOUTHERN NEVADA, a
23 foreign corporation; DOE Individuals I
24 through X; and ROE Corporations and
25 Organizations I through V, inclusive;

26 Defendants.

27 VEGAS UNITED INVESTMENT SERIES
28 105, INC., a Nevada corporation,

Counter-Claimant,

Vs.

CELTIC BANK CORPORATION,
successor-in-interest to SILVER STATE
BANK by acquisition of assets from the
FDIC as Receiver for Silver State Bank,

Counter-Defendant.

Case No. A-15-728233-C
Dept. No. XXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 **VEGAS UNITED INVESTMENT SERIES**
2 **105, INC., a Nevada Corporation,**

3 **Third-Party Plaintiff,**

4 **Vs.**

5 **GIBSON ROAD, LLC, a Nevada limited**
6 **liability company; DOE individuals I**
7 **through XX; and ROE CORPORATIONS**
8 **I through XX,**

9 **Third-Party Defendants.¹**

10 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

11 This matter came on for trial before the Court on the 9th, 10th and 11th day of August 2017
12 before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with
13 JUDGE SUSAN H. JOHNSON presiding; Plaintiff/Counter-Defendant CELTIC BANK
14 CORPORATION, as Successor-in-Interest to SILVERSTATE BANK appeared by and through its
15 attorneys, ALLYSON R. NOTO, ESQ. and KELLY L. SCHMIDT, ESQ. of the law firm,
16 SYLVESTER & POLEDNAK; and Defendant/Counter-Claimant VEGAS UNITED INVESTMENT
17 SERIES 105, INC. appeared by and through its attorney, ROGER P. CROTEAU, ESQ. of the law
18 firm, ROGER P. CROTEAU & ASSOCIATES. Having reviewed the papers and pleadings on file
19 herein, including the stipulated Joint Trial Exhibits 1 through 59, heard the testimonies of the
20 witnesses, to wit: BRIAN ZERN, JULIA SKINNER and CHARLES SCHMIDT, as well as
21 arguments of counsel, and taken this matter under advisement, this Court now makes the following
22 Findings of Fact and Conclusions of Law:
23
24 ...
25

26
27 ¹As GIBSON ROAD, LLC is not listed as a plaintiff in the primary action, it is improper to classify the action
28 against it as a "counter-claim" or identify it as a "counter-defendant." Similarly, as this party is not listed as a party in
the primary action at all, GIBSON ROAD, LLC is best identified as a "third-party defendant" in a "third-party
complaint."

FINDINGS OF FACT

1
2 1. CELTIC BANK CORPORATION filed its Verified Complaint for Judicial
3 Foreclosure of Deed of Trust against VEGAS UNITED INVESTMENT SERIES 105, INC.,
4 GIBSON ROAD, LLC, GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION and
5 REPUBLIC SILVER STATE DISPOSAL, INC. on November 25, 2015.² On January 4, 2016,
6 VEGAS UNITED INVESTMENT SERIES 105, INC. filed its Answer and Counterclaim, asserting
7 two causes of action: (1) Quiet Title/Declaratory Relief, and (2) Slander of Title against CELTIC
8 BANK CORPORATION. The facts adduced through trial, most of which were stipulated by the
9 parties, are as follows:
10

11 2. On or about January 18, 2006, GIBSON ROAD, LLC borrowed \$748,000.00 from
12 Plaintiff/Counter-Defendant CELTIC BANK CORPORATION'S predecessor-in-interest, SILVER
13 STATE BANK to purchase certain non-residential real property, to wit: 181 North Gibson Road,
14 Henderson, Nevada.³ The property in question is located within what appears to be two common-
15 interest communities encompassing the same business or industrial park, i.e. GIBSON BUSINESS
16 PARK, PHASE ONE and GIBSON BUSINESS CENTER PROPERTY OWNERS ASSOCIATION,
17 both of which are governed by certain covenants, conditions and restrictions (also known as
18 "CC&Rs"). The CC&Rs include, *inter alia*, the requirement the associations' members pay
19 periodic assessments to benefit the business parks or common-interest communities.
20
21

22 3. As discussed *supra* and in more detail *infra*, there are actually two declarations of
23 covenants, conditions and restrictions recorded against the business park. The first declaration
24 entitled "Declaration of Protective Covenants, Conditions and Restrictions" for GIBSON
25

26 ²GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION disclaimed interest in the property,
27 and it was dismissed as a party to the lawsuit on June 1, 2016. REPUBLIC SILVER STATE DISPOSAL, INC. was
28 dismissed as a party on August 8, 2017. Defaults were entered against GIBSON ROAD, LLC. on February 5, 2016 and
April 29, 2016, respectively.

³Also see Stipulated Trial Exhibit 4, Promissory Note.

1 BUSINESS PARK, PHASE ONE was recorded by its then declarant, AMPAC DEVELOPMENT
2 COMPANY, and joining parties⁴ on or about September 11, 1989 for the purpose of developing the
3 premises into a commercial and industrial park.⁵ The parties to this lawsuit have referred to these
4 CC&Rs as the "1989 Master CC&Rs." The 1989 Master CC&Rs were amended by the October 24,
5 1994 recording of the "First Amendment to Declaration of Protective Covenants, Conditions and
6 Restrictions" for GIBSON BUSINESS PARK, PHASE ONE." The purpose of this recording was to
7 "amend the description of the land constituting the Premises for the purpose of withdrawing certain
8 acreage from the Premises due to changes in development plans for the affected area."⁶ The parties
9 have referred this document as the "1994 First Amendment." Approximately ten years later, on or
10 about March 18, 2004, the second set of CC&Rs, entitled "Declaration of Covenants, Conditions and
11 Restrictions for Gibson Business Center" was recorded against the business park already being
12 governed by the 1989 Master CC&Rs by a new declarant, GIBSON AMERICAN PACIFIC, LLC.
13 The parties here have referred to this recording as the "2004 CC&Rs."
14
15

16 4. To secure payment of the promissory note, GIBSON ROAD, LLC executed and
17 delivered a first deed of trust to SILVER STATE BANK on or about December 9, 2005, which was
18 recorded with the Clark County Recorder's Office on December 30, 2005, and encumbered the
19 subject property within the business park.⁷
20

21 5. On or about September 5, 2008, SILVER STATE BANK was closed by the Nevada
22 Financial Institutions Division, and the Federal Deposit Insurance Corporation (FDIC) was named
23 receiver for the bank. Approximately one year later, on September 24, 2009, the FDIC, as SILVER
24 ...
25

26 ⁴See Stipulated Trial Exhibit 1. The "joining parties" are identified as MARSHMELLOW LANE PARTNERS,
27 GIBSON BUSINESS PARK ASSOCIATION 1986-1, OCEAN SPRAY CRANBERRIES, INC., and PACIFIC
ENGINEERING & PRODUCTION COMPANY OF NEVADA.

28 ⁵See Stipulated Trial Exhibit 1, 1989 Master CC&Rs.

⁶See Stipulated Trial Exhibit 2, 1994 First Amendment.

⁷Also see Stipulated Trial Exhibit 5, Deed of Trust.

1 STATE BANK'S receiver, assigned the promissory note and Deed of Trust to CELTIC BANK
2 CORPORATION.⁸

3 6. Almost two years later, on August 23, 2011, RED ROCK FINANCIAL SERVICES,
4 the collection agent for GIBSON BUSINESS CENTER PROPERTY OWNERS ASSOCIATION,
5 recorded a Lien for Delinquent Assessments with the Clark County Recorder's Office purportedly
6 against the subject property, listing as its current owner: "Trustee Clark County Treasurer c/o
7 GIBSON ROAD, LLC." The assessment lien, however, did not specify the subject property as the
8 particular parcel to be lienied; instead, the legal description contained within the Lien for Delinquent
9 Assessments was that of the *entire* business park.

11 7. The Lien for Delinquent Assessments also provided it was made "in accordance with
12 Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and
13 Restrictions, herein also called CC&Rs, recorded on 10/24/1994, in Book Number , as Instrument
14 Number 19940240000285 and including any and all Amendments and Annexations et seq. of
15 Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said
16 owner." However, a review of the Official Records of Clark County, Nevada shows there were no
17 CC&Rs recorded as Instrument Number 19940240000285.

19 8. While there is no CC&Rs recorded with Instrument Number 19940240000285, there is
20 the document recorded in 1994 as First Amendment to Declaration of Protective Covenants,
21 Conditions and Restrictions (again referred to as the "1994 First Amendment") by GIBSON
22 BUSINESS PARK, PHASE ONE with Instrument Number 199410240000285; this Instrument
23 number contains one additional number, i.e. "1," as the fifth digit, than the figure referred to within
24 the Lien for Delinquent Assessments recorded August 23, 2011. As noted above, this 1994 First
25 Amendment revises or amends that certain document titled "Declaration of Protective Covenants,
26
27

28 ⁸Also see Stipulated Trial Exhibit 7, Assignment of Deed of Trust.

1 Conditions and Restrictions" (again referred to as the "1989 Master CC&Rs) by GIBSON
2 BUSINESS PARK, PHASE ONE, recorded by the declarant, AMPAC DEVELOPMENT
3 COMPANY, in 1989 as Instrument Number 198909110000173.⁹

4 9. Neither the 1989 Master CC&Rs nor the 1994 First Amendment incorporate, refer to
5 or mention NRS Chapter 116 which was enacted December 31, 1991. There is no language
6 contained within the 1989 Master CC&Rs and its 1994 First Amendment to suggest a lien for
7 delinquent assessments has priority over the first security interest; if anything, its provisions state to
8 the contrary.¹⁰ The 2004 CC&Rs does mention NRS Chapter 116, although it specifies "[t]he Real
9 Property shall not be subject to the provisions of the Uniform Common Interest Ownership Act,
10 codified in Chapter 116 of the Nevada Revised Statutes ('NRS') except to the extent permitted under
11 NRS 278A.170." Like the 1989 Master CC&Rs, the 2004 CC&Rs contain a mortgage protection
12 clause as set forth in Article XIII.¹¹
13
14

15 10. On October 14, 2011, RED ROCK FINANCIAL SERVICES recorded a Notice of
16 Default. Notably, the Notice of Default referred to the recorded Lien for Delinquent Assessments
17

18 ⁹The "Declaration of Protective Covenants, Conditions and Restrictions" recorded in 1989 were also referred to
19 by the parties as the "1989 Master CC&Rs." The stated purchase of the 1994 First Amendment was to remove some of
20 the property originally encumbered by the Declarant identified in the 1989 Master CC&Rs. Notably, and as discussed
21 *infra*, the GIBSON BUSINESS CENTER PROPERTY OWNERS' ASSOCIATION was not created until approximately
22 March 17, 2004 when a second "Declaration of Covenants, Conditions and Restrictions" was recorded against the
23 business park or common-interest community. See Stipulated Trial Exhibit 3.

24 ¹⁰Section 8.09 of the 1989 Master CC&Rs provides as follows:

25 Liens to Secure Assessments. All Assessments, including interest and other amounts due
26 with respect to unpaid assessments, shall constitute, and shall be secured by, a separately valid and
27 existing lien on the portion of the Premises to which they relate, and upon all Improvements at any
28 time erected or constructed thereon. The provisions of Nev. Rev. Stat. Section 278A.170 are
incorporated herein by this reference.

Section 11.03 of the 1989 Master CC&Rs state in pertinent part:

Protection of Encumbrances. (a) No violation or breach of, or failure to comply with, any
provision of this Declaration, and no action to enforce any such provision, shall affect, defeat, render
invalid or impair the lien of any mortgage, deed of trust or other lien on any Lot or part of the Premises
taken in good faith and for failure; nor shall any violation, breach, failure to comply or action to
enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage,
deed of trust or other lien or title of any interest acquired by any purchaser upon foreclosure of any
such mortgage, deed of trust or other lien, or result in any liability, personal or otherwise, of any such
holder or purchaser.

¹¹See Stipulated Trial Exhibit 3, Bates No. CB000380, Article XIII, "Mortgage Protection Clause."

1 and included the incorrect legal description of the property to be liened and the erroneous Instrument
2 Number¹² described in Paragraphs 4 and 5 above. The Notice of Default was sent by certified mail,
3 return receipt requested, to CELTIC BANK CORPORATION and it was signed as received by the
4 Bank's employee.

5 11. On or about October 21, 2011, in conjunction with the Property Owners'
6 Association's impending foreclosure, RED ROCK FINANCIAL SERVICES obtained a Trustee's
7 Sale Guarantee¹³ from FIRST AMERICAN TITLE INSURANCE COMPANY.¹⁴ This Trustee's
8 Sale Guarantee identified, as one of its exceptions to title, that which related to the 1989 Master
9 CC&Rs; this exception, No. 7, provided as follows:
10

11 COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, ASSESSMENTS,
12 LIENS, CHARGES, TERMS AND PROVISIONS IN THE DOCUMENT RECORDED
13 **SEPTEMBER 11, 1989** IN BOOK **890911** AS INSTRUMENT NO. **00173** OF OFFICIAL
14 RECORDS, WHICH PROVIDE THAT A VIOLATION THEREOF SHALL NOT DEFEAT
15 OR RENDER INVALID THE LIEN OF ANY FIRST MORTGAGE OR DEED OF TRUST
16 MADE IN GOOD FAITH AND FOR VALUE, BUT DELETING ANY COVENANT,
17 CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR
18 DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP,
19 FAMILIAL STATUS, OR NATIONAL ORIGIN, TO THE EXTENT SUCH
20 COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION
21 3604(c), OF THE UNITED STATES CODES. (Emphasis in original)

22 A similar exception, No. 8, was noted with respect to the 2004 CC&Rs. Other exceptions to title
23 identified within the Trustee's Sale Guarantee were issues related to unpaid property taxes and the
24 Deed of Trust recorded December 30, 2005 against the property and assigned to CELTIC BANK
25 CORPORATION on or about September 24, 2009.¹⁵

26 12. On or about December 21, 2011, RED ROCK FINANCIAL SERVICES sent what
27 appears to be a form letter to CELTIC BANK CORPORATION, indicating it was sending "this
28

¹²Also see Stipulated Trial Exhibit 10, Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments.

¹³The Trustee's Sale Guarantee was also identified as "TSG" by the parties and their lawyers.

¹⁴Also see Stipulated Trial Exhibit 11, Trustee's Sale Guarantee.

¹⁵See Stipulated Trial Exhibit 11, Trustee's Sale Guarantee, pp. 2-3, Exceptions Nos. 2 and 9.

1 notice" as a courtesy. The collection agent indicated "the above referenced homeowner"¹⁶ was
2 delinquent in paying "their "Homeowners Association assessments," and it set forth the procedures
3 followed thus far regarding the non-judicial foreclosure process. At that juncture, RED ROCK
4 FINANCIAL SERVICES stated it was "approximately 60 days into the mandatory 90-day waiting
5 period" between the recordation of Noticed of Default and Election to Sell and when it could
6 exercise its enforcement rights. As pertinent to the analysis here, the letter also stated: "The
7 Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage
8 Holder," which all parties agree was CELTIC BANK CORPORATION.
9

10 13. Approximately twenty (20) months later, on August 12, 2013, ASHLEY PANON,
11 Account Coordinator for RED ROCK FINANCIAL SERVICES, sent an electronic mail (also
12 referred to as "e-mail") to the Community Manager for the business park to "assist the Board of
13 Directors in making the decision of whether or not to proceed forward with foreclosure,..."¹⁷
14 Attached was a form outlining pertinent information such as (1) "A brief outline of the two (2)
15 possible outcomes of foreclosure. This will assist in making certain the Board is making an
16 informed decision and understands the Associations' responsibility[;]" and (2) "Mortgage
17 information obtained from the Title Report [or Trustee's Sale Guarantee]. This provides the Board
18 with an estimate of outstanding mortgages that may survive the association foreclosure." The
19 attached form indicated the balance due as of that date to the Association and its collection agent
20 was \$11,676.08. The two possible outcomes were:
21
22

- 23 1. The first possible outcome is when a 3rd Party steps in and purchases the
24 property at auction. This outcome will usually only occur if there is equity and/or no
25 mortgage. Under this outcome, the Association would be made whole.
26 ...

27 ¹⁶The "above referenced homeowner" was identified in the letter's "Re:" line as "181 N. Gibson Rd, (sic)
28 Henderson, NV 89014" and "Gibson Business Center Property Owners Association/R92471." See Stipulated Trial
Exhibit 12, p. 1 (Bates No. "Redrock 0312").

¹⁷See Stipulated Trial Exhibit 13.

1 2. The second possible outcome is that at auction no 3rd Party steps in which will
2 cause the property to revert to the Association. The Association would then be responsible
3 for collection costs, property tax and transfer tax. *The first mortgage would remain on the*
4 *property.* (Emphasis added)

5 The information "pulled" from the Title Report or Trustee's Sale Guarantee was:

6 **1st Mortgage: \$748,000.00**
7 **2nd Mortgage: NONE**
8 **Lender Foreclosure Activity: NONE**
9 (Emphasis in original)

10 The Community Manager was then asked to mark the Association's decision whether it desired to
11 proceed with foreclosure of "181 N Gibson Rd, (sic) Henderson, NV 89014."

12 14. Apparently, the Board of Directors elected to pursue non-judicial foreclosure as, on
13 February 26, 2014, its collection agent recorded and posted a Notice of Foreclosure Sale "Under the
14 Lien for Delinquent Assessments," indicating the association's foreclosure sale would take place on
15 March 21, 2014 at 10:00 a.m. at the front entrance of Nevada Legal News.¹⁸ This Notice also set
16 forth on page 2,¹⁹ "[t]he sale will be made without covenant or warranty, expressed or implied
17 regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or
18 unsecured liens or against all right, title and interest of the owner, without equity or right of
19 redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the
20 Declarations of Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number ,
21 as Instrument Number 19940240000285 of the Official Records in the Office of the Recorder and
22 any subsequent amendments or updates that may have been recorded." This Notice of Foreclosure
23 Sale was also sent, via certified mail, return receipt requested, to CELTIC BANK CORPORATION,
24 care of ROBERTA MERRYMAN, 340 East 400 South, Salt Lake City, Utah 84111, although the
25 Bank claims the notice was never received as it was sent to its former address.

26
27 ¹⁸See Stipulated Trial Exhibit 15.

28 ¹⁹See Bates No. Redrock 0076.

1 15. The foreclosure sale took place on March 21, 2014, and CHARLES SCHMITDT was
2 the highest bidder at \$30,000.00 of the three (3) who attended. As a result of the association's
3 auction, the property title was vested in Defendant/Counter-Claimant VEGAS UNITED
4 INVESTMENT SERIES 105 of which MR. SCHMIDT is the sole shareholder.²⁰

5 16. MR. SCHMIDT claims he was a *bona fide* purchaser at the aforementioned
6 foreclosure sale, and entitled to rely upon the recitals contained in the Foreclosure Deed. Prior to
7 bidding on the property here, MR. SCHMIDT testified he did look at the public record by assessor
8 parcel number (or "APN") and owner. However, he did not review any of the CC&Rs recorded
9 against the property until approximately two weeks after the foreclosure sale. Whether his assertion
10 he is a *bona fide* purchaser is true, the evidence also showed MR. SCHMIDT was sophisticated. He
11 started purchasing real estate at both bank and association foreclosure sales since 2008, and by the
12 time this trial commenced, he admitted he has acquired over 100 properties either personally or
13 through controlled entities.
14

15 17. In the meantime, on June 3, 2013, the Clark County Treasurer placed a lien on the
16 subject property for past due taxes which was recorded in Book No. 20131226 as Instrument No.
17 00891 in the Official Records of the Clark County Recorder's Office. CELTIC BANK
18 CORPORATION sent various reminders to its borrower, GIBSON ROAD, LLC, concerning the
19 delinquent property taxes due in 2014.²¹
20

21 18. In addition to not paying the taxes and association assessments, GIBSON ROAD,
22 LLC also did not pay the monthly installments owing to CELTIC BANK CORPORATION under
23

24 ...

25 ...

26
27
28 ²⁰See Stipulated Trial Exhibits 16 and 17 (Foreclosure Deed).

²¹See Stipulated Trial Exhibit 19.

1 the promissory note. On March 2, 2015, CELTIC BANK CORPORATION recorded a Notice of
2 Default and Election to Sell under the Deed of Trust.²²

3 19. On April 30, 2015, ROGER P. CROTEAU, ESQ., counsel for VEGAS UNITED
4 INVESTMENT SERIES 105, sent a letter to CELTIC BANK CORPORATION,²³ indicating its
5 Notice of Default was invalid for a couple of reasons. *First*, the original Deed of Trust recorded
6 December 30, 2005 and described within the Notice of Default identified incorrect assessor parcel
7 numbers, meaning, in his view, the subject property was not secured by the Deed of Trust.²⁴ *Second*,
8 *even if* the Deed of Trust was properly recorded against the property, it was extinguished by the
9 association's foreclosure sale held in March 2014. According to CELTIC BANK CORPORATION,
10 MR. CROTEAU'S April 2015 letter was the first notice it received regarding the association's
11 intention to sell the property and ultimately, the foreclosure sale to VEGAS UNITED
12 INVESTMENT SERIES 105.
13

14 20. On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed against
15 the subject property, indicating \$14,149.45 in taxes, penalties, interest and costs were due.²⁵ This
16 Tax Trustee Deed deeded the subject property to the county in trust for GIBSON ROAD, LLC. On
17 October 29, 2015, CELTIC BANK CORPORATION paid the outstanding amount due to the Clark
18 County Treasurer, i.e. \$18,281.67. Such resulted in the Treasurer's re-conveyance of the deed to the
19 Bank's borrower, GIBSON ROAD, LLC, and such was recorded On November 5, 2015.²⁶
20

21 ...
22

23
24 ²²See Stipulated Trial Exhibit 20.

25 ²³See Stipulated Trial Exhibit 21.

26 ²⁴The correct assessor parcel number or APN for the subject property is 178-15-511-042. The APNs indicated
27 in the Deed of Trust recorded December 30, 2005 are 178-15-511-029, 178-15-511-030 and 178-15-511-031. JULIA
28 SKINNER, Senior Underwriter for National Commercial Services at FIRST AMERICAN TITLE COMPANY, who had
worked in the property title industry for over thirty (30) years, testified at trial the APNs set forth on the Deed of Trust
were changed over time. However, the alterations in the APNs did not affect whether the Deed of Trust was properly
recorded against the subject property.

²⁵See Stipulated Trial Exhibit 22.

²⁶See Stipulated Trial Exhibit 26.

CONCLUSIONS OF LAW

1
2 1. NRS 30.030 specifically provides the courts shall have the power to declare rights,
3 status and other legal relations whether or not further relief is or could be claimed. The court's
4 declaration may be affirmative or negative in form and effect; such declaration shall have the force
5 and effect of a final judgment or decree. NRS 40.010 provides "[a]n action may be brought by any
6 person against another who claims an estate or interest in real property adverse to the person
7 bringing the action, for the purpose of determining such adverse claim." As noted above, CELTIC
8 BANK CORPORATION seeks, by way of relief, to enforce its rights under the December 30, 2005
9 Deed of Trust and judicially foreclose upon the property. VEGAS UNITED INVESTMENT
10 SERIES 105 seeks declaratory relief and to quiet title, as well as damages for slander of title against
11 CELTIC BANK CORPORATION. Both parties claim their interest has first priority, and notably,
12 VEGAS UNITED INVESTMENT SERIES 105 claims the Bank's rights under the Deed of Trust
13 were extinguished by way of the Association's foreclosure sale. Before it determines whether
14 CELTIC BANK CORPORATION can enforce its rights under the Deed of Trust, it first determines
15 whether such rights, if any, were extinguished by the Association's foreclosure sale, and perhaps
16 more importantly, if NRS Chapter 116 applies in this case.

17
18
19 2. NRS Chapter 116 codifies the Uniform Common-Interest Ownership Act or UCIOA,
20 and applies to all common-interest communities created within the State of Nevada, subject to
21 certain exceptions. *See* NRS 116.1201(1). One of those exceptions is set forth in NRS
22 116.1201(2)(b). It states NRS Chapter 116 does not apply to "[a] planned community in which all
23 units are restricted exclusively to nonresidential use unless the declaration provides that this chapter
24 or a part of this chapter does apply to that planned community pursuant to NRS 116.12075." NRS
25 116.12075 states in pertinent part:
26
27
28

1 **116.12075. Applicability to nonresidential condominiums.**

- 2 1. The provisions of this chapter do not apply to a nonresidential condominium
3 except to the extent that the declaration for the nonresidential condominium provides that:
4 (a) This entire chapter applies to the condominium;
5 (b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS
6 116.3116 to 116.31167, inclusive, apply to the condominium; or
7 (c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to
8 the condominium.

9 Clearly, as set forth in NRS 116.1201 and 116.12075, NRS Chapter 116 does not apply to non-
10 residential common-interest communities *except* to the extent set forth set forth by their CC&Rs. In
11 this case, there is no question the subject property is non-residential and located within a business or
12 industrial park. This Court therefore considers the terms set forth in the CC&Rs in determining
13 whether exceptions exist for NRS Chapter 116 to apply here.

14 3. As noted above, there are two separate declarations of covenants, conditions and
15 restrictions recorded against the subject property. The first CC&Rs, referred to as the 1989 Master
16 CC&Rs was recorded over two years before NRS Chapter 116 was enacted on December 31, 1991.
17 Neither the 1989 Master CC&Rs nor its 1994 First Amendment mentions NRS Chapter 116, much
18 less indicates this statutory scheme, or any part thereof, applies to the subject property. Further,
19 there is no language contained within the 1989 Master CC&Rs and its 1994 First Amendment to
20 suggest a lien for delinquent association assessments has priority over the first security interest.
21 While the 2004 CC&Rs does mention NRS Chapter 116, it also specifies “[t]he Real Property *shall*
22 *not* be subject to the provisions of the Uniform Common Interest Ownership Act, codified in
23 Chapter 116 of the Nevada Revised Statutes (‘NRS’) except to the extent permitted under NRS
24 278A.170.”²⁷ (Emphasis added)

25 ...

26
27
28 ²⁷The 1989 Master CC&Rs also addresses NRS 278A.170 in Section 8.09. See Stipulated Trial Exhibit 1, Bates
No. CB000419; also see Footnote 10 *supra*.

1 4. Turning, then, to NRS 278A.170, it states:

2 The procedures for enforcing payment of an assessment for the maintenance of
3 common open space provided in NRS 116.3116 to 116.31168, inclusive, are also available to
4 any organization for the ownership and maintenance of common open space established
5 other than under this chapter or chapter 116 of NRS and entitled to receive payments from
6 owners of property for such maintenance under a recorded declaration of restrictions, deed
7 restriction, restrictive covenant or equitable servitude which provides that any reasonable and
8 ratable assessment thereon for the organization's cost of maintaining the common open space
9 constitutes a lien or encumbrance upon the property.

10 5. While NRS 278A.170 outlines the *procedures* for enforcing assessment payments for
11 the maintenance of "common open space" provided in NRS 116.3116 to 116.31168, it does not
12 state, substantively, the priority of the encumbrances upon the property and the exceptions thereto
13 outlined in NRS 116.3116 are to be applied. As pertinent here, NRS 278A.170 does not state the
14 association's assessments' lien charged for the nine-month period immediately preceding the action
15 is prior to any first-security interest. That is, while NRS 278A.170 provides, procedurally, the
16 association's assessments shall be enforced as provided in NRS 116.3116 to 116.31168, it does not
17 state the assessments, or any part thereof, shall take priority over any other liens.

18 6. As noted above, the CC&Rs also contain clauses which protect certain
19 encumbrances, which include mortgages and deeds of trust.²⁸ Specifically, "[n]o violation of any
20 provision of this Declaration, nor any remedy exercised hereunder, shall defeat or render invalid the
21 lien of any Mortgage made in good faith and for failure upon any portion of the Project, nor shall
22 any Lien created hereunder be superior to any such Mortgage unless such Lien shall have been
23 recorded in the Public Records prior to the recordation...of such Mortgage."²⁹ Further, "[n]o
24 violation or breach of, or failure to comply with, any provision of this Declaration, and no action to
25 enforce any such provision, shall affect, defeat, render invalid or impair the lien of any mortgage,
26 deed of trust or other lien on any Lot or part of the Premises taken in good faith and for value; nor

27

28 ²⁸See Stipulated Trial Exhibits 1, 1989 Master CC&Rs, Section 11.03, and 3, 2004 CC&Rs, Article XIII.

²⁹See Stipulated Trial Exhibit 3, 204 CC&Rs, Article XIII.

1 shall any violation, breach, failure to comply or action to enforce affect, defeat, render invalid or
2 impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or
3 any interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other
4 lien;....³⁰ In short, except to the extent the Association can utilize the procedures set forth in NRS
5 116.3116 to 116.31168 for collecting its assessment lien against a delinquent property owner, NRS
6 Chapter 116 does not apply with respect to establishing the priority of such debt, or any part thereof,
7 over the first-security interest held by CELTIC BANK CORPORATION. Further, as NRS Chapter
8 116 does not apply, this statutory scheme does not render invalid any provision of the two governing
9 documents. Cf. NRS 116.2103(1). Thus, if VEGAS UNITED INVESTMENT SERIES 105, INC.
10 purchased the property at the foreclosure sale, it took title subject to CELTIC BANK
11 CORPORATION'S Deed of Trust. Its acquisition of the Foreclosure Deed did not result in an
12 extinguishment of the first-security interest.
13
14

15 7. Notwithstanding the aforementioned, this Court notes it was CELTIC BANK
16 CORPORATION that satisfied the property tax lien, which resulted in a re-conveyance of the title to
17 its borrower, GIBSON ROAD, LLC. No evidence was presented to demonstrate VEGAS UNITED
18 INVESTMENT SERIES 105, INC. paid any property taxes. Further, GIBSON ROAD, LLC is
19 delinquent in paying the monthly installments toward the mortgage. The Bank is entitled to
20 judicially foreclose given its first-security interest recorded against the property. As it finds
21 CELTIC BANK CORPORATION'S Deed of Trust is superior to any Association liens, this Court
22 also concludes VEGAS UNITED INVESTMENT SERIES 105, INC. has not sustained its burden of
23 proving the elements of its Slander of Title claim by a preponderance of the evidence. Further,
24 given its conclusion regarding the priority of interests, this Court does not reach the remaining issues
25 concerning the fairness or commercial reasonableness of the Association's foreclosure sale.
26
27
28

³⁰See Stipulated Trial Exhibit I, 1989 Master CC&Rs, Section 11.03.

8. VEGAS UNITED INVESTMENT SERIES 105, INC. did raise the issue concerning the propriety of the Deed of Trust's recording against the correct property and the listing of three different assessor parcel numbers (APNs) therein. As testified by MS. SKINNER, the APNs set forth on the Deed of Trust were changed over time. However, the alterations in the APNs did not affect whether the Deed of Trust was properly recorded against the subject property. This Court found MS. SKINNER'S testimony to be credible, and CELTIC BANK CORPORATION met its burden of proof, by a preponderance of the evidence, its Deed of Trust was properly recorded against the subject property.

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED judgment is rendered in favor of CELTIC BANK CORPORATION as against VEGAS UNITED INVESTMENT SERIES 105, INC. with respect to its Complaint for Judicial Foreclosure. As GIBSON ROAD, LLC is a defaulting party, CELTIC BANK CORPORATION can judicially foreclose upon the property;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED judgment is rendered in favor of CELTIC BANK CORPORATION as against VEGAS UNITED INVESTMENT SERIES 105, INC. with respect to the Counter-Claim for quiet title/declaratory relief and slander of title. The Bank's first-security interest was not extinguished by the Association's foreclosure sale.

DATED this 25th day of August 2017.

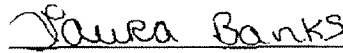
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, on the 25th day of August 2017, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT to the following counsel of record, and that first-class postage was fully prepaid thereon:

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EXHIBIT 4

EXHIBIT 4



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DISTRICT COURT

CLARK COUNTY, NEVADA

11 CELTIC BANK CORPORATION,) CASE NO.: A-15-728233-C
successor- in-interest to SILVER STATE)
12 BANK by acquisition of assets from) DEPT. NO.: XXII
FDIC as Receiver for Silver State Bank, a)
13 Utah banking corporation organized and)
in good standing under the laws of the)
14 State of Utah,)
15 Plaintiff,)
16 vs.)
17 VEGAS UNITED INVESTMENT)
SERIES 105, INC., a Nevada domestic)
19 corporation; GIBSON ROAD, LLC, a)
Nevada limited liability company;)
20 GIBSON BUSINESS CENTER)
PROPERTY OWNER ASSOCIATION,)
21 a Nevada non-profit corporation;)
22 REPUBLIC SILVER STATE)
DISPOSAL, INC., dba REPUBLIC)
23 SERVICES OF SOUTHERN NEVADA,)
a foreign corporation; DOE Individuals I)
24 through X; and ROE Corporations and)
Organizations I through V, inclusive,)
25 DOE Individuals I through X; and ROE)
26 Corporations and Organizations I through)
V, inclusive,)
27 Defendants.)
28

WILLIAMS & ASSOCIATES

Attorneys at Law
612 South Tenth Street
Las Vegas, NV 89101
Telephone: (702) 320-7755 Facsimile: (702) 320-7760

1 VEGAS UNITED INVESTMENT)
 2 SERIES 105, INC., a Nevada)
 Corporation)
 3 Counterclaimant,)
 4)
 5 vs.)
 6)
 7 CELTIC BANK CORPORATION,)
 8 successor- in-interest to SILVER STATE)
 BANK by acquisition of assets from)
 9 FDIC as Receiver for Silver State Bank, a)
 10 Utah banking corporation; GIBSON)
 ROAD, LLC, a Nevada limited liability)
 company, DOE Individuals I through)
 11 XX; and ROE Corporations I through XX)
 Counter-Defendants.)
 12)

13 **STIPULATION AND ORDER TO DISMISS DEFENDANT REPUBLIC SERVICES,**

14 **INC.**

15 IT IS HEREBY STIPULATED by and between Drew J. Starbuck, Esq. of WILLIAMS
 16 & ASSOCIATES, on behalf of Defendant, Republic Silver State Disposal, Inc., dba Republic
 17 Services of Southern Nevada, and Kelly L. Schmitt, Esq., of SYLVESTER & POLEDNAK,
 18 LTD., on behalf of Plaintiff, Celtic Bank Corporation, and Roger P. Croteau, Esq., of ROGER
 19 P. CROTEAU & ASSOCIATES, on behalf of Defendant Vegas United Investment Series 105,
 20 Inc., do hereby stipulate that:

21 Republic Silver State Disposal, Inc., dba Republic Services of Southern Nevada is to
 22 be dismissed without prejudice from the above named lawsuit. The Parties further agree that
 23 this dismissal does not affect or impair in any way, any of the Parties' lien rights as allowable
 24 under applicable state and federal law, including but not limited to NRS 444.520(3), and that
 25 Republic Silver State Disposal, Inc., dba Republic Services of Southern Nevada reserves all
 26 rights that it may have at law.

27 ...

28 ...

1 The Parties do further stipulate that Republic Silver State Disposal, Inc., dba Republic
2 Services of Southern Nevada may also further amend its lien as allowed by law, and that
3 Republic retains and reserves all rights and defenses available to it.

4 Stipulated and agreed this 19 day of
5 July, 2017.

6 WILLIAMS & ASSOCIATES

7 
8 DONALD H. WILLIAMS, ESQ.

9 Nevada Bar No. 5548

10 DREW J. STARBUCK, ESQ.

11 Nevada Bar No. 13964

12 612 South Tenth Street

13 Las Vegas, Nevada 89106

14 *Attorneys for Republic Services, Inc.*

Stipulated and agreed this 19th day of
July, 2017.

SYLVESTER & POLEDNAK, LTD

15 
ALLYSON RINGTO, ESQ.

Nevada Bar No. 8286

KELLY L. SCHMITT, ESQ.

Nevada Bar No. 10387

1731 Village Center Circle

Las Vegas, NV 89134

Attorneys for Celtic Bank Corporation

13 Stipulated and agreed this 19 day of
14 July, 2017.

15 ROGER P. CROTEAU & ASSOCIATES

16 
17 ROGER P. CROTEAU, ESQ.

Nevada Bar No.

18 TIMOTHY E. RHODA, ESQ.

Nevada Bar No.

19 9120 W. Post Road, Ste. 100

20 Las Vegas, NV 89148

Attorneys for Vegas United Investment

21 *Series 105, Inc.*

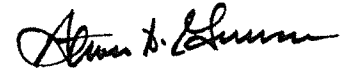
22 IT IS SO ORDERED this 1st day of August, 2017.

23
24
25 
DISTRICT COURT JUDGE

26 A-15-728233-C
27
28

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 SAO
2 SYLVESTER & POLEDNAK, LTD.
3 ALLYSON R. NOTO, ESQ.
4 Nevada Bar No. 8286
5 KELLY L. SCHMITT, ESQ.
6 Nevada Bar No. 10387
7 1731 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 952-5200
10 Facsimile: (702) 952-5205
11 Email: allyson@sylvesterpolednak.com
12 Email: kelly@sylvesterpolednak.com
13 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CELTIC BANK CORPORATION,
12 successor-in-interest to SILVER STATE
13 BANK by acquisition of assets from the FDIC
14 as Receiver for Silver State Bank, a Utah
15 banking corporation organized and in good
16 standing under the laws of the State of Utah,

Plaintiff,

v.

17 VEGAS UNITED INVESTMENT SERIES
18 105, INC., a Nevada domestic corporation;
19 GIBSON ROAD, LLC, a Nevada limited
20 liability company; GIBSON BUSINESS
21 CENTER PROPERTY OWNER
22 ASSOCIATION, a Nevada non-profit
23 corporation; REPUBLIC SILVER STATE
24 DISPOSAL, INC. dba REPUBLIC
25 SERVICES OF SOUTHERN NEVADA, a
26 foreign corporation; DOE Individuals I
27 through X; and ROE Corporations and
28 Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

Defendants.

Case No. A-15-728233-C
Dept. No. XXII

**STIPULATION AND ORDER
DISCLAIMING INTEREST AND
DISMISSING GIBSON BUSINESS
CENTER PROPERTY OWNER
ASSOCIATION WITHOUT PREJUDICE**

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1 VEGAS UNITED INVESTMENT SERIES
2 105, INC., a Nevada corporation,

3 Counterclaimant,

4 v.

5 CELTIC BANK CORPORATION,
6 successor-in-interest to SILVER STATE
7 BANK by acquisition of assets from the FDIC
8 as Receiver for Silver State Bank, a Utah
9 banking corporation; GIBSON ROAD, LLC, a
10 Nevada limited liability company; DOE
11 Individuals I through XX; and ROE
12 Corporations I through XX,

13 Counter-Defendants.

14 COMES NOW, Plaintiff CELTIC BANK CORPORATION, successor-in-interest to
15 SILVER STATE BANK by acquisition of assets from the FDIC as Receiver of Silver State Bank
16 ("Plaintiff"), by and through its attorneys, the law office of Sylvester & Polednak, Ltd., and
17 Defendant GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION ("Gibson
18 Business Center POA" together with Plaintiff the "Parties"), by and through its attorneys, the law
19 office of Knight Law, hereby stipulate and agree as follows:

20 That Gibson Business Center POA claims no present or future legal interest, either actual
21 or possessory, in the lien recorded August 23, 2011 in Book 20110823 as Instrument No. 01011
22 related to the real property located at 181 N. Gibson Road, Henderson, NV 89014, APN#
23 178-15-511-042.

24 That Gibson Business Center POA shall be dismissed from the instant lawsuit without
25 prejudice.

26 IT IS SO STIPULATED.

27 DATED this 25th day of May, 2016.
28 SYLVESTER & POLEDNAK, LTD.

By

Anyson R. Noto, Esq.
Kelly L. Schmitt, Esq.
1731 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

DATED this 24th day of May, 2016.
KNIGHT LAW

By

Scott A. Knight, Esq.
2850 W. Horizon Ridge Pkwy, Ste. 200
Henderson, Nevada 89052
Attorney for Gibson Business Center
Property Owner Association


Celtic Bank Corporation v. Vegas United Investment Series 105, Inc. et al
Case No. A-15-728233

ORDER

Pursuant to the Stipulation of the Parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff's Complaint shall be dismissed without prejudice as to Gibson Business Center POA, each party to bear their own attorney's fees and costs.

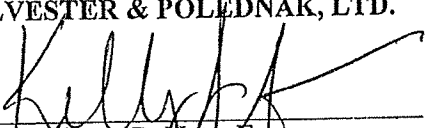
DATED this 26th day of May, 2016.


DISTRICT COURT JUDGE
A728233

Respectfully Submitted by:

SYLVESTER & POLEDNAK, LTD.

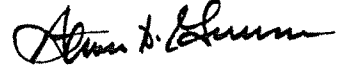
By


Allyson R. Noto, Esq.
Kelly L. Schmitt, Esq.
1731 Village Center Circle
Las Vegas, NV 89134
Attorneys for Plaintiff

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 ANS
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Defendant*
13 **VEGAS UNITED INVESTMENT**
14 **SERIES 105, INC.**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 CELTIC BANK CORPORATION, successor-)
13 in-interest to SILVER STATE BANK by)
14 acquisition of assets from the FDIC as Receiver)
15 for Silver State Bank, a Utah banking)
16 corporation organized and in good standing)
17 with the laws of the State of Utah,)

Plaintiff,)

vs.)

18 VEGAS UNITED INVESTMENT SERIES)
19 105, INC., a Nevada domestic corporation;)
20 GIBSON ROAD, LLC, a Nevada limited)
21 liability company; GIBSON BUSINESS)
22 CENTER PROPERTY OWNER)
23 ASSOCIATION, a Nevada non-profit)
24 corporation; REPUBLIC SILVER STATE)
25 DISPOSAL, INC. dba REPUBLIC SERVICES)
26 OF SOUTHERN NEVADA, a foreign)
27 corporation; DOE Individuals I through X; and)
28 ROE Corporations and Organizations I through)
V; DOE Individuals I through X; and ROE)
Corporations and Organizations I through V,)

Defendants.)

Case No. A-15-728233-C
Dept. No. XXXII

ANSWER AND COUNTERCLAIM

//

//

1 VEGAS UNITED INVESTMENT SERIES)
2 105, INC., a Nevada corporation,)
3 Counterclaimant,)
4 vs.)
5 CELTIC BANK CORPORATION, successor-)
6 in-interest to SILVER STATE BANK by)
7 acquisition of assets from the FDIC as Receiver)
8 for Silver State Bank, a Utah banking)
9 corporation; GIBSON ROAD, LLC, a Nevada)
10 limited liability company; DOE individuals I)
11 through XX; and ROE CORPORATIONS I)
12 through XX,,)
13 Counter-Defendants.)

ANSWER AND COUNTERCLAIM

12 COMES NOW, Defendant, VEGAS UNITED INVESTMENT SERIES 105, INC., by
13 and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby answers
14 Plaintiff's Complaint as follows:

JURISDICTIONAL ALLEGATIONS

- 16 1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant is without sufficient
17 information to either admit or deny the allegations therein. On this basis, Defendant
18 denies said allegations in their entirety.
- 19 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits the allegations
20 therein.
- 21 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant denies that Borrower is the
22 owner of the Property. Defendant avers that Defendant is the owner of the Property by
23 virtue of its purchase of the Property for good and valuable consideration at an
24 association foreclosure sale dated March 21, 2014. Defendant is without sufficient
25 information to either admit or deny the remaining allegations therein. On this basis,
26 Defendant denies said allegations in their entirety.
- 27 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant denies the allegations therein.
28 Defendant avers that the lien claimed by the Association was fully satisfied at the time of

1 the association foreclosure sale dated March 21, 2014, and that the Association thus
2 maintains no claim against the Property at this time.

3 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant is without sufficient
4 information to either admit or deny the allegations therein. On this basis, Defendant
5 denies said allegations in their entirety.

6 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant neither admits nor denies the
7 allegations therein as said allegations are not directed towards this answering Defendant.
8 To the extent that a response may be required, Defendant denies the allegations therein.

9 **FACTUAL BACKGROUND**

10 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant is without sufficient
11 information to either admit or deny the allegations therein. On this basis, Defendant
12 denies said allegations in their entirety.

13 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendant is without sufficient
14 information to either admit or deny the allegations therein. On this basis, Defendant
15 denies said allegations in their entirety.

16 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant is without sufficient
17 information to either admit or deny the allegations therein. On this basis, Defendant
18 denies said allegations in their entirety.

19 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant is without sufficient
20 information to either admit or deny the allegations therein. On this basis, Defendant
21 denies said allegations in their entirety.

22 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant is without sufficient
23 information to either admit or deny the allegations therein. On this basis, Defendant
24 denies said allegations in their entirety.

25 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant is without sufficient
26 information to either admit or deny the allegations therein. On this basis, Defendant
27 denies said allegations in their entirety.

28 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant is without sufficient

1 information to either admit or deny the allegations therein. On this basis, Defendant
2 denies said allegations in their entirety.

3 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant denies the allegations
4 therein upon information and belief.

5 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant neither admits nor denies
6 the allegations therein as said allegations are not directed towards this answering
7 Defendant. To the extent that a response may be required, Defendant denies the
8 allegations therein.

9 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant admits the allegations
10 therein upon information and belief.

11 17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant admits the allegations
12 therein upon information and belief.

13 18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant admits the allegations
14 therein upon information and belief.

15 19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant admits the allegations
16 therein upon information and belief.

17 20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant admits the allegations
18 therein upon information and belief.

19 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant admits the allegations
20 therein upon information and belief.

21 22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant admits the allegations
22 therein.

23 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant denies the allegations
24 therein.

25 **BORROWER'S DEFAULT UNDER THE LOAN DOCUMENTS**

26 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant is without sufficient
27 information to either admit or deny the allegations therein. On this basis, Defendant
28 denies said allegations in their entirety.

1 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant is without sufficient
2 information to either admit or deny the allegations therein. On this basis, Defendant
3 denies said allegations in their entirety.

4 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendant is without sufficient
5 information to either admit or deny the allegations therein. On this basis, Defendant
6 denies said allegations in their entirety.

7 27. Answering Paragraph 27 of Plaintiff's Complaint, Defendant is without sufficient
8 information to either admit or deny the allegations therein. On this basis, Defendant
9 denies said allegations in their entirety.

10 28. Answering Paragraph 28 of Plaintiff's Complaint, Defendant is without sufficient
11 information to either admit or deny the allegations therein. On this basis, Defendant
12 denies said allegations in their entirety.

13 **FIRST CAUSE OF ACTION**

14 **(Judicial Foreclosure of Deed of Trust)**

15 29. Answering Paragraph 29 of Plaintiff's Complaint, Defendant repeats, realleges, and
16 incorporates by reference herein, its Answers to Paragraphs 1 through 28 above, as
17 though said paragraphs were fully set forth herein.

18 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendant is without sufficient
19 information to either admit or deny the allegations therein. On this basis, Defendant
20 denies said allegations in their entirety.

21 31. Answering Paragraph 31 of Plaintiff's Complaint, Defendant is without sufficient
22 information to either admit or deny the allegations therein. On this basis, Defendant
23 denies said allegations in their entirety.

24 32. Answering Paragraph 31 of Plaintiff's Complaint, Defendant is without sufficient
25 information to either admit or deny the allegations therein. On this basis, Defendant
26 denies said allegations in their entirety.

27 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant denies the allegations
28 therein.

1 34. Answering Paragraph 34 of Plaintiff's Complaint, Defendant denies the allegations
2 therein.

3 35. Answering Paragraph 35 of Plaintiff's Complaint, Defendant denies the allegations
4 therein.

5 36. Answering Paragraph 36 of Plaintiff's Complaint, Defendant denies the allegations
6 therein.

7 37. Answering Paragraph 37 of Plaintiff's Complaint, Defendant denies the allegations
8 therein.

9 38. Answering Paragraph 38 of Plaintiff's Complaint, Defendant denies the allegations
10 therein.

11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

13 Defendant states that the allegations contained in the Complaint fail to state a cause of
14 action against this answering party upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 Plaintiff has failed to mitigate its damages, if any, the existence of which is expressly
17 denied.

18 **THIRD AFFIRMATIVE DEFENSE**

19 The Plaintiff's claims for damages are barred as a result of the failure to satisfy conditions
20 precedent.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 The Plaintiff's claims have been waived by the acts and conduct of the Plaintiff and,
23 therefore, Plaintiff is estopped from asserting its claims for damages against this answering party.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 The Plaintiff's claims are barred by the Doctrine of Laches.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 The damages which are alleged to have been incurred by the Plaintiff, if any, are the
28 direct result, in whole or in part, of acts or omissions of the Plaintiff and/or its authorized agents

1 and representatives, and this answering party is not responsible for any such damages.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 The Plaintiff lacks standing to bring some or all of the claims asserted.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 The Plaintiff's claims are barred by the applicable statutes of limitations.

6 **NINTH AFFIRMATIVE DEFENSE**

7 Defendant is a bona fide purchaser for value.

8 **TENTH AFFIRMATIVE DEFENSE**

9 Any security interest that the Plaintiff once possessed was extinguished as a matter of law
10 at the time of the association foreclosure sale dated March 21, 2014.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 To the extent that the Plaintiff has paid any sum of money to the Clark County Treasurer
13 or otherwise in relation to the Property, recovery of the same is barred by the Voluntary Payment
14 Doctrine.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 The First Deed of Trust upon which the Plaintiff seeks to foreclose is not recorded
17 against; is not secured by; and does not relate to the Property by its own terms.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 Defendant hereby incorporates by reference those affirmative defenses enumerated in
20 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
21 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
22 right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses
23 are herein incorporated by reference for the specific purpose of not waiving the same.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 Pursuant to Nevada Rule of Civil Procedure 11, all possible affirmative defenses may not
26 have been raised herein as sufficient facts were not available after reasonable inquiry upon the
27 filing of this Answer, and therefore, this answering Defendant reserves the right to amend its
28 answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Defendant prays for judgment as follows:

- A. That Plaintiff take nothing by virtue of its Complaint;
- B. For reasonable attorneys' fees and costs;
- C. For such other and further relief as this Court may deem meet and proper.

DATED this 4th day of January, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Defendant
**VEGAS UNITED INVESTMENT
SERIES 105, INC.**

COUNTERCLAIM

COMES NOW, Defendant/Counterclaimant, VEGAS UNITED INVESTMENTS SERIES 105, INC., by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges as follows:

PARTIES

1. At all times relevant to this matter, Counterclaimant, VEGAS UNITED INVESTMENTS SERIES 105, INC. ("*Vegas United*"), was and is a Nevada corporation, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Upon information and belief, at all times relevant to this matter, Counter-Defendant, CELTIC BANK CORPORATION ("*Celtic Bank*"), was and is a Utah corporation, authorized to do business and doing business in the County of Clark, State of Nevada.
3. Upon information and belief, at all times relevant to this matter, Counter-Defendant, GIBSON ROAD, LLC, was and is a Nevada corporation, authorized to do business and doing business in the County of Clark, State of Nevada.

- 1 4. Counterclaimant is unaware of the true names and capacities whether individuals,
2 corporations, associates, or otherwise of Defendants DOES I through X and ROE
3 Corporations I through X, inclusive, and therefore sues these Defendants by such
4 fictitious names. Counterclaimant is informed and believes and thereupon alleges that the
5 Defendants, and each of them, are in some manner responsible and liable for the acts and
6 damages alleged in this Complaint. Counterclaimant will seek leave of this Court to
7 amend this Complaint to allege the true names and capacities of the DOES and ROE
8 CORPORATIONS Defendants when the true names of the DOES and ROE
9 CORPORATIONS Defendants are ascertained.

10 **GENERAL ALLEGATIONS**

- 11 5. Counterclaimant repeats and realleges each and every allegation contained in paragraphs
12 1 through 4 hereof as if set forth fully herein.
- 13 6. On or about September 11, 1989, a Declaration was recorded as Instrument No. 890911-
14 00173 in the Official Records of the Clark County Recorder, thereby creating the Gibson
15 Business Center Property Owners Association (*the "Association"*) and perfecting a lien
16 in favor of the Association on all real property located within the premises it governed,
17 including but not limited to that real property commonly known as 181 Gibson Road,
18 Henderson, Nevada (*the "Property"*). The Declaration was re-recorded on March 18,
19 2014, as Instrument No. 20040318-03472.
- 20 7. The lien having been recorded prior to any other liens is first in right and first in time as
21 to all other interests recorded after the Declaration with the exception of liens for real
22 estate taxes and other governmental assessments.
- 23 8. N.R.S. Chapter 116 provides that the lien perfected by the Declaration is subordinate to a
24 "first security interest on the unit recorded before the date on which the assessment
25 sought to be enforced became delinquent."
- 26 9. While this statutory subordination applies to the majority of the lien perfected by the
27 Declaration, pursuant to N.R.S. 116.3116(2)(c), it does not subordinate the lien to two
28 specific charges incurred under it.

- 1 10. The charges which are specifically NOT subordinated to the first security interest include:
2 (1) any charges incurred by the association on a unit pursuant to N.R.S. 116.310312 and;
3 (2) that portion of the assessments for common expenses based on the periodic budget
4 adopted by the association pursuant to N.R.S. 116.3115 which would have become due in
5 the absence of acceleration during the 9 months immediately preceding institution of an
6 action to enforce the lien.
- 7 11. Counter-Defendant, GIBSON ROAD, LLC ("*Former Owner*") formerly owned the
8 Property.
- 9 12. Upon information and belief, Former Owner obtained one or more mortgage loans and/or
10 lines of credit secured by the Property.
- 11 13. On or about December 30, 2005, Silver State Bank recorded a deed of trust against the
12 Property in the Official Records of the Clark County Recorder as Instrument No.
13 200512300002937 ("*First Deed of Trust*"). The First Deed of Trust was subsequently re-
14 recorded on January 23, 2006, as Instrument No. 200601230000482.
- 15 14. Upon information and belief, Celtic Bank subsequently became the holder and/or owner
16 of the First Deed of Trust by way of an assignment recorded in the Official Records of the
17 Clark County Recorder on or about November 9, 2009, as Instrument No.
18 200911090001572.
- 19 15. The Property is and was subject to certain Covenants, Conditions and Restrictions
20 ("*CC&Rs*") of Association.
- 21 16. By virtue of its ownership of the Property, Former Owner was a member of the
22 Association and accordingly was obligated to pay Association assessments pursuant to
23 the terms of the CC&Rs.
- 24 17. At some point in time during its ownership of the Property, Former Owner failed to pay
25 the Association assessments related to the Property.
- 26 18. As a result of the failure of Former Owner to pay the Association assessments,
27 Association recorded one or more Notices of Delinquent Assessment Lien ("*Association*
28 *Lien*") with the Office of the Recorder of Clark County, Nevada.

- 1 19. Thereafter, Association recorded a Notice of Default and Election to Sell with the Office
- 2 of the Recorder of Clark County, Nevada.
- 3 20. Upon information and belief, the Notice of Default and Election to Sell was served upon
- 4 the Former Owner, as well as all interested parties holding a security interest in the
- 5 Property.
- 6 21. After the expiration of 90 days from the recording and mailing of the Notice of Default,
- 7 Association caused a Notice of Trustee's Sale to be recorded with the Office of the
- 8 Recorder of Clark County, Nevada.
- 9 22. Upon information and belief, the Notice of Trustee's Sale was served upon the Former
- 10 Owner, as well as all interested parties holding a security interest in the Property.
- 11 23. On or about March 21, 2014, Association caused a foreclosure sale ("*Association*
- 12 *Foreclosure Sale*") to be conducted pursuant to the powers conferred by the Nevada
- 13 Revised Statutes 116.3116, 116.31162, 116.31163 and/or 116.31164; the CC&Rs; the
- 14 Notice of Delinquent Assessment Lien; and the Notice of Default and Election to Sell.
- 15 24. Vegas United purchased the Property by successfully bidding at the Association
- 16 Foreclosure Sale.
- 17 25. On or about April 17, 2014, a Foreclosure Deed was recorded in the Official Records of
- 18 the Clark County Recorder as Instrument No. 20140417-0003282, vesting title to the
- 19 Property in the name of Vegas United.
- 20 26. The Association Foreclosure Sale complied with all requirements of law, including but
- 21 not limited to, the recording and mailing of copies of the Notice of Delinquent
- 22 Assessment and Notice of Default, and the recording, posting and publication of the
- 23 Notice of Sale.
- 24 27. Upon information and belief, Counter-Defendants had actual and/or constructive notice
- 25 of the Association foreclosure proceedings.
- 26 28. N.R.S. 116.3116(2) provides that an Association Lien has priority over all other liens and
- 27 encumbrances except:
- 28 (a) Liens and encumbrances recorded before the recordation of the declaration

1 and, in a cooperative, liens and encumbrances which the association creates,
2 assumes or takes subject to;

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

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

- 9 29. N.R.S. 116.3116(2) further provides that a portion of the Association Lien has priority
10 over even a first security interest in the Property, stating as follows:

11 The lien is also prior to all security interests described in paragraph (b) to the
12 extent of any charges incurred by the association on a unit pursuant to NRS
13 116.310312 and to the extent of the assessments for common expenses based on
14 the periodic budget adopted by the association pursuant to NRS 116.3115 which
15 would have become due in the absence of acceleration during the 9 months
16 immediately preceding institution of an action to enforce the lien[.]

- 17 30. Upon information and belief, the Association incurred charges within the nine (9) months
18 immediately preceding the initiation of the Association foreclosure action that constituted
19 super priority amounts.

- 20 31. Upon information and belief, no party still claiming an interest in the Property recorded a
21 lien or encumbrance prior to the declaration creating the Association.

- 22 32. Vegas United's bid at the Association Foreclosure Sale was equal to or in excess of the
23 amount necessary to satisfy the costs of sale and the super-priority portion of the
24 Association Lien.

- 25 33. Upon information and belief, the Association or its agent distributed or should have
26 distributed any excess funds to lien holders in order of priority pursuant to N.R.S.
27 116.3114(c).

- 28 34. Upon information and belief, Counter-Defendants had actual and/or constructive notice
of the requirement to pay assessments to the Association and of the Association Lien.

35. Upon information and belief, prior to the Association Foreclosure Sale, Celtic Bank had
not assigned the First Deed of Trust to the Secretary of Housing and Urban Development
("HUD"), the Federal National Mortgage Association ("FNMA"), the Federal Home
Loan Mortgage Corporation ("Freddie Mac") or any governmental agency or
instrumentality.

- 1 36. Upon information and belief, at the time of the Association Foreclosure Sale, neither the
2 United States nor any of its agencies or instrumentalities possessed any interest in the
3 First Deed of Trust or the Property.
- 4 37. Upon information and belief, prior to the Association Foreclosure Sale, no individual or
5 entity paid the full amount of delinquent assessments described in the Notice of Default.
- 6 38. Upon information and belief, prior to the Association Foreclosure Sale, no individual or
7 entity paid the super priority portion of the delinquent assessments described in the
8 Notice of Default.
- 9 39. Upon information and belief, Counter-Defendants had actual and/or constructive notice
10 of the super priority portion of the Association Lien.
- 11 40. Upon information and belief, Celtic Bank knew or should have known that any security
12 interest that it may have possessed pursuant to the First Deed of Trust would be
13 extinguished through foreclosure if it failed to cure the super-priority portion of the
14 Association Lien representing nine (9) months of assessments for common expenses
15 based upon the periodic budget adopted by the Association which would have become
16 due in the absence of acceleration for the relevant time period.
- 17 41. Pursuant to N.R.S. 116.31166, the Association Foreclosure Sale vested title in Vegas
18 United "without equity or right of redemption."
- 19 42. Pursuant to N.R.S. 116.31166, the Foreclosure Deed is conclusive against the Property's
20 "former owner, his or her heirs and assigns, and all other persons."
- 21 43. Former Owner's ownership interest in the Property was extinguished by the foreclosure
22 of the Association Lien.
- 23 44. Celtic Bank's security interest in the Property, if any, was extinguished by the foreclosure
24 of the Association Lien and the First Deed of Trust was rendered null, void and
25 unenforceable.
- 26 45. Any other existing security interests in the Property, if any, were likewise extinguished by
27 the foreclosure of the Association Lien and rendered null, void and unenforceable.
- 28 46. By virtue of its purchase of the Property at the Association Foreclosure Sale, Vegas

1 United became the sole owner of all right, title and interest in the Property free and clear
2 of any encumbrances of the Counter-Defendants.

3 47. In the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d
4 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), the Nevada Supreme Court
5 resolved a split that previously existed in the state and federal courts of the State of
6 Nevada regarding the force, effect and interpretation of N.R.S. §116.3116.

7 48. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners
8 association a true super-priority lien over real property that can and does extinguish a first
9 deed of trust when non-judicially foreclosed. *Id.*

10 49. In *SFR Investments*, the Nevada Supreme Court also recognized that a foreclosure deed
11 “reciting compliance with notice provisions of N.R.S. 116.31162 through NRS
12 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her
13 heirs and assigns and all other persons.’” *See id.* at 3 (citing NRS 116.3116(2)).

14 50. Moreover, under Nevada law, the Association foreclosure sale and the resulting
15 foreclosure deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable
16 presumptions exist “that the law has been obeyed”; “that a trustee or other person, whose
17 duty it was to convey real property to a particular person, has actually conveyed to that
18 person, when such presumption is necessary to perfect the title of such person or a
19 successor in interest”; “that private transactions have been fair and regular”; and “that the
20 ordinary course of business has been followed.”).

21 **FIRST CAUSE OF ACTION**

22 **(Quiet Title/Declaratory Relief)**

23 51. Counterclaimant repeats and realleges each and every allegation contained in paragraphs
24 1 through 50 hereof as if set forth fully herein.

25 52. Vegas United acquired title and ownership of the Property at the Association Foreclosure
26 Sale in exchange for good and valuable consideration.

27 53. By virtue of its purchase of the Property at the Association Foreclosure Sale, Vegas
28 United became the sole owner of all right, title and interest in the Property free and clear

of any encumbrances of the Counter-Defendants.

54. Because the Association Foreclosure Sale extinguished the First Deed of Trust, Celtic Bank no longer possesses any security interest in the Property and possesses no right to foreclose upon the Property based upon the First Deed of Trust.

55. One or more of the Counter-Defendants may claim some right, title and/or interest in the Property.

56. A justiciable controversy exists regarding the right, title and interest held by Counterclaimant and Counter-Defendants in the Property.

57. The interests of Counterclaimant and Counter-Defendants are adverse in this justiciable controversy.

58. The Counterclaimant has a legally protectible interest in the Property.

59. The controversy between Counterclaimant and Counter-Defendants is ripe for judicial determination.

60. This Court should enter an Order which determines all and every claim, estate or interest of the parties in the Property.

61. The Counterclaimant is entitled to a declaratory judgment finding that: (1) Counterclaimant is the title owner of the Property; (2) the Foreclosure Deed is valid and enforceable; (3) the Association Foreclosure Sale extinguished the applicable Counter-Defendants' ownership and security interests in the Property; (4) Counterclaimant's rights and interest in the Property are superior to any interest claimed by the Counter-Defendants.

62. Title to the Property should be quieted solely in the name of Counterclaimant.

63. As a direct and proximate result of the actions of the Counter-Defendants, it has become necessary for Counterclaimant to retain the services of an attorney to protect its rights and prosecute this Claim.

64. Counterclaimant reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

SECOND CAUSE OF ACTION

(Slander of Title against Celtic Bank)

65. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 64 hereof as if set forth fully herein.
66. Vegas United acquired title and ownership of the Property at the Association Foreclosure Sale.
67. By virtue of its purchase of the Property at the Association Foreclosure Sale, Vegas United became the sole owner of all right, title and interest in the Property free and clear of any encumbrances of the Counter-Defendants.
68. Celtic Bank knew or should have known that the First Deed of Trust was extinguished as a result of the Association Foreclosure Sale.
69. On or about March 2, 2015, Celtic Bank caused a Notice of Default and Election to Sell to be recorded in the Official Records of the Clark County Recorder as Instrument No. 201503020003758.
70. The Notice of Default and Election to Sell and/or other documents recorded by Counter-Defendant since the time that Counterclaimant purchased the Property have impugned Counterclaimant's title to the Property.
71. Counterclaimant's title to the Property has been disparaged and slandered, and there is a cloud on Counterclaimant's title.
72. The actions of the Counter-Defendant were done with the intent to cause Counterclaimant harm, or in conscious disregard for its rights, or were done with conscious disregard for the consequences of their actions, and were therefore done with either express or implied malice.
73. As a direct and proximate result of the actions of the Counter-Defendant, it has become necessary for Counterclaimant to retain the services of an attorney to protect its rights and prosecute this Claim.
74. Counterclaimant reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

1 WHEREFORE, Counterclaimant, VEGAS UNITED INVESTMENTS SERIES 105,
2 INC., prays for judgment as follows:

- 3 A. On its First Cause of Action, for an Order which determines all and every claim,
4 estate or interest of the parties in the Property, finding that: (1) Counterclaimant is
5 the title owner of the Property; (2) the Association Foreclosure Deed is valid and
6 enforceable; (3) the Association Foreclosure Sale extinguished the applicable
7 Counter-Defendants' ownership and security interests in the Property; and (4)
8 Counterclaimant's rights and interest in the Property are superior to any interest
9 claimed by the Counter-Defendants.
- 10 B. On its Second Cause of Action, for general and special damages in excess of Ten
11 Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an
12 amount sufficient to deter Counter-Defendant and others from engaging in similar
13 conduct, said amount to adequately express social outrage over Counter-
14 Defendant's wrongful actions;
- 15 C. For costs and attorneys' fees incurred in bringing this action; and
- 16 D. For such other and further relief as this Court may deem meet and proper.

17 DATED this 4th day of January, 2016.

18 ROGER P. CROTEAU & ASSOCIATES, LTD.

19
20 /s/ Timothy E. Rhoda
21 ROGER P. CROTEAU, ESQ.
22 Nevada Bar No. 4958
23 TIMOTHY E. RHODA, ESQ.
24 Nevada Bar No. 7878
25 9120 West Post Road, Suite 100
26 Las Vegas, Nevada 89148
27 (702) 254-7775
28 *Attorney for Defendant*
**VEGAS UNITED INVESTMENT
SERIES 105, INC.**

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 4th day of January, 2016, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Sylvester & Polednak, Ltd.

Contact

Bridget Williams

Kelly L. Schmitt

Email

bridget@sylvesterpolednak.com

kelly@sylvesterpolednak.com

Williams & Associates

Contact

Donald H. Williams, Esq.

Robin Gullo

Email

dwilliams@dhwlawlv.com

rgullo@dhwlawlv.com

Williams & Associates

Contact

Drew Starbuck, Esq.

Email

dstarbuck@dhwlawlv.com

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

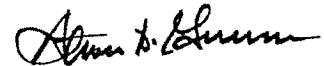
____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 **COMP**
2 SYLVESTER & POLEDNAK, LTD.
3 ALLYSON R. NOTO, ESQ.
4 Nevada Bar No. 8286
5 KELLY L. SCHMITT, ESQ.
6 Nevada Bar No. 10387
7 1731 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 952-5200
10 Facsimile: (702) 952-5205
11 Email: allyson@sylvesterpolednak.com
12 Email: kelly@sylvesterpolednak.com
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CELTIC BANK CORPORATION,
12 successor-in-interest to SILVER STATE
13 BANK by acquisition of assets from the
14 FDIC as Receiver for Silver State Bank, a
15 Utah banking corporation organized and in
16 good standing under the laws of the State of
17 Utah,

18 **Plaintiff,**

19 **v.**

20 VEGAS UNITED INVESTMENT SERIES
21 105, INC., a Nevada domestic corporation;
22 GIBSON ROAD, LLC, a Nevada limited
23 liability company; GIBSON BUSINESS
24 CENTER PROPERTY OWNER
25 ASSOCIATION, a Nevada non-profit
26 corporation; REPUBLIC SILVER STATE
27 DISPOSAL, INC. dba REPUBLIC
28 SERVICES OF SOUTHERN NEVADA, a
foreign corporation; DOE Individuals I
through X; and ROE Corporations and
Organizations I through V, inclusive; DOE
Individuals I through X; and ROE
Corporations and Organizations I through V,
inclusive,

Defendants.

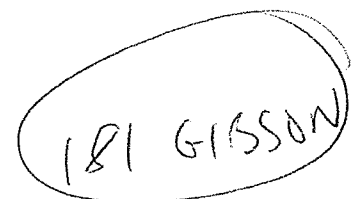
Case No. A-15-728233-C

Dept. No. XXXII

**VERIFIED COMPLAINT FOR
JUDICIAL FORECLOSURE OF DEED
OF TRUST**

**Exempt from Arbitration Action Involves
Real Property**

SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200



1 Plaintiff CELTIC BANK CORPORATION, successor-in-interest to SILVER STATE
2 BANK by acquisition of assets from the FDIC as Receiver for Silver State Bank ("Plaintiff"), by
3 and through its attorneys, the law firm of Sylvester & Polednak, Ltd., hereby complains and
4 alleges against Defendants GIBSON ROAD, LLC; GIBSON BUSINESS CENTER PROPERTY
5 OWNER ASSOCIATION; REPUBLIC SILVER STATE DISPOSAL, INC. dba REPUBLIC
6 SERVICES OF SOUTHERN NEVADA; and VEGAS UNITED INVESTMENT SERIES 105,
7 INC. (collectively, the "Defendants"), as follows:

8 **JURISDICTIONAL ALLEGATIONS**

9 1. Plaintiff CELTIC BANK CORPORATION ("Plaintiff") is a Utah banking
10 corporation organized and in good standing under the laws of the State of Utah, and authorized
11 to conduct business in the State of Nevada.

12 2. Upon information and belief, Defendant VEGAS UNITED INVESTMENT
13 SERIES 105, INC. ("Vegas United") was, and at all relevant times mentioned herein, was a
14 Nevada domestic corporation.

15 3. Upon information and belief, Defendant GIBSON ROAD, LLC ("Borrower") is,
16 and at all relevant times mentioned herein was, a Nevada limited liability company and the
17 owner of the commercial real property located at 181 North Gibson Road, Henderson, Nevada
18 (the "Property"), Clark County Assessor's Parcel Number 178-15-511-042.

19 4. Upon information and belief, Defendant GIBSON BUSINESS CENTER
20 PROPERTY OWNER ASSOCIATION ("Association") is a lien claimant against Borrower for
21 homeowners association assessments in the amount of Six Thousand Four Hundred Thirteen
22 Dollars and 36/100 (\$6,413.36), recorded August 23, 2011 in Book No. 20110823 as Document
23 No. 01011, in the office of the County Recorder of Clark County, Nevada.

24 5. Upon information and belief, Defendant REPUBLIC SILVER STATE
25 DISPOSAL, INC. dba REPUBLIC SERVICES OF SOUTHERN NEVADA ("Republic") is a
26 lien claimant against Borrower for disposal services in the amount of One Thousand One
27 Hundred Seventy Two Dollars and 92/100 (\$1,172.92), recorded December 18, 2014 in Book
28 No. 20141218 as Instrument No. 02048, in the office of the County Recorder of Clark County,

1 Nevada.

2 6. Pursuant to the Nevada Rules of Civil Procedure, Rule 10(a) and Nuremberger
3 Hercules-Werke GMBH v. Virotek, 107 Nev. 873, 822 P.2d 1100 (1991), the true names and
4 capacities of Defendant DOES I through V and ROE Corporations and Organizations I through
5 X, are unknown to Plaintiff, and Plaintiff therefore sues said Defendants by said fictitious names.
6 Plaintiff is informed and believes, and thereupon alleges that each of the Defendants designated
7 as DOE and ROE are responsible in some manner for the events and happenings referred to and
8 caused the damages to Plaintiff as alleged, and Plaintiff will seek leave of this Court to amend
9 this Complaint to insert the true names and capacities of DOES I through V and ROE
10 Corporations and Organizations I through X when they are ascertained by Plaintiff together with
11 appropriate charges and allegations to join such Defendants in this action.

12 FACTUAL BACKGROUND

13 LOAN DOCUMENTS

14 7. On or about January 18, 2006, Borrower executed a Promissory Note (the "Note")
15 wherein Silver State Bank ("Silver State"), Plaintiff's predecessor in interest, agreed to loan
16 Seven Hundred Forty-Eight Thousand, Dollars and 00/100 (\$748,000.00) to Borrower. A true
17 and correct copy of the Note is attached hereto as *Exhibit "1."*

18 8. On or about December 9, 2005, and in order to secure payment of the Note,
19 Borrower executed and delivered to Silver State a first priority deed of trust encumbering the
20 Property (the "Deed of Trust"). The Deed of Trust was recorded in Book No. 20051230 as
21 Instrument No. 0002937 in the Official Records of the Clark County Recorder's Office on
22 December 30, 2005 and Re-Recorded on January 23, 2006 in Book No. 20060123 as Instrument
23 No. 0000482. A true and correct copy of the Deed of Trust is attached hereto as *Exhibit "2."*

24 9. On or about December 9, 2005, and in order to further secure payment of the
25 Note, Borrower executed and delivered to Silver State an assignment of rents (the "Assignment
26 of Rents"). The Assignment of Rents was recorded in Book No. 20051230 as Instrument No.
27 0002938 in the Official Records of the Clark County Recorder's Office on December 30, 2005
28 and Re-Recorded on January 23, 2006 in Book No. 20060123 as Instrument No. 0000483. A

1 true and correct copy of the Assignment of Rents is attached hereto as *Exhibit "3."*

2 10. On September 5, 2008, Silver State was closed by the Nevada Financial
3 Institutions Division and the Federal Deposit Insurance Corporation ("FDIC") was named
4 Receiver.

5 11. On September 24, 2009, the FDIC as Receiver for Silver State assigned the Note
6 and Deed of Trust to Plaintiff. The Assignment of Deed of Trust was recorded in Book No.
7 20091109 as Instrument No. 0001572 in the Official Records of the Clark County Recorder's
8 Office on November 9, 2009. A true and correct copy of the Assignment of Deed of Trust is
9 attached hereto as *Exhibit "4."*

10 12. On September 24, 2009, the FDIC as Receiver for Silver State also assigned the
11 Assignment of Rents to Plaintiff. The Assignment of Assignment of Rents was recorded in
12 Book No. 20091109 as Instrument No. 0001573 in the Official Records of the Clark County
13 Recorder's Office on November 9, 2009. A true and correct copy of the Assignment of
14 Assignment of Rents is attached hereto as *Exhibit "5."*

15 13. On September 24, 2009, the FDIC as Receiver for Silver State also assigned the
16 Assignment of Lease to Plaintiff. The Assignment of Subordination Agreement - Lease was
17 recorded in Book No. 20091109 as Instrument No. 0001574 in the Official Records of the Clark
18 County Recorder's Office on November 9, 2009. A true and correct copy of the Assignment of
19 Assignment of Rents is attached hereto as *Exhibit "6."*

20 14. Under the Assignment of Rents and Assignment of Lease, Plaintiff has a
21 continuing security interest in the rents, issues and profits from the Property.

22 15. Collectively, the Note, Deed of Trust and Assignment of Rents are referred herein
23 as (the "Loan Documents.")

24 16. In addition to the Deed of Trust, the Property was also encumbered by covenants,
25 conditions and restrictions ("CC&Rs") recorded September 11, 1989 in Book No. 890911 as
26 Instrument No. 00173 and re-recorded March 18, 2014 in Book No. 20040318 as Instrument No.
27 03472 in the Official Records of the Clark County Recorder's Office.
28

1 17. It has been alleged that the Borrower failed to perform pursuant to the terms and
2 conditions of the CC&Rs by, among other things, failing to remit payments and/or assessments
3 allegedly due and owing.

4 18. On August 23, 2011, the Association recorded a notice of delinquent assessment
5 lien.

6 19. On October 14, 2011, a notice of default was recorded by the Association.

7 20. On December 26, 2013, the County Treasurer placed a lien on the Property for
8 past due taxes recorded in Book No. 20131226 as Instrument No. 00891 in the Official Records
9 of the Clark County Recorder's Office.

10 21. On February 26, 2014, a notice of foreclosure sale was recorded by the
11 Association.

12 22. A document entitled "Foreclosure Deed" purportedly transferring the Subject
13 Property to Vegas United was recorded April 17, 2014 in Book No. 20140417 as Instrument No.
14 03282 in the Official Records of the Clark County Recorder's Office. A true and correct copy of
15 the Foreclosure Deed is attached hereto as *Exhibit "7."*

16 23. As of the filing of the instant Complaint, ownership of the Subject Property
17 remains in the name of Borrower.

18 **BORROWER'S DEFAULT UNDER THE LOAN DOCUMENTS**

19 24. On or about June 1, 2014, the Borrower defaulted pursuant to the terms and
20 conditions of the Loan Documents.

21 25. As a result of Borrower's default under the Loan Documents, a Notice of Default
22 was recorded March 2, 2015 in Book No. 20150302 as Instrument No. 0003758 in the Official
23 Records of the Clark County Recorder's Office.

24 26. A Tax Trustee Deed was recorded on June 11, 2015 in Book No. 20150611 as
25 Instrument No. 0000189 in the Official Records of the Clark County Recorder's Office. A true
26 and correct copy of the Tax Trustee Deed is attached hereto as *Exhibit "8."*

27 27. On October 29, 2015, Plaintiff paid the County Treasurer for all back taxes
28 accrued together with any costs, penalties, and interest in the amount of Eighteen Thousand Two

1 Hundred Eighty One Dollars and 67/100 (\$18,281.67).

2 28. A Treasure's Deed of Reconveyance to Borrower was recorded on November 5,
3 2015 in Book No. 20151105 as Instrument No. 0002131. A true and correct copy of the
4 Treasurer's Deed of Reconveyance is attached hereto as *Exhibit "9."*

5 **FIRST CAUSE OF ACTION**
6 **(Judicial Foreclosure of Deed of Trust)**

7 29. Plaintiff restates and realleges paragraphs 1 through 28 as though fully set forth
8 herein at length.

9 30. By and through the FDIC assignments, Plaintiff holds all beneficial interest in and
10 to the Loan Documents and is thereby empowered to bring this action.

11 31. Borrower defaulted under the terms of the Loan Documents by having failed and
12 refused to make the installment payments beginning June 1, 2014.

13 32. All amounts secured by the Deed of Trust are currently due and payable.

14 33. Pursuant to the Deed of Trust, Plaintiff holds a valid and enforceable first priority
15 security interest in the Property.

16 34. Pursuant to the Deed of Trust and applicable law, Plaintiff has the right to cause
17 the Property to be sold to satisfy the unpaid balance of the Note and all other amounts due or that
18 may come due under the Loan Documents.

19 35. Pursuant to the Deed of Trust, Plaintiff is entitled to foreclose on its interest in the
20 Property:

21 **Foreclosure.** With respect to all or any part of the Real Property,
22 the Trustee shall have the right to foreclose by notice and sale, and
23 Lender shall have the right to foreclose by judicial foreclosure, in
24 either case in accordance with and to the full extent provided by
25 applicable law.

26 *See Exhibit "2" at page 11.*

27 36. Plaintiff's lien is prior to the interest of Vegas United hereto, and all such
28 subordinate interests should be eliminated by this foreclosure action. Plaintiff is entitled to
judgment foreclosing the interests of Vegas United hereto in the Property and forever barring
that interest, and that of any successors, assigns or heirs.

1 37. Accordingly, Plaintiff is entitled to a Judgment and Decree of Judicial
2 Foreclosure:

3 a. determining that Plaintiff holds a valid and enforceable first priority
4 security interest in the Property;

5 b. determining the order of priority of any other parties claiming an interest
6 in the Property;

7 c. ordering the Property to be sold to satisfy the Note; and

8 d. directing the Sheriff in and for Clark County to proceed and sell the
9 Property according to the provisions of law relating to sales on execution;

10 38. Plaintiff is entitled to an award of its attorneys' fees and costs pursuant to the
11 terms of the Loan Documents, including post-judgment attorneys' fees and expenses.

12 WHEREFORE, Plaintiff prays for relief as follows:

13 a. For entry of Judgment and Decree of Judicial Foreclosure:

14 i. determining that Plaintiff holds a valid and enforceable first priority
15 interest in the Property;

16 ii. determining the order of priority of any other parties claiming an interest
17 in the Property;

18 iii. ordering the Property to be sold to satisfy the Note; and

19 iv. directing the Sheriff in and for Clark County to proceed and sell the
20 Property according to the provisions of law relating to sales on execution.

21 b. For Plaintiff's reasonable attorneys' fees and expenses incurred for bringing this
22 action; and

23 ///

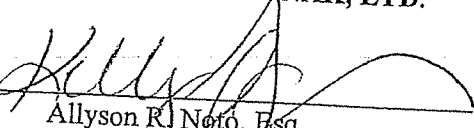
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SYLVESTER & POLEDNAK, LTD.
1731 Village Center Circle
Las Vegas, Nevada 89134
Phone (702) 952-5200

1
2 c. For such other and further relief as the Court may deem just and appropriate.
3 DATED this 25th day of November, 2015.
4

5 SYLVESTER & POLEDNAK, LTD.
6

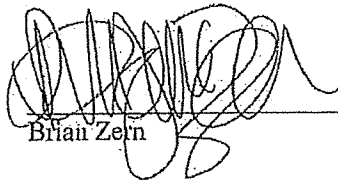
7 By 
8 Allyson R. Noto, Esq.
9 Kelly L. Schmitt, Esq.
10 1731 Village Center Circle
11 Las Vegas, Nevada 89134
12 *Attorneys for Plaintiff*
13
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VERIFICATION

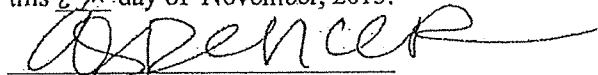
STATE OF UTAH)
)ss,
COUNTY OF Salt Lake

Brian Zern, being first duly sworn upon his/her oath, states:

That I am employed by Celtic Bank Corporation, the authorized VP Special Assets and Loan Servicing for Plaintiff in the above-entitled action. That I have read the foregoing Verified Complaint and that the matters and things alleged therein are true to the best on my information and belief.


Brian Zern

SUBSCRIBED and SWORN to before me
this 25th day of November, 2015.


NOTARY PUBLIC

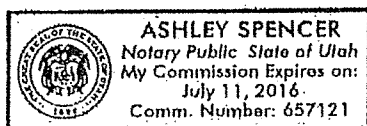


EXHIBIT “1”

EXHIBIT “1”

U.S. SMALL BUSINESS ADMINISTRATION



U.S. Small Business Administration

NOTE

The guaranteed portion of this Note has been transferred to a registered Holder for value.

1-18-06
(Dated)

W. L. & P. L.
(Lender)

SBA Loan #	925-966-4005
SBA Loan Name	Gibson Road LLC
Date	December 9, 2005
Loan Amount	\$748,000.00
Interest Rate	Variable
Borrower	Gibson Road LLC
Operating Company	Las Vegas Pipeline LLC Blackwell Environmental LLC
Lender	Silver State Bank

1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the amount of Seven Hundred Forty-eight Thousand & 00/100 Dollars, interest on the unpaid principal balance, and all other amounts required by this Note.

2. DEFINITIONS:

"Collateral" means any property taken as security for payment of this Note or any guarantee of this Note.

"Guarantor" means each person or entity that signs a guarantee of payment of this Note.

"Loan" means the loan evidenced by this Note.

"Loan Documents" means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

"SBA" means the Small Business Administration, an Agency of the United States of America.

3. PAYMENT TERMS:

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

The interest rate on this Note will fluctuate. The initial interest rate is 8.500% per year. This initial rate is the prime rate on the date SBA received the loan application, plus 1.500%. The initial interest rate must remain in effect until the first change period begins.

Borrower must pay principal and interest payments of \$6,014.49 every month, beginning one (1) month from the month this Note is dated; payments must be made on the first calendar day in the months they are due.

Lender will apply each installment payment first to pay interest accrued to the day Lender receives the payment, then to bring principal current, then to pay any late fees, and will apply any remaining balance to reduce principal.

**PROMISSORY NOTE
(Continued)**

Loan No: 54726

Page 2

The interest rate will be adjusted monthly (the "change period").

The "Prime Rate" is the prime rate in effect on the first business day of the month in which an interest rate change occurs, as published in the Wall Street Journal on the next business day.

The adjusted interest rate will be 1.500% above the Prime Rate. Lender will adjust the interest rate on the first calendar day of each change period. The change in interest rate is effective on that day whether or not Lender gives Borrower notice of the change.

Lender must adjust the payment amount at least annually as needed to amortize principal over the remaining term of the note.

If SBA purchases the guaranteed portion of the unpaid principal balance, the interest rate becomes fixed at the rate in effect at the time of the earliest uncured payment default. If there is no uncured payment default, the rate becomes fixed at the rate in effect at the time of purchase.

Loan Prepayment:

Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note. Borrower may prepay 20% or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20% and the Loan has been sold on the secondary market, Borrower must:

- a. Give Lender written notice;
- b. Pay all accrued interest; and
- c. If the prepayment is received less than 21 days from the date Lender receives the notice, pay an amount equal to 21 days' interest from the date lender receives the notice, less any interest accrued during the 21 days and paid under subparagraph b., above. If Borrower does not prepay within 30 days from the date Lender receives the notice, Borrower must give Lender a new notice.

All remaining principal and accrued interest is due and payable twenty-five (25) years from dated of Note.

Late Charge: If a payment on this Note is more than 10 days late, Lender may charge Borrower a late fee of up to 5.00% of the unpaid portion of the regularly scheduled payment.

Borrower shall have the right to prepay principal hereunder in an amount not to exceed twenty percent (20%) of the original loan amount of this Note during any Loan Year (as hereinafter defined), non-cumulative, without penalty. Any prepayment in excess of such Twenty percent (20%) during the first three (3) Loan Years shall be accompanied by a prepayment fee equal to the following percentages of the full prepayment amount: 5% during the first Loan Year, 3% during the second Loan Year, 1% during the third Loan Year. For the purpose of the foregoing, the term "Loan Year" shall mean the twelve (12) month period following the Note date, and each successive twelve (12) month period.

4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Falls to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgement;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. WHEN FEDERAL LAW APPLIES:

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

8. SUCCESSORS AND ASSIGNS:

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS:

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.

10. STATE-SPECIFIC PROVISIONS:

COUNTERPARTS: This document may be executed in two or more counterparts, and all counterparts constitute but one and the same document.

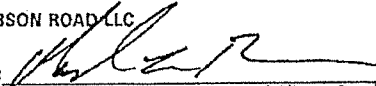
11. BORROWER'S NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated under this Note as Borrower.

BORROWER:

GIBSON ROAD LLC

By:



Mark Lee Blackwell, Manager of Gibson Road LLC



Re: Gibson Road, LLC

Note Date: 12/09/2005
Loan amount: \$748,000

Allonge to Note

Pay to the order of

Celtic Bank Corporation
268 S. State St. #300
Salt Lake City, UT 84111

Without recourse
Celtic Bank Corporation

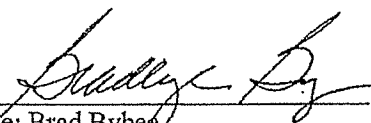
By: 
Name: Brad Bybee
Title: Chief Lending Officer

EXHIBIT “2”

EXHIBIT “2”

20060123-0000482

Fee: \$33.00
N/C Fee: \$0.00

01/23/2006 09:01:45
T20060012893

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane LEX
Clark County Recorder Pgs: 20

Parcel Number: 178-15-511-029
178-15-511-030 and 178-15-511-
031

DEED OF TRUST

(Title on Document)
(Example: Declaration of Homestead, Quit Claim Deed, etc.)

RE-RECORDED

TO CORRECT THE LEGAL DESCRIPTION

Recording requested by:
LAWYERS TITLE OF NEVADA, INC

Return to:

Name LAWYERS TITLE OF NEVADA

Address 1210 S. VALLEY VIEW BLVD. #104

City/State/Zip LAS VEGAS, NV 89102

01902564-8A

This page added to provide additional information required by NRS 111.312
Sections 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

20051230-0002937

Assessor Parcel No(s):
178-15-511-029,
178-15-511-030 &
178-15-511-031

Loan No.: 54726

Escrow No.:
01902564

Fee: \$32.00

N/C Fee: \$0.00

12/30/2005

12:32:48

T20050235505

Requestor:

LAWYERS TITLE OF NEVADA

Frances Deane

KGP

Clark County Recorder

Pgs: 19

RECORDATION
REQUESTED BY:

2

19

WHEN RECORDED MAIL
TO:

Silver State Bank
Valle Verde Branch
691 N. Valle Verde
Drive
Henderson, NV
89014

SEND TAX NOTICES TO:

Gibson Road LLC
1489 W. Warm
Springs Road,
Ste. 110
Henderson, NV
89014

FOR RECORDER'S USE ONLY

TO CORRECT THE LEGAL DESCRIPTION
DEED OF TRUST

THIS DEED OF TRUST is dated December 9, 2005, among Gibson Road LLC, a Nevada limited liability company ("Grantor"); Silver State Bank, whose address is Valle Verde Branch, 691 N. Valle Verde Drive, Henderson, NV 89014 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and LandAmerica Lawyers Title, whose address is 1210 S. Valley View Blvd, Ste. 202, Las Vegas, NV 89102 (referred to below as "Trustee").

CONVEYANCE AND GRANT: For valuable consideration, Grantor irrevocably grants, bargains, sells and conveys to Trustee with power of sale for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating

to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Clark County, State of Nevada:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

PARCEL I:

A portion of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 15, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NE Cor.) of Section 15, Township 22 South, Range 62 East, also being the Intersection of American Pacific Drive and Gibson Road;
Thence South 89° 26' 15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00° 58' 42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89° 13' 35" West a distance of 201.18 feet;
Thence South 00° 46' 25" West a distance of 81.50 feet;
Thence South 89° 13' 35" East a distance of 165.00 feet;
Thence South 00° 46' 25" West a distance of 5.00 feet;
Thence South 89° 13' 35" East a distance of 35.87 feet;
Thence North 00° 58' 42" a distance of 86.50 feet to the True Point of Beginning;

PARCEL II:

East
A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records,

The Real Property or its address is commonly known as 155, 161 & 173 N. Gibson Road, Henderson, NV. 89014. The Real Property tax identification number is 178-15-511-029, 178-15-511-030 & 178-15-511-031.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS INCLUDING FUTURE ADVANCES AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

DEED OF TRUST
(Continued)

STATUTORY COVENANTS. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of N.R.S. 107.030. The rate of interest after default for Covenant No. 4 shall be the same variable rate as prior to default. The percent of counsel fees under Covenant No. 7 shall be ten percent (10%). Except for Covenants Nos. 6, 7, and 8, to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may: (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the

**DEED OF TRUST
(Continued)**

Loan No: 54726

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Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if

DEED OF TRUST
(Continued)

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requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property; if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause; and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's

election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance: Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may, at its election, require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation. Grantor waives any legal or equitable interest in the net proceeds and any right to require any apportionment of the net proceeds of the award. Grantor agrees that Lender is entitled to apply the award in accordance with this paragraph without demonstrating that its security has been impaired.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**DEED OF TRUST
(Continued)**

Loan No: 54726

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Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This Instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve. (1)

Grantor's obligations under the Note, this Deed of Trust, and the Related Documents; and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

Default on Subordinate Indebtedness. Default by Grantor under any subordinate obligation or instrument securing any subordinate obligation or commencement of any suit or other action to foreclose any subordinate lien on the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**DEED OF TRUST
(Continued)**

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Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a guarantor's death, the guarantor may not be required to permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property, and, whether or not Lender takes possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property; or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Notices given by Lender or Trustee under the real property foreclosure proceedings shall be deemed reasonable. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the

**DEED OF TRUST
(Continued)**

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Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Real Property remaining unsold, but shall continue unimpaired until all of the Real Property has been sold by exercise of the power of sale and all indebtedness has been paid in full.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Deed of Trust and are recoverable from the Property.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**DEED OF TRUST
(Continued)**

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Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Clark County, State of Nevada. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

COUNTERPARTS: This document may be executed in two or more counterparts, and all counterparts constitute but one and the same document.

MISCELLANEOUS PROVISIONS: The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding; and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

DEED OF TRUST
(Continued)

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law. (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here _____)

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of

DEED OF TRUST
(Continued)

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law. (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here MS)

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

DEED OF TRUST
(Continued)

~~Time is of the Essence.~~ Time is of the essence in the performance of this Deed of Trust.

~~Waive Jury.~~ All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

(Initial Here MS)

~~Waiver of Homestead Exemption.~~ Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Silver State Bank, and its successors and assigns.

Borrower. The word "Borrower" means Gibson Road LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means Gibson Road LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or

**DEED OF TRUST
(Continued)**

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otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Silver State Bank, its successors and assigns.

original principal amount of \$748,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, mobile homes, manufactured homes or modular homes which have not been legally acceded to the real property in accordance with Nevada law, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to or used in the operation of the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means LandAmerica Lawyers Title, whose address is 1210 S. Valley View Blvd, Ste. 202, Las Vegas, NV 89102 and any substitute or successor

Loan No.: 54726

DEED OF TRUST
(Continued)

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trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST,
AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

GIBSON ROAD LLC

By: 

Mark Lee Blackwell, Manager of Gibson Road LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nevada

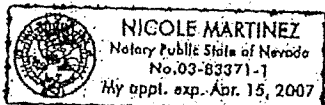
)

) SS

COUNTY OF Clark

)

This instrument was acknowledged before me on December 20, 2005 by Mark Lee Blackwell, Manager of Gibson Road LLC, as designated agent of Gibson Road LLC.




(Signature of notarial officer)

Notary Public in and for State of Nevada

(Seal, if any)

Loan No: 54726

DEED OF TRUST
(Continued)

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REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

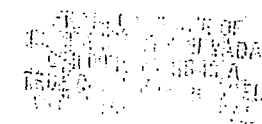
Date: _____

Beneficiary: _____

By: _____

Its: _____

LS119 PRO Lending, Ltd. 1760 007 Copy, Printed and/or Sold, 1971, 2005. All Rights Reserved. 100% U.S. DOLLAR CURRENCY 10/11/97 PM 24



2006 JUN 20 A 9:38

Tracy



Fee: \$32.00
N/C Fee: \$0.00

T20050235505

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane KGP
Clark County Recorder Pgs: 19

Assessor Parcel No(s):
178-15-511-029,
178-15-511-031
Loan No.: 54726
Escrow No.:
01902564

RECORDATION
REQUESTED BY:

19

WHEN RECORDED MAIL

TO:
Silver State Bank
Valle Verde Branch
691 N. Valle Verde
Drive
Henderson, NV
89014

SEND TAX NOTICES TO:

Gibson Road LLC
1489 W. Warm
Springs Road,
Ste. 110
Henderson, NV
89014

FOR RECORDER'S USE ONLY

DEED OF TRUST

THIS DEED OF TRUST is dated December 9, 2005, among Gibson Road LLC, a Nevada limited liability company ("Grantor"); Silver State Bank, whose address is Valle Verde Branch, 691 N. Valle Verde Drive, Henderson, NV 89014 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and LandAmerica Lawyers Title, whose address is 1210 S. Valley View Blvd, Ste. 202, Las Vegas, NV 89102 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor irrevocably grants, bargains, sells and conveys to Trustee with power of sale for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating

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to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Clark County, State of Nevada:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

PARCEL I:

A portion of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 15, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NE Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89°26'15" West along the centerline of American Pacific Drive a distance of 259.36 feet;

Thence leaving the centerline of American Pacific Drive South 00°58'42" East a distance of 598.75 feet to the True Point of Beginning;

Thence North 89°13'35" West a distance of 201.18 feet;

Thence South 00°46'25" West a distance of 81.50 feet;

Thence South 89°13'35" East a distance of 165.00 feet;

Thence South 00°46'25" West a distance of 5.00 feet;

Thence South 89°13'35" East a distance of 35.87 feet;

Thence North 00°58'42" a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records.

The Real Property or its address is commonly known as 155, 161 & 173 N. Gibson Road, Henderson, NV 89014. The Real Property tax identification number is 178-15-511-029, 178-15-511-030 & 178-15-511-031.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS INCLUDING FUTURE ADVANCES AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

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STATUTORY COVENANTS. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of N.R.S. 107.030. The rate of interest after default for Covenant No. 4 shall be the same variable rate as prior to default. The percent of counsel fees under Covenant No. 7 shall be ten percent (10%). Except for Covenants Nos. 6, 7, and 8, to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the

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Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if

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requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property. If any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials, Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's

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election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value, replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

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Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation. Grantor waives any legal or equitable interest in the net proceeds and any right to require any apportionment of the net proceeds of the award. Grantor agrees that Lender is entitled to apply the award in accordance with this paragraph without demonstrating that its security has been impaired.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

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Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below, unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1)

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Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

Default on Subordinate Indebtedness. Default by Grantor under any subordinate obligation or instrument securing any subordinate obligation or commencement of any suit or other action to foreclose any subordinate lien on the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

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Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

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Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property, and, whether or not Lender takes possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Notices given by Lender or Trustee under the real property foreclosure proceedings shall be deemed reasonable. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the

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Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Real Property remaining unsold, but shall continue unimpaired until all of the Real Property has been sold by exercise of the power of sale and all indebtedness has been paid in full.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services; the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Deed of Trust and are recoverable from the Property.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**DEED OF TRUST
(Continued)**

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Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Clark County, State of Nevada. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

COUNTERPARTS: This document may be executed in two or more counterparts, and all counterparts constitute but one and the same document.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**DEED OF TRUST
(Continued)**

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Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law. (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here _____).

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of

**DEED OF TRUST
(Continued)**

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Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law; (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here: PS).

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

DEED OF TRUST
(Continued)

Time is of the Essence: Time is of the essence in the performance of this Deed of Trust.

Waive Jury: All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.
(Initial Here MS)

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all indebtedness secured by this Deed of Trust.

DEFINITIONS: The following capitalized words and terms shall have the following meanings when used in this Deed of Trust: Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Silver State Bank, and its successors and assigns.

Borrower. The word "Borrower" means Gibson Road LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means Gibson Road LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or

DEED OF TRUST
(Continued)

otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Silver State Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated December 9, 2005, in the original principal amount of \$748,000.00, from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, mobile homes, manufactured homes or modular homes which have not been legally acceded to the real property in accordance with Nevada law, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to or used in the operation of the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property, and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means LandAmerica Lawyers Title, whose address is 1210 S. Valley View Blvd, Ste. 202, Las Vegas, NV 89102 and any substitute or successor

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DEED OF TRUST
(Continued)

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trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST
AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

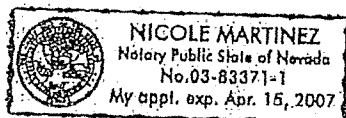
GIBSON ROAD LLC

By: [Signature]
Mark Lee Blackwell, Manager of Gibson Road LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nevada)
) SS
COUNTY OF Clark)

This instrument was acknowledged before me on December 20, 2005 by Mark Lee Blackwell, Manager of Gibson Road LLC, as designated agent of Gibson Road LLC.



(Seal, if any)

[Signature]
(Signature of notarial officer)

Notary Public in and for State of Nevada

Loan No: 54726

DEED OF TRUST
(Continued)

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REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

EXHIBIT “3”

EXHIBIT “3”

(15)



20060123-0000483

Parcel Number: 178-15-511-029
178-15-511-030 and 178-15-511-
031

PK

ASSIGNMENT OF RENTS

(Title on Document)
(Example: Declaration of Homestead; Quit Claim Deed, etc.)

RE-RECORDED

TO CORRECT THE LEGAL DESCRIPTION

Recording requested by:
LAWYERS TITLE OF NEVADA, INC

Return to:

Name LAWYERS TITLE OF NEVADA

Address 1210 S. VALLEY VIEW BLVD. #104

City/State/Zip LAS VEGAS, NV 89102

01902564-8A

This page added to provide additional information required by NRS 111.312
Sections 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

Fee: \$26.00

N/C Fee: \$0.00

01/23/2008

09:01:45

T20060012893

Requestor:

LAWYERS TITLE OF NEVADA

Frances Deane

LEX

Clark County Recorder

Pgs: 13

29

20051230-0002938

Assessor: Parcel No(s):

178-15-511-029
178-15-511-030 &
178-15-511-031

Loan No.: 54726

Escrow No.:
01902564

Fee: \$25.00

N/C Fee: \$0.00

12/30/2005

12:32:48

T20050235505

Requestor:

LAWYERS TITLE OF NEVADA

Frances Deane

Clark County Recorder

KCP

Pgs: 12

RECORDATION

REQUESTED BY:

12

WHEN RECORDED MAIL:

TO:

Silver State Bank
Valle Verde Branch
691 N. Valle Verde
Drive
Henderson, NV
89014

SEND TAX NOTICES TO:

Gibson Road LLC
1489 W. Warm
Springs Road,
Ste. 110
Henderson, NV
89014

FOR RECORDER'S USE ONLY

TO CORRECT THE LEGAL DESCRIPTION
ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated December 9, 2005, is made and executed between Gibson Road LLC, a Nevada limited liability company (referred to below as "Grantor") and Silver State Bank, whose address is 691 N. Valle Verde Drive, Henderson, NV 89014 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Clark County, State of Nevada:

All that certain real property situated in the County of Clark, State of Nevada, described as

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page 2

follows:

PARCEL I:

A portion of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 15, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NE Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89° 26' 15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00° 58' 42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89° 13' 35" West a distance of 201.18 feet;
Thence South 00° 46' 25" West a distance of 81.50 feet;
Thence South 89° 13' 35" East a distance of 165.00 feet;
Thence South 00° 46' 25" West a distance of 5.00 feet;
Thence South 89° 13' 35" East a distance of 35.87 feet;
Thence North 00° 58' 42" a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

East

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records;

The Property or its address is commonly known as 155, 161 & 173 N. Gibson Road, Henderson, NV. 89014. The Property tax identification number is 178-15-511-029, 178-15-511-030 & 178-15-511-031.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page 3

Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments, and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of Nevada and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs

ASSIGNMENT OF RENTS

(Continued)

Loan No: 54726

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LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of Nevada and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

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No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Grantor pays all of the indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the

ASSIGNMENT OF RENTS
(Continued)

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Page 5

Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default on Other Payments. Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to perform Grantor's obligations under this Assignment or any of the Related Documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

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becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company; or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor or any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

ASSIGNMENT OF RENTS
(Continued)

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Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur.

ASSIGNMENT OF RENTS

Loan No: 54726

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Page 8

if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Assignment and are recoverable from the Property.

COUNTERPARTS: This document may be executed in two or more counterparts, and all counterparts constitute but one and the same document.

MISCELLANEOUS PROVISIONS: The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Assignment or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Assignment shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The provisions of this Assignment, including without limitation those which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law; (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty,

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(Continued)

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tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here)

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

ASSIGNMENT OF RENTS
(Continued)

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Severability. If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waive Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.
(Initial Here MS)

WAIVER OF HOMESTEAD EXEMPTION. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all indebtedness secured by this Assignment.

WAIVER OF RIGHT OF REDEMPTION. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Gibson Road LLC.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

ASSIGNMENT OF RENTS
(Continued)

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Grantor. The word "Grantor" means Gibson Road LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment.

Lender. The word "Lender" means Silver State Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated December 9, 2005, in the original principal amount of \$748,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

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GRANTOR:

GIBSON ROAD, LLC

By:

Mark Lee Blackwell, Manager of Gibson Road LLC

STATE OF

Nevada


;

155

COUNTY OF

Chark

Abstract

 **NICOLE MARTINEZ**
Notary Public State of Nevada
No. 03-83371-1
My appl. exp. Apr. 15, 2007

(Signature of notarial officer)

Notary Public In and for State of Nevada

(Seal, if any)

[illegible]

2006 JAN 20 A 9:38

Greene

20051230-0002938

Fee: \$25.00

N/C Fee: \$0.00

12/30/2005

12:32:48

T20050235505

Requestor:

LAWYERS TITLE OF NEVADA

Frances Deane

KCP

Clark County Recorder

Pgs: 12

Assessor Parcel No(s):

178-15-511-029,
178-15-511-030 &
178-15-511-031

Loan No.: 54726

Escrow No.:
01902564

RECORDATION

REQUESTED BY:

12

WHEN RECORDED MAIL

TO:

Silver State Bank
Valle Verde Branch
691 N. Valle Verde
Drive
Henderson, NV
89014

SEND TAX NOTICES TO:

Gibson Road LLC
1489 W. Warm
Springs Road
Ste. 110
Henderson, NV
89014

FOR RECORDER'S USE ONLY

ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated December 9, 2005, is made and executed between Gibson Road LLC, a Nevada limited liability company (referred to below as "Grantor") and Silver State Bank, whose address is 691 N. Valle Verde Drive, Henderson, NV 89014 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Clark County, State of Nevada:

All that certain real property situated in the County of Clark, State of Nevada, described as

**ASSIGNMENT OF RENTS
(Continued)**

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follows:

PARCEL I:

A portion of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 15, Township 22 South, Range 62 East, M.D.B.&M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NE Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89° 26' 15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00° 58' 42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89° 13' 35" West a distance of 201.18 feet;
Thence South 00° 46' 25" West a distance of 81.50 feet;
Thence South 89° 13' 35" East a distance of 165.00 feet;
Thence South 00° 46' 25" West a distance of 5.00 feet;
Thence South 89° 13' 35" East a distance of 35.87 feet;
Thence North 00° 58' 42" a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records.

The Property or its address is commonly known as 155, 161 & 173 N. Gibson Road, Henderson, NV 89014. The Property tax identification number is 178-15-511-029, 178-15-511-030 & 178-15-511-031.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this

ASSIGNMENT OF RENTS
(Continued)

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Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS: Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of Nevada and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs

ASSIGNMENT OF RENTS

Loan No.: 54726

(Continued)

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LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of Nevada and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

_____, Lender, shall pay all of the Indebtedness when due and Lender performs all the obligations imposed upon Grantor under this Assignment, the Note, and the

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Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default on Other Payments. Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to perform Grantor's obligations under this Assignment or any of the Related Documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

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becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page: 7

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond. If permitted by law, Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its

demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur,

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page 8

if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Assignment and are recoverable from the Property.

COUNTERPARTS: This document may be executed in two or more counterparts, and all counterparts constitute but one and the same document.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Assignment or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Assignment shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law. (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty,

ASSIGNMENT OF RENTS

Loan No: 54726

(Continued)

Page 9

tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Instrument.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here)

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Powers of Attorney. The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

**ASSIGNMENT OF RENTS
(Continued)**

Loan No: 54726

Page: 10

Severability. If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waive Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.
(Initial Here MB)

WAIVER OF HOMESTEAD EXEMPTION. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Nevada as to all indebtedness secured by this Assignment.

WAIVER OF RIGHT OF REDEMPTION. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Gibson Road LLC.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page: 11

Grantor. The word "Grantor" means Gibson Road LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment.

Lender. The word "Lender" means Silver State Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated December 9, 2005, in the original principal amount of \$748,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

ASSIGNMENT OF RENTS
(Continued)

Loan No: 54726

Page 12

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON DECEMBER 9, 2005.

GRANTOR:

GIBSON ROAD LLC

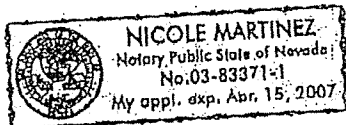
By: [Signature]

Mark Lee Blackwell, Manager of Gibson Road LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nevada)
) SS
COUNTY OF Clark)

This instrument was acknowledged before me on December 20, 2005 by Mark Lee Blackwell, Manager of Gibson Road LLC, as designated agent of Gibson Road LLC.



(Seal, if any)

[Signature]
(Signature of notarial officer)
Notary Public in and for State of Nevada

EXHIBIT “4”

EXHIBIT “4”

Tax ID: 178-15-511-029, 178-15-511-030
& 178-15-511-031
When Recorded, Mail to:
Celtic Bank Corp.
340 East 400 South
Salt Lake City, Utah 84111
Roberta Merryman
54726

2

Inst #: 200911090001572
Fees: \$15.00
N/C Fee: \$0.00
11/09/2009 12:37:28 PM
Receipt #: 121774
Requestor:
CELTIC BANK
Recorded By: SOL Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF DEED OF TRUST

For and good and valuable consideration, the receipt of which is hereby acknowledged, Federal Deposit Insurance Corporation ("FDIC") as Receiver of Silver State Bank, Henderson, Nevada, successor-in-interest to Silver State Bank hereby grants, assigns and transfers to Celtic Bank Corporation, that certain DEED OF TRUST executed by Gibson Road LLC, a Nevada limited liability company ("Grantor") to Silver State Bank, as Lender, in the amount of \$748,000.00 and bearing the date of the December 9, 2005 recorded on December 30, 2005 as Entry No. 20051230-0002937 of the County Clerk's Official Records of Clark County, State of Nevada, together with the note described therein and the money to become due thereon with the interest provided therein, and covers real property situated in said county, described as follows:

PARCEL I:

A portion of the North Half (N ½) of the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section 15, Township 22 South, Range 62 East, M.D.B. & M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NW Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89°26'15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00°58'42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89°13'35" West a distance of 201.18 feet;
Thence South 00°46'25" West a distance of 81.50 feet;
Thence South 89°13'35" East a distance of 165.22 feet;
Thence South 00°46'25" West a distance of 5.00 feet;
Thence South 89°13'35" East a distance of 35.87 feet;
Thence North 00°58'42" East a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records.

Real Property Tax ID: 178-15-511-029, 178-15-511-030 & 178-15-511-031

IN WITNESS WHEREOF,

The undersigned has executed this assignment on September 24, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Silver State Bank of Henderson, Nevada

By:

Name: Bradley C. Bybee
Title: Attorney-in-Fact

STATE OF Utah)
County of Salt Lake)

On this day personally appeared before me, Bradley C. Bybee, Chief Lending Officer, Celtic Bank Corporation, Attorney-in-Fact for Federal Deposit Insurance Corporation As Receiver for Silver State Bank of Henderson, Nevada, known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal this 24th day of September, 2009

Daniele Saddler
NOTARY PUBLIC
Commission Expires: 7-21-2012
Residing at: Salt Lake City

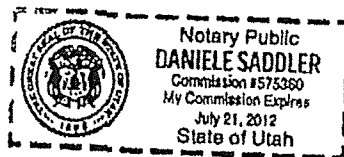


EXHIBIT “5”

EXHIBIT “5”

2
Tax ID: 178-15-511-029, 178-15-511-030
& 178-15-511-031
When Recorded, Mail to:
Celtic Bank Corp.
340 East 400 South
Salt Lake City, Utah 84111
Roberta Merryman
54726

Inst #: 200911090001573
Fees: \$15.00
N/C Fee: \$0.00
11/09/2009 12:37:28 PM
Receipt #: 121774
Requestor:
CELTIC BANK
Recorded By: SOL Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF ASSIGNMENT OF RENTS

For and good and valuable consideration, the receipt of which is hereby acknowledged, Federal Deposit Insurance Corporation ("FDIC") as Receiver of Silver State Bank, Henderson, Nevada, successor-in-interest to Silver State Bank hereby grants, assigns and transfers to Celtic Bank Corporation, that certain ASSIGNMENT OF RENTS executed by Gibson Road LLC, a Nevada limited liability company (Grantor) to Silver State Bank, as Lender, in the amount of \$748,000.00 and bearing the date of the December 9, 2005 recorded on December 30, 2005 as Entry No. 20051230-0002938 of the County Clerk's Official Records of Clark County, State of Nevada, together with the note described therein and the money to become due thereon with the interest provided therein, and covers real property situated in said county, described as follows:

PARCEL I:

A portion of the North Half (N ½) of the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section 15, Township 22 South, Range 62 East, M.D.B. & M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NW Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89°26'15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00°58'42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89°13'35" West a distance of 201.18 feet;
Thence South 00°46'25" West a distance of 81.50 feet;
Thence South 89°13'35" East a distance of 165.22 feet;
Thence South 00°46'25" West a distance of 5.00 feet;
Thence South 89°13'35" East a distance of 35.87 feet;
Thence North 00°58'42" East a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records.

Real Property Tax ID: 178-15-511-029, 178-15-511-030 & 178-15-511-031

IN WITNESS WHEREOF,

The undersigned has executed this assignment on September 24, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Silver State Bank of Henderson, Nevada

By:

Name: Bradley C. Bybee
Title: Attorney-in-Fact

STATE OF Utah)
County of Salt Lake)

On this day personally appeared before me, Bradley C. Bybee, Chief Lending Officer, Celtic Bank Corporation, Attorney-in-Fact for Federal Deposit Insurance Corporation As Receiver for Silver State Bank of Henderson, Nevada, known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal this 24th day of September, 2009



NOTARY PUBLIC

Commission Expires:

Residing at:

7-21-2012

Salt Lake City

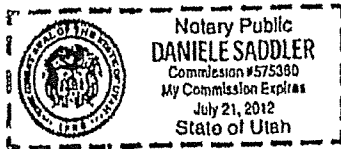


EXHIBIT “6”

EXHIBIT “6”

(2)

Tax ID: 178-15-511-029, 178-15-511-030
& 178-15-511-031

When Recorded, Mail to:
Celtic Bank Corp.
340 East 400 South
Salt Lake City, Utah 84111
Roberta Merryman
54726

Inst #: 200911090001574
Fees: \$15.00
N/C Fee: \$0.00
11/09/2009 12:37:28 PM
Receipt #: 121774
Requestor:
CELTIC BANK
Recorded By: SOL Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF SUBORDINATION AGREEMENT -- LEASE

For and good and valuable consideration, the receipt of which is hereby acknowledged, Federal Deposit Insurance Corporation ("FDIC") as Receiver of Silver State Bank, Henderson, Nevada, successor-in-interest to Silver State Bank hereby grants, assigns and transfers to Celtic Bank Corporation, that certain ASSIGNMENT OF LEASE executed by Gibson Road LLC ("Lessor") and Silver State Bank as Lender bearing the date of the December 9, 2005 recorded on December 30, 2005 as Entry No. 20051230-0002940 of the County Clerk's Official Records of Clark County, State of Nevada, together with the note described therein and the money to become due thereon with the interest provided therein, and covers real property situated in said county, described as follows:

PARCEL I:

A portion of the North Half (N ½) of the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section 15, Township 22 South, Range 62 East, M.D.B. & M., Clark County, Nevada, also being Lot 6-10 as shown on map in File 151 of Surveys, Page 20, Clark County, Nevada Records, more particularly described as follows:

COMMENCING at the Northeast Corner (NW Cor.) of Section 15, Township 22 South, Range 62 East, also being the intersection of American Pacific Drive and Gibson Road;
Thence South 89°26'15" West along the centerline of American Pacific Drive a distance of 259.36 feet;
Thence leaving the centerline of American Pacific Drive South 00°58'42" East a distance of 598.75 feet to the True Point of Beginning;
Thence North 89°13'35" West a distance of 201.18 feet;
Thence South 00°46'25" West a distance of 81.50 feet;
Thence South 89°13'35" East a distance of 165.22 feet;
Thence South 00°46'25" West a distance of 5.00 feet;
Thence South 89°13'35" East a distance of 35.87 feet;
Thence North 00°58'42" East a distance of 86.50 feet to the True Point of Beginning.

PARCEL II:

A non-exclusive easement for pedestrian and vehicular ingress and egress as set forth in the Declaration of Protective Covenants, Conditions and Restrictions recorded September 11, 1989 in Book 890911 as Document No. 00173, Official Records.

Real Property Tax ID: 178-15-511-029, 178-15-511-030 & 178-15-511-031

IN WITNESS WHEREOF,

The undersigned has executed this assignment on September 24, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Silver State Bank of Henderson, Nevada

By:

Name: Bradley C. Bybee
Title: Attorney-in-Fact

STATE OF Utah)
County of Salt Lake) §§

On this day personally appeared before me, Bradley C. Bybee, Chief Lending Officer, Celtic Bank Corporation, Attorney-in-Fact for Federal Deposit Insurance Corporation As Receiver for Silver State Bank of Henderson, Nevada, known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal this 24th day of September, 2009

Daniele Sandler

NOTARY PUBLIC

Commission Expires:

Residing at:

7-21-2012

Salt Lake City

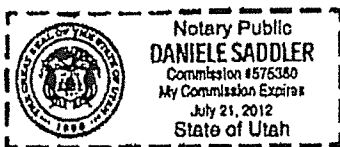


EXHIBIT “7”

EXHIBIT “7”

31-1

Return TD

Mail Tax statement to:
Vegas United Investment Series 105
2676 Ponte Vecchio Terrace
Henderson, NV 89052

APN # 178-15-511-042

Inst #: 20140417-0003282

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$1830.90 Ex: #

04/17/2014 03:48:10 PM

Receipt #: 1996917

Requestor:

LVDG LLC

Recorded By: ANI Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

FORECLOSURE DEED

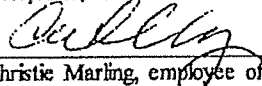
The undersigned declares:

Red Rock Financial Services, herein called agent for (Gibson Business Center Property Owners Association), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 08/23/2011 as instrument number 0001011 Book 20110823, in Clark County. The previous owner as reflected on said lien is GIBSON ROAD LLC. Red Rock Financial Services as agent for Gibson Business Center Property Owners Association does hereby grant and convey, but without warranty expressed or implied to: Vegas United Investment Series 105 (herein called grantee), pursuant to NRS 116.3116 through NRS 116.31168, all its right, title and interest in and to that certain property legally described as: GIBSON BUSINESS PARK 3 PLAT BOOK 56 PAGE 36 PT LOT 1 which is commonly known as 181 N Gibson Rd Henderson, NV 89014.

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Gibson Business Center Property Owners Association governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 10/14/2011 as instrument number 0001581 Book 20111014 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Gibson Business Center Property Owners Association at public auction on 03/21/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale became the purchaser of said property and paid therefore to said agent the amount bid \$30,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

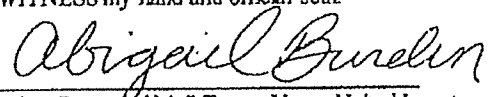
Dated: April 15, 2014


By: Christie Marling, employee of Red Rock Financial Services, agent for Gibson Business Center Property Owners Association

STATE OF NEVADA)
COUNTY OF CLARK)

On April 15, 2014, before me, personally appeared Christie Marling, personally known to me (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 they executed the same in their authorized capacity, and that by their 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.


When Recorded Mail To: Vegas United Investment Series 105
2676 Ponte Vecchio Terrace
Henderson, NV 89052

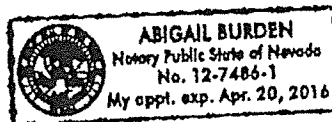


EXHIBIT “8”

EXHIBIT “8”

APN: 178-15-511-042

When Recorded Mail & Send Tax Bills to:

TRUSTEE CLARK COUNTY TREASURER
% GIBSON ROAD L L C
1027 PLENTYWOOD PL
HENDERSON NV 89002-9248

Inst #: 20150611-0000189
Fees: \$0.00
N/C Fee: \$0.00
06/11/2015 08:28:49 AM
Receipt #: 2454866
Requestor:
TREASURER CLARK COUNTY
Recorded By: GWC Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

TAX TRUSTEE DEED

I, Laura B. Fitzpatrick, the Ex-Officio Tax Receiver of the County of Clark, State of Nevada, pursuant to Nevada Revised Statutes (NRS) 361.585, do hereby execute and deliver to Laura B. Fitzpatrick, the Treasurer of Clark County as trustee for the state and county, a deed to the real property described below.

Parcel Number: 178-15-511-042

Owner: GIBSON ROAD L L C

ASSESSOR DESCRIPTION: GIBSON BUSINESS PARK 3 PLAT BOOK 56 PAGE 36 PT
LOT 1 GEOID: PT N2 NE4 SEC 15 22 62

Taxes	10,739.43
Penalty	1,611.37
Interest	1,769.65
Cost	29.00
Total	<hr/> 14,149.45

Pursuant to NRS 361.570, on June 3, 2013 the Ex-Officio Tax Receiver prepared a certificate for each property on which delinquent taxes had not been paid as of that date authorizing the County Treasurer as trustee for the state and county to hold each property described in the certificates for the period of two (2) years after the first Monday in June of the year the certificate was dated, unless sooner redeemed by payment of the taxes and accruing taxes, penalties and costs, together with interest on the taxes at the rate of 10 percent (10%) per annum from the date due until paid.

EXHIBIT “10”

EXHIBIT “10”

(D2)

Parcel Number: 178-15-511-042

When Recorded Mail to:
CELTIC BANK
268 S STATE ST #300
SALT LAKE CITY UT 84111-5314

Inst #: 20151105-0002131
Fees: \$0.00
N/C Fee: \$0.00
11/05/2015 02:28:08 PM
Receipt #: 2599082
Requestor:
TREASURER CLARK COUNTY
Recorded By: RYUD Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

TREASURER'S DEED OF RECONVEYANCE

WHEREAS, pursuant to N.R.S. 361.585, GIBSON ROAD L L C, paid by CELTIC BANK, is entitled to reconveyance having paid on 10/29/2015 to the County Treasurer an amount equal to all taxes accrued, together with any costs, penalties and interest legally chargeable against the herein described property:

Parcel (505) 178-15-511-042

ASSESSOR DESCRIPTION: GIBSON BUSINESS PARK 3 PLAT BOOK 56 PAGE 36 PT LOT 1
GEOID: PT N2 NE4 SEC 15 22 62

ACRES: 0.3800

Tax Year	Description	Amount
2016	Taxes, Interest, Penalties, & Costs	\$3,774.23
2015	Taxes, Interest, Penalties, & Costs	\$4,418.77
2014	Taxes, Interest, Penalties, & Costs	\$4,622.88
2013	Taxes, Interest, Penalties, & Costs	\$5,465.79
Total:		<u>\$18,281.67</u>

NOW, THEREFORE, Laura B. Fitzpatrick, as County Treasurer and Trustee of the above-described property, does hereby reconvey to GIBSON ROAD L L C the above-described property according to the laws of the State of Nevada as set forth in Chapter 361 of the Nevada Revised Statutes.

Parcel Number: 178-15-511-042

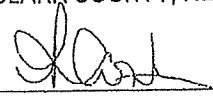
IN WITNESS WHEREOF, I have hereupon set my hand this 2nd day of November 2015.

CLARK COUNTY, NEVADA

CLARK COUNTY, NEVADA



LAURA B. FITZPATRICK, Treasurer
Ex-Officio Tax Receiver



REBECCA L COATES, Assistant Treasurer

STATE OF NEVADA)

SS.

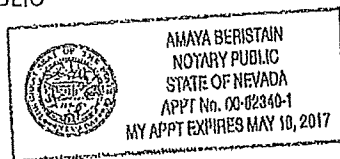
COUNTY OF CLARK)

This instrument was acknowledged before me on the 2nd day of November 2015 by ~~LAURA B. FITZPATRICK~~ as County Treasurer of Clark County, Nevada or REBECCA L COATES, Assistant Treasurer of Clark County, Nevada.

Witness my hand and official seal.



NOTARY PUBLIC



Send Future Tax Bills To:

GIBSON ROAD L L C
1027 PLENTYWOOD PL
HENDERSON NV 89002-9248

1 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2 TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
3 ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
4 Las Vegas, Nevada 89148
(702) 254-7775
5 (702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
6 *Attorney for Appellant*
VEGAS UNITED INVESTMENT
7 SERIES 105, INC.

Electronically Filed
Oct 17 2017 04:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8
9
10 IN THE SUPREME COURT OF THE STATE OF NEVADA

11 ***

12 VEGAS UNITED INVESTMENT SERIES)
13 105, INC., A NEVADA DOMESTIC)
CORPORATION,)

14 Appellant,)

15 vs.)

16 CELTIC BANK CORPORATION,)
17 SUCCESSOR-IN-INTEREST TO SILVER)
STATE BANK BY ACQUISITION OF)
18 ASSETS FROM THE FDIC AS RECEIVER)
FOR SILVER STATE BANK, A UTAH)
19 BANKING CORPORATION ORGANIZED)
AND IN GOOD STANDING WITH THE)
20 LAWS OF THE STATE OF UTAH,)

21 Respondents.)
22

Supreme Court No. 74163

District Court Case No. A728233

DOCKETING STATEMENT

23 1. Judicial District: Eighth Department: XXII
24 County: Clark Judge: The Honorable Susan H. Johnson
25 District Court Docket No. A-15-728233-C
26
27
28

1 **2. Attorney filing this docket statement:**

2 Roger P. Croteau, Esq.
3 Timothy E. Rhoda, Esq.
4 Roger P. Croteau & Associates, Ltd.
5 9120 West Post Road, Suite 100
6 Las Vegas, Nevada 89148
7 (702) 254-7775 (telephone)
8 *Attorney for Appellant*
9 *Vegas United Investment Series 105, Inc.*

10 **3. Attorney representing Respondents:**

11 A. CELTIC BANK CORPORATION

12 Allyson R. Noto, Esq.
13 Kelly A. Schmitt, Esq.
14 SYLVESTER & POLEDNAK, LTD.
15 1731 Village Center Circle
16 Las Vegas, Nevada 89134
17 (702) 952-5200

18 **4. Nature of disposition below:**

- 19 ☒ Judgment after bench trial ☐ Dismissal
20 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
21 ☐ Summary judgment ☐ Failure to state claim
22 ☐ Default judgment ☐ Failure to prosecute
23 ☐ Grant/denial of NRCP 60(b) relief ☐ Other (specify) _____
24 ☐ Grant/denial of injunction ☐ Divorce decree:
25 ☐ Grant/denial of declaratory relief ☐ Original ☐ Modification
26 ☐ Review of agency determination
27 ☐ Other disposition (specify): _____

28 **5. Does this appeal raise issues concerning any of the following:**

- ☐ Child custody
☐ Venue
☐ Termination of parental rights
☒ Inapplicable

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court

which are related to this appeal: **None**

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: **None**

8. **Nature of action.** Briefly describe the nature of the action and the result below:

The action is primarily a judicial foreclosure and quiet title/declaratory relief action related to real property that was the subject of a HOA lien foreclosure sale pursuant to NRS Chapter 116. Defendant/Appellant purchased the property at the HOA lien foreclosure sale and asserts that said sale served to extinguish any and all deeds of trust previously secured by the property. As a result, Defendant/Appellant asserts that it is the owner of the property free and clear of any interests of the Plaintiff/Appellee. Notwithstanding the extinguishment of the deed of trust, the Plaintiff/Appellee seeks to judicially foreclose upon its deed of trust.

The matter proceeded to a non-jury trial between August 9, 2017 and August 11, 2017. Appellant appeals from the Court's final judgment finding that the Plaintiff's deed of trust was not extinguished and that the Plaintiff may therefore judicially foreclose upon the subject property.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary): The real property at issue herein is commercial property. The district court's decision was based primarily upon an interpretation of the CC&R's that found that NRS Chapter 116 was not applicable to the subject property. In addition, the court failed to properly consider the fact that the subject property did not secure the deed of trust pursuant to the security instrument's terms and the face of the document.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: Although numerous cases dealing with the force and effect of NRS Chapter 116 are pending before this Court, Appellant is unaware of any pending

proceedings which raise exactly the same issues raised herein.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A ☐ Yes ☐ No If not, explain:

The constitutionality of NRS 116.3116 *et seq.* was not a basis upon which summary judgment was granted in this case.

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: The case raises an important question regarding the application of NRS Chapter 116 to commercial property.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? 3

Was it a bench or jury trial? Bench

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? No If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from:** The Court's Findings of Fact, Conclusions of Law and Judgment was entered on August 25, 2017.
If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

16. **Date written notice of entry of judgment or order served:** Notice of Entry of the Findings of Fact, Conclusion of Law and Judgment was served on September 5, 2017.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, the date and method of service of the motion, and date of filing

☐ NRCP 50(b) Date of filing: _____

☐ NRCP 52(b) Date of filing: _____

☐ NRCP 59 Date of filing: _____

☒ Inapplicable

Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served: N/A

Was service by:

☐ Delivery

☐ Mail/electronic/fax

☒ Inapplicable

18. **Date notice of appeal was filed:** September 28, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other** NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's Findings of Fact, Conclusions of Law and Judgment constituted a final judgment appealable pursuant to NRAP 3A(b)(1).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff - CELTIC BANK CORPORATION

Defendants - VEGAS UNITED INVESTMENT SERIES 105, INC.

Defendants - GIBSON ROAD, LLC

Defendants - GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION

Defendant - REPUBLIC SILVER STATE DISPOSAL, INC. dba REPUBLIC
SERVICES OF SOUTHERN NEVADA

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: Gibson Road, LLC was defaulted. The HOA and Republic Silver State were dismissed by stipulation prior to judgment.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third party claims, and the date of formal disposition of each claim. Plaintiff's Complaint is a Complaint for Judicial Foreclosure. Vegas United Investment Series 105, Inc. filed a Counterclaim for Quiet Title/Declaratory Relief and Slander of Title. All claims were resolved in favor of Plaintiff subsequent to the trial

of the matter.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered “No” to question 23, complete the following:

(a) Specify the claims remaining pending below: N/A

(b) Specify the parties remaining below: N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

See attached:

Exhibit 1 - Complaint

Exhibit 2 - Answer and Counterclaim

Exhibit 3 - Stipulation and Order Dismissing Gibson Business Center Property Owner
Association

Exhibit 4 - Stipulation and Order to Dismiss Defendant Republic Services, Inc.

Exhibit 5 - Findings of Fact, Conclusions of Law and Judgment

Exhibit 6 - Order and Judgment Re: Memorandum of Costs and Disbursements

Exhibit 7 - Notice of Entry of Findings of Fact, Conclusions of Law and Judgment

Exhibit 8 - Notice of Entry of Order and Judgment Re: Memorandum of Costs and
Disbursements

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 17th day of October, 2017, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile and serve system.

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.