

Electronically Filed  
Nov 15 2017 09:01 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **ANOA**  
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](mailto: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. )

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

**AMENDED NOTICE OF APPEAL**

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.)  
14

**AMENDED NOTICE OF APPEAL**

11 **NOTICE IS HEREBY GIVEN** that the Defendant/Counterclaimant, VEGAS UNITED  
12 INVESTMENT SERIES 105, INC., by and through its attorneys, ROGER P. CROTEAU &  
13 ASSOCIATES, LTD., hereby appeals to the Supreme Court of the State of Nevada from:  
14

- 15 (1) the Findings of Fact, Conclusions of Law and Judgment entered herein on or  
16 about August 25, 2017; and  
17 (2) the Order and Judgment re: Memorandum of Costs and Disbursements entered  
18 herein on or about October 2, 2017.

19 DATED this 5<sup>th</sup> day of November, 2017.

20 ROGER P. CROTEAU & ASSOCIATES, LTD.

21  
22 /s/ Timothy E. Rhoda  
23 ROGER P. CROTEAU, ESQ.  
24 Nevada Bar No. 4958  
25 TIMOTHY E. RHODA, ESQ.  
26 Nevada Bar No. 7878  
27 9120 West Post Road, Suite 100  
28 Las Vegas, Nevada 89148  
(702) 254-7775  
***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 6<sup>th</sup> day of November, 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 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

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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.

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

**Celtic Bank Corporation, Plaintiff(s)**  
**vs.**  
**Vegas United Investment Series 105, Inc. , Defendant**  
**(s)**

§  
§  
§  
§  
§  
§

Location: **Department 22**  
Judicial Officer: **Johnson, Susan**  
Filed on: **11/25/2015**  
Case Number History:  
Cross-Reference Case **A728233**  
Number:  
Supreme Court No.: **74163**

**CASE INFORMATION**

**Statistical Closures**  
08/25/2017 Judgment Reached (bench trial)

Case Type: **Judicial Foreclosure**  
Case Flags: **Appealed to Supreme Court**  
**Automatically Exempt from**  
**Arbitration**

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number A-15-728233-C  
Court Department 22  
Date Assigned 02/18/2016  
Judicial Officer Johnson, Susan



**PARTY INFORMATION**

|                          |  |  |
|--------------------------|--|--|
| <b>Plaintiff</b>         | <b>Celtic Bank Corporation</b>   | <b>Noto, Allyson R.</b><br><i>Retained</i><br>702-952-5200(W)      |
| <b>Defendant</b>         | <b>Gibson Business Center Property Owner Association</b><br>Removed: 06/01/2016<br>Dismissed<br><b>Gibson Road LLC</b><br><b>Republic Silver State Disposal Inc</b><br>Removed: 08/08/2017<br>Dismissed<br><b>Vegas United Investment Series 105, Inc.</b> | <b>Croteau, Roger P, ESQ</b><br><i>Retained</i><br>702-254-7775(W) |
| <b>Counter Claimant</b>  | <b>Vegas United Investment Series 105, Inc.</b>  | <b>Croteau, Roger P, ESQ</b><br><i>Retained</i><br>702-254-7775(W) |
| <b>Counter Defendant</b> | <b>Celtic Bank Corporation</b><br><br><b>Gibson Road LLC</b>   | <b>Noto, Allyson R.</b><br><i>Retained</i><br>702-952-5200(W)      |










**DATE**

**EVENTS & ORDERS OF THE COURT**



**INDEX**

|            |  |  |
|------------|--|--|
| 11/25/2015 |  <b>Complaint</b><br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Verified Complaint for Judicial Foreclosure of Deed of Trust</i> |  |
| 11/25/2015 |  <b>Initial Appearance Fee Disclosure</b>   |  |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**













|            |   |
|------------|---|
|            | Filed By: Counter Defendant Celtic Bank Corporation<br><i>Initial Appearance Fee Disclosure</i>   |
| 12/01/2015 |  Notice of Lis Pendens<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Notice of Lis Pendens</i>  |
| 12/03/2015 |  Summons<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Summons-Civil-Gibson Business Center Property Owner Association</i>                                    |
| 12/07/2015 |  Summons<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Summons - Republic Silver State Disposal, Inc. dba Republic Services of Southern Nevada</i>            |
| 12/07/2015 |  Notice of Appearance<br>Party: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Notice of Appearance</i>   |
| 12/07/2015 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Service-Vegas United Investment Series 105 Inc</i>                           |
| 12/08/2015 |  Answer<br>Filed By: Defendant Republic Silver State Disposal Inc<br><i>Answer to Complaint</i>  |
| 12/08/2015 |  Initial Appearance Fee Disclosure<br>Filed By: Defendant Republic Silver State Disposal Inc<br><i>Initial Appearance Fee Disclosure</i>                                   |
| 01/04/2016 |  Peremptory Challenge<br>Filed by: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Peremptory Challenge of Judge</i>                                       |
| 01/04/2016 |  Answer and Counterclaim<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Answer and Counterclaim</i>  |
| 01/04/2016 |  Notice of Department Reassignment<br><i>Notice of Department Reassignment</i>   |
| 01/05/2016 |  Summons<br>Filed by: Counter Defendant Celtic Bank Corporation<br>Party served: Counter Defendant Gibson Road LLC<br><i>Summons - Gibson Road LLC</i>                     |
| 01/22/2016 |  Three Day Notice of Intent to Default<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Three (3) Day Notice of Intent to Take Default of Gibson Road, LLC</i> |
| 01/27/2016 |  Motion to Dismiss<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i>    |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**














|            |   |
|------------|---|
| 02/05/2016 |  Opposition to Motion to Dismiss<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Opposition to Motion to Dismiss Counterclaim</i>   |
| 02/05/2016 |  Default<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Default - Gibson Road, LLC</i>   |
| 02/17/2016 |  Affidavit<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Service - Gibson Road</i>   |
| 02/18/2016 |  Notice of Department Reassignment<br><i>Notice of Department Reassignment</i>   |
| 03/14/2016 |  Notice of Entry of Order<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i>                   |
| 03/14/2016 |  Stipulation and Order<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Stipulation and Order to Continue Hearing on Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i>   |
| 03/28/2016 |  Notice of Entry of Default<br>Party: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Default</i>   |
| 03/31/2016 |  Stipulation and Order<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Stipulation and Order to Continue Hearing on Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i>                                       |
| 04/01/2016 |  Notice of Entry of Stipulation and Order<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i> |
| 04/06/2016 |  Affidavit of Attempted Service<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Affidavit of Attempted Service</i>  |
| 04/08/2016 |  Affidavit of Service<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Affidavit of Service</i>  |
| 04/20/2016 |  Joint Case Conference Report<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Joint Case Conference Report</i>  |
| 04/29/2016 |  Notice of Entry of Default<br>Party: Counter Claimant Vegas United Investment Series 105, Inc.  |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

*Notice of Entry of Default*

|            |  |
|------------|--|
| 04/29/2016 |  <b>Default</b><br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Default of Gibson Road, LLC (as to Counterclaim)</i>   |
| 05/06/2016 |  <b>Scheduling Order</b><br><i>Scheduling Order</i>   |
| 05/16/2016 |  <b>Order Setting Civil Bench Trial</b><br><i>Order Setting Civil Bench Trial</i>   |
| 05/24/2016 |  <b>Reply in Support</b><br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Reply in Support of Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i>   |
| 05/31/2016 |  <b>Motion to Dismiss</b> (10:30 AM) (Judicial Officer: Johnson, Susan)<br><i>Plaintiff/Counterdefendant Celtic Bank Corporation's Motion to Dismiss Defendant Vegas United Investment Series 105, Inc.'s Counterclaim</i><br>04/05/2016      Continued to 05/31/2016 - Stipulation and Order - Vegas United Investment Series 105, Inc.; Celtic Bank Corporation; Republic Silver State Disposal Inc |
| 05/31/2016 |  <b>Stipulation and Order for Dismissal Without Prejudice</b><br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Stipulation and Order Disclaiming Interest and Dismissing Gibson Business Center Property Owner Association Without Prejudice</i>  |
| 05/31/2016 | <b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Johnson, Susan)<br>Debtors: Gibson Business Center Property Owner Association (Defendant)<br>Creditors: Celtic Bank Corporation (Plaintiff)<br>Judgment: 05/31/2016, Docketed: 06/09/2016   |
| 06/01/2016 |  <b>Notice of Entry of Stipulation &amp; Order for Dismissal</b><br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Stipulation and Order Disclaiming Interest and Dismissing Gibson Business Center Property Owner Association Without Prejudice</i>  |
| 06/02/2016 |  <b>Notice of Entry of Order</b><br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Notice of Entry of Order</i>  |
| 06/02/2016 |  <b>Order Denying Motion</b><br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Order Denying Motion to Dismiss Counterclaim</i>  |
| 12/19/2016 |  <b>Motion to Stay</b><br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Joint Motion to Stay Proceedings</i>  |
| 01/24/2017 |  <b>Motion to Stay</b> (10:30 AM) (Judicial Officer: Johnson, Susan)<br><i>Joint Motion to Stay Proceedings</i>   |
| 03/24/2017 |  <b>Answer to Counterclaim</b>  |














DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

|            |  |
|------------|--|
|            | Filed By: Counter Defendant Celtic Bank Corporation<br><i>Answer to Counterclaim</i>   |
| 04/04/2017 |  Motion to Extend Discovery<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Motion to Extend Discovery Deadlines - First Request on Order Shortening Time</i>                      |
| 04/05/2017 |  Receipt of Copy<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Receipt of Copy of Motion to Extend Discovery Deadlines - First Request on Order Shortening Time</i>              |
| 04/05/2017 |  <b>Status Check: Trial Setting</b> (8:30 AM) (Judicial Officer: Johnson, Susan)  |
| 04/07/2017 |  <b>Motion to Extend Discovery</b> (9:30 AM) (Judicial Officer: Bulla, Bonnie)<br><i>Pltf's Motion to Extend Discovery Deadlines, First Request on OST</i>                                      |
| 05/18/2017 |  Discovery Commissioners Report and Recommendations<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Discovery Commissioner's Report and Recommendation</i>                         |
| 06/01/2017 | <b>CANCELED Status Check: Compliance</b> (3:00 AM) (Judicial Officer: Bulla, Bonnie)<br><i>Vacated - per Commissioner</i>  |
| 06/30/2017 |  Pre-Trial Disclosure<br>Party: Counter Defendant Celtic Bank Corporation<br><i>Plaintiff's Pre-Trial Disclosure</i>  |
| 07/19/2017 |  <b>Pretrial/Calendar Call</b> (8:30 AM) (Judicial Officer: Johnson, Susan)   |
| 07/28/2017 |  Amended Notice<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Amended Notice of 2.67 Conference</i>  |
| 07/28/2017 |  Affidavit of Attempted Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Attempted Service - Trial Subpoena Karen Klagues</i>                                |
| 07/28/2017 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>(Attorney refileing with proper caption 8/1/17) Affidavit of Service - Trial Subpoena Stephanie Jordan</i> |
| 07/28/2017 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>(Attorney refileing with proper caption 8/1/17) Affidavit of Service - Trial Subpoena Julia Thompson</i>   |
| 08/01/2017 |  Trial Subpoena<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>(8/2/2017 Withdrawn) Trial Subpoena - Julia Thompson</i>   |
| 08/01/2017 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation  |













DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**










*Affidavit of Service of Trial Subpoena - Julia Thompson*

|            |   |
|------------|---|
| 08/01/2017 |  Trial Subpoena<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>(8/1/2017 Withdrawn) Trial Subpoena - Karen Klagues</i>                     |
| 08/01/2017 |  Trial Subpoena<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>(8/1/2017 Withdrawn) Trial Subpoena - Stephanie Jordan</i>                  |
| 08/01/2017 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Service of Trial Subpoena - Stephanie Jordan</i>         |
| 08/01/2017 |  Notice of Withdrawal<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Notice of Withdrawal of Trial Subpoena for Karen Klagues</i>          |
| 08/01/2017 |  Notice of Withdrawal<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Notice of Withdrawal of Trial Subpoena for Stephanie Jordan</i>       |
| 08/02/2017 |  Notice of Withdrawal<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Notice of Withdrawal of Trial Subpoena for Julia Thompson</i>         |
| 08/04/2017 |  Trial Subpoena<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Trial Subpoena</i>  |
| 08/04/2017 |  Pre-trial Memorandum<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Joint Pre-Trial Memorandum</i>                                      |
| 08/08/2017 |  Affidavit of Service<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Service of Trial Subpoena - Julie Skinner</i>          |
| 08/08/2017 |  Trial Brief<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Celtic Bank Corporation's E.D.C.R. 7.27 Civil Trial Memorandum</i>           |
| 08/08/2017 | <b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Johnson, Susan)<br>Debtors: Celtic Bank Corporation (Plaintiff)<br>Creditors: Republic Silver State Disposal Inc (Defendant)<br>Judgment: 08/08/2017, Docketed: 08/08/2017 |
| 08/08/2017 |  Stipulation and Order<br><i>Stipulation and Order to Dismiss Defendant Republic Services, Inc.</i>  |
| 08/09/2017 |  <b>Bench Trial</b> (9:30 AM) (Judicial Officer: Johnson, Susan)<br><b>08/09/2017-08/11/2017</b>   |
| 08/15/2017 |  Notice  |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

|            |   |
|------------|---|
|            | Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Notice of Supplemental Authority</i>  |
| 08/25/2017 |  Findings of Fact, Conclusions of Law and Judgment<br><i>Findings of Fact, Conclusions of Law and Judgment</i>   |
| 08/25/2017 | <b>Judgment</b> (Judicial Officer: Johnson, Susan)<br>Debtors: Vegas United Investment Series 105, Inc. (Defendant)<br>Creditors: Celtic Bank Corporation (Plaintiff)<br>Judgment: 08/25/2017, Docketed: 08/28/2017<br>Debtors: Vegas United Investment Series 105, Inc. (Counter Claimant)<br>Creditors: Celtic Bank Corporation (Counter Defendant)<br>Judgment: 08/25/2017, Docketed: 08/28/2017 |
| 09/05/2017 |  Notice of Entry of Order<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Findings of Fact, Conclusions of Law and Judgment</i>  |
| 09/06/2017 |  Memorandum of Costs and Disbursements<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Memorandum of Costs and Disbursements</i>  |
| 09/26/2017 |  Writ Electronically Issued<br>Party: Counter Defendant Celtic Bank Corporation<br><i>Writ of Execution</i>  |
| 09/28/2017 |  Notice of Appeal<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Notice of Appeal</i>  |
| 09/28/2017 |  Case Appeal Statement<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Case Appeal Statement</i>  |
| 10/02/2017 | <b>Judgment</b> (Judicial Officer: Johnson, Susan)<br>Debtors: Vegas United Investment Series 105, Inc. (Defendant), Gibson Road LLC (Defendant)<br>Creditors: Celtic Bank Corporation (Plaintiff)<br>Judgment: 10/02/2017, Docketed: 10/02/2017<br>Total Judgment: 10,442.96   |
| 10/02/2017 |  Order<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Order and Judgment re: Memorandum of Costs and Disbursements</i>   |
| 10/03/2017 |  Notice of Entry<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry Of Order and Judgment re: Memorandum of Costs and Disbursements</i>  |
| 10/04/2017 |  Writ of Execution<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Writ of Execution</i>  |
| 10/12/2017 |  Notice of Sheriff's Sale<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Sheriff's Sale of Real Property</i>   |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

|            |   |
|------------|---|
| 10/13/2017 |  Affidavit of Mailing<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Mailing</i>  |
| 10/20/2017 |  Affidavit of Posting<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Affidavit of Posting</i>  |
| 10/23/2017 |  Ex Parte Motion for Order Allowing Examination of Judgment<br>Filed by: Counter Defendant Celtic Bank Corporation<br><i>Ex Parte Application for Order Allowing Examination of the 30(B)(6) Designee of Vegas United Investments Series 105, Inc.</i> |
| 10/30/2017 |  Affidavit of Publication<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.; Counter Defendant Celtic Bank Corporation; Counter Defendant Gibson Road LLC<br><i>Affidavit of Publication</i>                                      |
| 10/31/2017 |  Order Allowing Examination of Judgment Debtor<br>Party: Counter Defendant Celtic Bank Corporation<br><i>Order Allowing Examination of the 30(B)(6) Designee of Vegas United Investment Series 105, Inc.</i>   |
| 10/31/2017 |  Notice of Entry<br>Filed By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Entry of Order Allowing Examination of the 30(B)(6) Designee of Vegas United Investment Series 105, Inc.</i>   |
| 10/31/2017 |  Notice of Examination of Judgment Debtor<br>File By: Counter Defendant Celtic Bank Corporation<br><i>Notice of Judgment Debtor Exam of the 30(B)(6) Designee of Vegas United Investment Series 105, Inc.</i>  |
| 11/06/2017 |  Amended Notice of Appeal<br>Party: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Amended Notice of Appeal</i>   |
| 11/08/2017 |  Motion<br>Filed By: Counter Claimant Vegas United Investment Series 105, Inc.<br><i>Motion for Injunction Pending Appeal on Order Shortening Time</i>   |
| 11/14/2017 | <b>Motion</b> (10:30 AM) (Judicial Officer: Johnson, Susan)<br><i>Motion for Injunction Pending Appeal on Order Shortening Time</i>   |

| DATE | FINANCIAL INFORMATION  |
|------|--|
|      | <b>Defendant</b> Republic Silver State Disposal Inc<br>Total Charges 223.00<br>Total Payments and Credits 223.00<br><b>Balance Due as of 11/8/2017 0.00</b>              |
|      | <b>Counter Claimant</b> Vegas United Investment Series 105, Inc.<br>Total Charges 697.00<br>Total Payments and Credits 697.00<br><b>Balance Due as of 11/8/2017 0.00</b> |
|      | <b>Counter Defendant</b> Celtic Bank Corporation   |

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-728233-C**

|  |               |
|--|---------------|
| Total Charges  | 287.00        |
| Total Payments and Credits   | 287.00        |
| <b>Balance Due as of 11/8/2017</b>                                   | <b>0.00</b>   |
| <br><b>Counter Claimant</b> Vegas United Investment Series 105, Inc. |               |
| Appeal Bond Balance as of 11/8/2017                                  | <b>500.00</b> |

# DISTRICT COURT CIVIL COVER SHEET

County, Nevada  
Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

A - 15 - 728233 - C

XXXXII

## I. Party Information *(provide both home and mailing addresses if different)*

|   |  |
|---|--|
| Plaintiff(s) (name/address/phone):<br><p style="text-align: center;">CELTIC BANK CORPORATION</p>  | Defendant(s) (name/address/phone):<br><p style="text-align: center;">VEGAS UNITED INVESTEMENT SERIES 105., INC., ET AL</p> |
|   |  |
|   |  |
| Attorney (name/address/phone):<br><p style="text-align: center;">Kelly L. Schmitt Esq., Sylvester &amp; Polednak, Ltd.</p> <p style="text-align: center;">1731 Village Center Circle</p> <p style="text-align: center;">Las Vegas, NV 89134</p> <p style="text-align: center;">(702) 952-5200</p> | Attorney (name/address/phone):<br><p style="text-align: center;">Unknown</p>   |

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

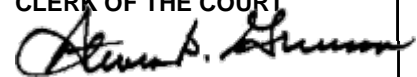
|   |  |  |
|---|--|--|
| <b>Real Property</b><br><b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> Other Landlord/Tenant<br><b>Title to Property</b><br><input checked="" type="checkbox"/> Judicial Foreclosure<br><input type="checkbox"/> Other Title to Property<br><b>Other Real Property</b><br><input type="checkbox"/> Condemnation/Eminent Domain<br><input type="checkbox"/> Other Real Property  | <b>Torts</b><br><b>Negligence</b><br><input type="checkbox"/> Auto<br><input type="checkbox"/> Premises Liability<br><input type="checkbox"/> Other Negligence<br><b>Malpractice</b><br><input type="checkbox"/> Medical/Dental<br><input type="checkbox"/> Legal<br><input type="checkbox"/> Accounting<br><input type="checkbox"/> Other Malpractice   | <b>Other Torts</b><br><input type="checkbox"/> Product Liability<br><input type="checkbox"/> Intentional Misconduct<br><input type="checkbox"/> Employment Tort<br><input type="checkbox"/> Insurance Tort<br><input type="checkbox"/> Other Tort  |
| <b>Probate</b><br><b>Probate</b> <i>(select case type and estate value)</i><br><input type="checkbox"/> Summary Administration<br><input type="checkbox"/> General Administration<br><input type="checkbox"/> Special Administration<br><input type="checkbox"/> Set Aside<br><input type="checkbox"/> Trust/Conservatorship<br><input type="checkbox"/> Other Probate<br><b>Estate Value</b><br><input type="checkbox"/> Over \$200,000<br><input type="checkbox"/> Between \$100,000 and \$200,000<br><input type="checkbox"/> Under \$100,000 or Unknown<br><input type="checkbox"/> Under \$2,500 | <b>Construction Defect &amp; Contract</b><br><b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> Other Construction Defect<br><b>Contract Case</b><br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> Building and Construction<br><input type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Collection of Accounts<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Other Contract | <b>Judicial Review/Appeal</b><br><b>Judicial Review</b><br><input type="checkbox"/> Foreclosure Mediation Case<br><input type="checkbox"/> Petition to Seal Records<br><input type="checkbox"/> Mental Competency<br><b>Nevada State Agency Appeal</b><br><input type="checkbox"/> Department of Motor Vehicle<br><input type="checkbox"/> Worker's Compensation<br><input type="checkbox"/> Other Nevada State Agency<br><b>Appeal Other</b><br><input type="checkbox"/> Appeal from Lower Court<br><input type="checkbox"/> Other Judicial Review/Appeal |
| <b>Civil Writ</b><br><div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Writ of Habeas Corpus<br/> <input type="checkbox"/> Writ of Mandamus<br/> <input type="checkbox"/> Writ of Quo Warrant                             </div> <div> <input type="checkbox"/> Writ of Prohibition<br/> <input type="checkbox"/> Other Civil Writ                             </div> </div>  |  | <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Foreign Judgment<br><input type="checkbox"/> Other Civil Matters   |

*Business Court filings should be filed using the Business Court civil coversheet.*

11/25/2015  
Date

\_\_\_\_\_  
Signature of initiating party or representative

*See other side for family-related case filings.*



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<br>Disposed After Trial Start  | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input checked="" type="checkbox"/> Non-Jury<br>Judgment Reached | <input type="checkbox"/> Jury<br>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.<sup>1</sup>**

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

11 This matter came on for trial before the Court on the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> 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 <sup>1</sup>As 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.<sup>2</sup> 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.<sup>3</sup> 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           <sup>2</sup>GIBSON 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.

<sup>3</sup>Also see Stipulated Trial Exhibit 4, Promissory Note.



1 BUSINESS PARK, PHASE ONE was recorded by its then declarant, AMPAC DEVELOPMENT  
2 COMPANY, and joining parties<sup>4</sup> on or about September 11, 1989 for the purpose of developing the  
3 premises into a commercial and industrial park.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>  
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 <sup>4</sup>See 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 <sup>5</sup>See Stipulated Trial Exhibit 1, 1989 Master CC&Rs.

<sup>6</sup>See Stipulated Trial Exhibit 2, 1994 First Amendment.

<sup>7</sup>Also 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.<sup>8</sup>

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.

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 <sup>8</sup>Also 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>  
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 <sup>9</sup>The "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 purpose 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 <sup>10</sup>Section 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.

<sup>11</sup>See 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 Number<sup>12</sup> 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 Guarantee<sup>13</sup> from FIRST AMERICAN TITLE INSURANCE COMPANY.<sup>14</sup> 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.<sup>15</sup>

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

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

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

<sup>14</sup>Also see Stipulated Trial Exhibit 11, Trustee's Sale Guarantee.

<sup>15</sup>See 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"<sup>16</sup> 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,..."<sup>17</sup>  
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 3<sup>rd</sup> 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 <sup>16</sup>The "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").

<sup>17</sup>See Stipulated Trial Exhibit 13.

1           2.       The second possible outcome is that at auction no 3<sup>rd</sup> 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                   **1<sup>st</sup> Mortgage: \$748,000.00**

7                   **2<sup>nd</sup> 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.<sup>18</sup> This Notice also set  
16       forth on page 2,<sup>19</sup> "[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  
28       <sup>18</sup>See Stipulated Trial Exhibit 15.

<sup>19</sup>See 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.<sup>20</sup>

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.<sup>21</sup>  
20  
21

22           18.     In addition to not paying the taxes and association assessments, GIBSON ROAD,  
23 LLC also did not pay the monthly installments owing to CELTIC BANK CORPORATION under  
24

25     ...

26     ...

27  
28           <sup>20</sup>See Stipulated Trial Exhibits 16 and 17 (Foreclosure Deed).

<sup>21</sup>See 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.<sup>22</sup>

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,<sup>23</sup> 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.<sup>24</sup> *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.<sup>25</sup> 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.<sup>26</sup>  
20

21 ...  
22

23  
24 <sup>22</sup>See Stipulated Trial Exhibit 20.

<sup>23</sup>See Stipulated Trial Exhibit 21.

25 <sup>24</sup>The correct assessor parcel number or APN for the subject property is 178-15-511-042. The APNs indicated  
26 in the Deed of Trust recorded December 30, 2005 are 178-15-511-029, 178-15-511-030 and 178-15-511-031. JULIA  
27 SKINNER, Senior Underwriter for National Commercial Services at FIRST AMERICAN TITLE COMPANY, who had  
28 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.

<sup>25</sup>See Stipulated Trial Exhibit 22.

<sup>26</sup>See 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       ...

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.”<sup>27</sup> (Emphasis added)

25           ...

26  
27  
28           <sup>27</sup>The 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  
restriction, restrictive covenant or equitable servitude which provides that any reasonable and  
ratable assessment thereon for the organization's cost of maintaining the common open space  
constitutes a lien or encumbrance upon the property.

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

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

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

28                   <sup>29</sup> See 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;....<sup>30</sup> 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

---

<sup>30</sup>See 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 25<sup>th</sup> day of August 2017.

  
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

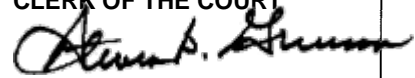
**CERTIFICATE OF SERVICE**

I hereby certify that, on the 25<sup>th</sup> 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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\_\_\_\_\_  
Laura Banks, Judicial Executive Assistant



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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

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

DATED this 5<sup>th</sup> 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 5<sup>th</sup> 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.  
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*Attorneys for Defendant Vegas United  
Investment Series 105, Inc.*



An employee of SYLVESTER & POLEDNAK, LTD.



*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**

|  |   |
|--|---|
| <input type="checkbox"/> Non-Jury<br>Disposed After Trial Start  | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input checked="" type="checkbox"/> Non-Jury<br>Judgment Reached | <input type="checkbox"/> Jury<br>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.<sup>1</sup>**

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

11 This matter came on for trial before the Court on the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> 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 <sup>1</sup>As 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.<sup>2</sup> 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.<sup>3</sup> 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 <sup>2</sup>GIBSON 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.

<sup>3</sup>Also see Stipulated Trial Exhibit 4, Promissory Note.

1 BUSINESS PARK, PHASE ONE was recorded by its then declarant, AMPAC DEVELOPMENT  
2 COMPANY, and joining parties<sup>4</sup> on or about September 11, 1989 for the purpose of developing the  
3 premises into a commercial and industrial park.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>  
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 <sup>4</sup>See 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.

<sup>5</sup>See Stipulated Trial Exhibit 1, 1989 Master CC&Rs.

<sup>6</sup>See Stipulated Trial Exhibit 2, 1994 First Amendment.

<sup>7</sup>Also 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.<sup>8</sup>

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.

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 <sup>8</sup>Also 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>  
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 <sup>9</sup>The "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 <sup>10</sup>Section 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.

<sup>11</sup>See 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 Number<sup>12</sup> 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 Guarantee<sup>13</sup> from FIRST AMERICAN TITLE INSURANCE COMPANY.<sup>14</sup> 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.<sup>15</sup>

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

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

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

<sup>14</sup>Also see Stipulated Trial Exhibit 11, Trustee's Sale Guarantee.

<sup>15</sup>See 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"<sup>16</sup> 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..."<sup>17</sup>  
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 3<sup>rd</sup> 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 <sup>16</sup>The "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").

<sup>17</sup>See Stipulated Trial Exhibit 13.



1                   2.       The second possible outcome is that at auction no 3<sup>rd</sup> 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                   **1<sup>st</sup> Mortgage: \$748,000.00**  
7                   **2<sup>nd</sup> 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.<sup>18</sup> This Notice also set  
16       forth on page 2,<sup>19</sup> "[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       <sup>18</sup>See Stipulated Trial Exhibit 15.

28       <sup>19</sup>See 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.<sup>20</sup>

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.<sup>21</sup>

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    ...

28    ...

<sup>20</sup>See Stipulated Trial Exhibits 16 and 17 (Foreclosure Deed).

<sup>21</sup>See 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.<sup>22</sup>

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,<sup>23</sup> 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.<sup>24</sup> *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  
15 20. On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed against  
16 the subject property, indicating \$14,149.45 in taxes, penalties, interest and costs were due.<sup>25</sup> This  
17 Tax Trustee Deed deeded the subject property to the county in trust for GIBSON ROAD, LLC. On  
18 October 29, 2015, CELTIC BANK CORPORATION paid the outstanding amount due to the Clark  
19 County Treasurer, i.e. \$18,281.67. Such resulted in the Treasurer's re-conveyance of the deed to the  
20 Bank's borrower, GIBSON ROAD, LLC, and such was recorded On November 5, 2015.<sup>26</sup>  
21

22 ...

23  
24 <sup>22</sup>See Stipulated Trial Exhibit 20.

25 <sup>23</sup>See Stipulated Trial Exhibit 21.

26 <sup>24</sup>The 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.

<sup>25</sup>See Stipulated Trial Exhibit 22.

<sup>26</sup>See 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.”<sup>27</sup> (Emphasis added)

25                  ...  
26  
27  
28                  <sup>27</sup>The 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.<sup>28</sup> 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."<sup>29</sup> 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                 <sup>28</sup>See Stipulated Trial Exhibits 1, 1989 Master CC&Rs, Section 11.03, and 3, 2004 CC&Rs, Article XIII.

28                 <sup>29</sup>See 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;....<sup>30</sup> 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 <sup>30</sup>See 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 25<sup>th</sup> day of August 2017.

  
SUSAN H. JOHNSON, DISTRICT COURT JUDGE




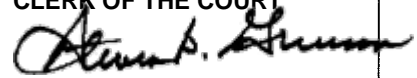
**CERTIFICATE OF SERVICE**

I hereby certify that, on the 25<sup>th</sup> 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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\_\_\_\_\_  
Laura Banks, Judicial Executive Assistant



**ORDR**

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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**

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

3 Counterclaimant,

4 v.

5 CELTIC BANK CORPORATION,  
6 successor-in-interest to SILVER STATE  
BANK by acquisition of assets from the FDIC  
7 as Receiver for Silver State Bank, a Utah  
banking corporation; GIBSON ROAD, LLC, a  
8 Nevada limited liability company; DOE  
Individuals I through XX; and ROE  
9 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 6<sup>th</sup> 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 29<sup>th</sup> day of September, 2017.

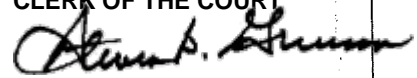
5  
6   
DISTRICT COURT JUDGE

7  
8  
9 Prepared and Submitted by:

10 **SYLVESTER & POLEDNAK, LTD.**

11  
12  
13 By: 

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



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](mailto:allyson@sylvesterpolednak.com)  
12 Email: [kelly@sylvesterpolednak.com](mailto:kelly@sylvesterpolednak.com)  
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11  
12 CELTIC BANK CORPORATION,  
13 successor-in-interest to SILVER STATE  
14 BANK by acquisition of assets from the  
15 FDIC as Receiver for Silver State Bank, a  
16 Utah banking corporation organized and in  
17 good standing under the laws of the State of  
18 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 2<sup>nd</sup> day of October, 2017. A copy which is attached hereto.

3 DATED this 3<sup>rd</sup> day of October, 2017.

4 SYLVESTER & POLEDNAK, LTD.

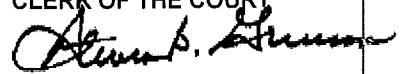
5  
6 By /s/ Kelly L. Schmitt  
7 Kelly L. Schmitt, Esq.  
8 1731 Village Center Circle  
9 Las Vegas, Nevada 89134  
10 *Attorneys for Plaintiff*

11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD.  
13 and that on the 3<sup>rd</sup> 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  
26 /s/ Kelly L. Easton  
27 An employee of SYLVESTER & POLEDNAK, LTD.  
28



**ORDR**

SYLVESTER & POLEDNAK, LTD.  
ALLYSON R. NOTO, ESQ.  
Nevada Bar No. 8286  
KELLY L. SCHMITT, ESQ.  
Nevada Bar No. 10387  
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Email: [kelly@sylvesterpolednak.com](mailto: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 v.

5 CELTIC BANK CORPORATION,  
6 successor-in-interest to SILVER STATE  
BANK by acquisition of assets from the FDIC  
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banking corporation; GIBSON ROAD, LLC, a  
8 Nevada limited liability company; DOE  
Individuals I through XX; and ROE  
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Phone (702) 952-5200

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5 DATED this 29<sup>th</sup> day of September, 2017.

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*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**May 31, 2016**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**May 31, 2016      10:30 AM      Motion to Dismiss**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Melissa Murphy

**RECORDER:** Sandra Pruchnic

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                         Schmitt, Kelly L      Attorney

**JOURNAL ENTRIES**

- Ms. Schmitt requested to stay the matter until September pending the Supreme Court decision on the retroactivity issue and noted not too much discovery will need to be done, if Vegas United takes the property subject to the first priority deed of trust. Mr. Croteau stated no faith in the retroactivity argument and that there were still pending issues that need to be developed. Given its rulings on similar cases, COURT ORDERED, Motion to Dismiss DENIED; oral request to stay case DENIED. Mr. Croteau to prepare the Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**January 24, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**January 24, 2017      10:30 AM      Motion to Stay**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
Schmitt, Kelly L      Attorney

**JOURNAL ENTRIES**

- Court noted it did not stay these cases anymore and ORDERED, Motion DENIED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**April 05, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**April 05, 2017      8:30 AM      Status Check: Trial Setting**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                 Schmitt, Kelly L      Attorney  
                 Starbuck, Drew      Attorney

**JOURNAL ENTRIES**

- Court noted this was #13 on the stack and it had previously denied a stipulation and order to extend discovery and continue trial. Ms. Schmitt advised they currently had a motion to extend discovery by 30 days on an order shortening time by the Discovery Commissioner; further advised this would not affect the current trial date; reviewed the deadlines for dispositive motions and motions in limine. Court reviewed its trial schedule. Counsel anticipated 2-3 days to try. Mr. Starbuck noted there may be a stipulation and order to dismiss Republic Silver State Disposal, Inc.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure****COURT MINUTES****April 07, 2017**

|               |   |
|---------------|---|
| A-15-728233-C | Celtic Bank Corporation, Plaintiff(s)<br>vs.<br>Vegas United Investment Series 105, Inc. , Defendant(s) |
|---------------|---|

|                       |                |                                       |  |
|-----------------------|----------------|---------------------------------------|--|
| <b>April 07, 2017</b> | <b>9:30 AM</b> | <b>Motion to Extend<br/>Discovery</b> | <b>Pltf's Motion to<br/>Extend Discovery<br/>Deadlines, First<br/>Request on OST</b> |
|-----------------------|----------------|---------------------------------------|--|

**HEARD BY:** Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

|                 |                       |          |
|-----------------|-----------------------|----------|
| <b>PRESENT:</b> | Croteau, Roger P, ESQ | Attorney |
|                 | Schmitt, Kelly L      | Attorney |
|                 | Starbuck, Drew        | Attorney |

**JOURNAL ENTRIES**

- Colloquy re: deadlines. COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 5-12-17; file dispositive motions by 5-26-17; 7-31-17 Trial date STANDS. Ms. Schmitt to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**July 19, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**July 19, 2017      8:30 AM      Pretrial/Calendar Call**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                 Noto, Allyson R.      Attorney  
                 Schmitt, Kelly L      Attorney  
                 Starbuck, Drew      Attorney

**JOURNAL ENTRIES**

- Court noted this was #3 on the stack. Counsel announced ready to proceed and anticipated 2 days to try. Colloquy regarding scheduling conflicts. COURT ORDERED, bench trial SET. Court reviewed its trial schedule. Mr. Starbuck advised there was a Stipulation and Order to Dismiss Republic Silver State Disposal, Inc. Court indicated it would sign the Order if everything was ok with it.

8/09/2017 - 9:30 AM - BENCH TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**August 09, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**August 09, 2017      9:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                 Noto, Allyson R.      Attorney  
                 Schmitt, Kelly L      Attorney

**JOURNAL ENTRIES**

- Counsel announced ready to proceed. Exhibits presented (see worksheet). Ms. Schmitt placed stipulated facts on the record. Opening statements by Ms. Noto. Mr. Croteau indicated he wanted to reserve his opening statements until right before his case in chief. Testimony presented (see worksheet). Recess. Testimony continued. Recess. Testimony continued. Arguments regarding whether or not NRS 116 applied to anything other than an HOA. Testimony continued. Recess. Testimony continued. Bench conference. Testimony continued. COURT ORDERED, Bench Trial CONTINUED.

CONTINUED TO 8/10/2017 - 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**August 10, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**August 10, 2017      1:00 PM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Croteau, Roger P, ESQ      Attorney  
                 Noto, Allyson R.      Attorney  
                 Schmitt, Kelly L      Attorney

**JOURNAL ENTRIES**

- Counsel announced ready to proceed. Testimony presented (see worksheet). Recess. Testimony continued. COURT ORDERED, Bench Trial CONTINUED. Counsel rested. Mr. Croteau requested to make his closing arguments tomorrow. Ms. Noto advised she was prepared to make closing arguments today. COURT ORDERED, Bench Trial CONTINUED.

CONTINUED TO 8/11/2017 - 8:30 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Judicial Foreclosure**

**COURT MINUTES**

**August 11, 2017**

---

A-15-728233-C      Celtic Bank Corporation, Plaintiff(s)  
vs.  
Vegas United Investment Series 105, Inc. , Defendant(s)

---

**August 11, 2017      8:30 AM      Bench Trial**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Keri Cromer

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

|                 |                       |          |
|-----------------|-----------------------|----------|
| <b>PRESENT:</b> | Croteau, Roger P, ESQ | Attorney |
|                 | Noto, Allyson R.      | Attorney |
|                 | Schmitt, Kelly L      | Attorney |

**JOURNAL ENTRIES**

- Counsel announced ready to proceed. Closing arguments by Ms. Noto and Mr. Croteau. Recess. Closing arguments continued. Recess. Closing arguments continued. COURT ORDERED, matter taken UNDER ADVISEMENT.

## EXHIBIT(S) LIST

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

Trial Date: August 9, 2017

Plaintiff: CELTIC BANK CORPORATION  
vs.

Judge: Susan Johnson  
Court Clerk: Keri Cromer  
Recorder: Norma Ramirez

Defendant: VEGAS UNITED INVESTMENT SERIES 105, INC., et. al.

Counsel for Plaintiff: Allyson R. Noto, Esq.

Counsel for Defendant: Roger P. Croteau, Esq.

### TRIAL BEFORE THE COURT

### JOINT EXHIBITS

| Exhibit Number | Exhibit Description   | Date Offered | Objection | Date Admitted |
|----------------|---|--------------|-----------|---------------|
| 1              | Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County Covenant, Conditions and Restrictions recorded 09/11/89 (CB000386-CB000434) | 8/9/17       | NO        | 8/9/17        |
| 2              | First Amendment to Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County recorded 10/24/94 (CB000435-CB000439)                    |              |           |               |
| 3              | Covenant Condition and Restrictions recorded 03/18/04 (CB000355-CB000385)   |              |           |               |
| 4              | Promissory Note dated 12/09/05 and Allonge (CB000001-CB000005)  |              |           |               |
| 5              | Re-Recorded Deed of Trust recorded 01/23/06 (CB000018-CB000056)   |              |           |               |
| 6              | Assignment of Deed of Trust recorded 11/09/09 (CB000057-CB000081)   |              |           |               |
| 7              | Assignment of Deed of Trust recorded 11/09/09 (CB000082-CB000083)   |              |           |               |
| 8              | Assignment of Rents recorded 11/09/09 (CB000084-CB000085)   |              |           |               |
| 9              | Lien for Delinquent Assessments recorded 08/23/11 (REDROCK 0047)  |              |           |               |
| 10             | Notice of Default and Election to Sell recorded 10/14/11 (REDROCK 0060, 0054, 0346)   |              |           |               |
| 11             | First American Title Trustee's Sale Guarantee dated 10/21/11 (GBC 000382-GBC 000394)  |              |           |               |
| 12             | Red Rock Financial letter to Celtic Bank and other entities dated 12/ 21/11 (REDROCK 0312, 0311, 0313-0317)   |              |           |               |
| 13             | Email from Ashley Panon/Red Rock to <a href="mailto:Sjones@marwestre.com">Sjones@marwestre.com</a>  |              |           |               |

|    |   |        |    |        |
|----|---|--------|----|--------|
|    | dated 8/12/13 (CB000440-CB000441)   | 8/9/17 | NO | 8/9/17 |
| 14 | Tax Trustee Certificate recorded 12/26/13 (REDROCK 0189)  |        |    |        |
| 15 | Notice of Foreclosure Sale recorded 02/26/14 (REDROCK 0075-0081, REDROCK 0071)  |        |    |        |
| 16 | Red Rock Emails dated 03/21/14 re: sale (REDROCK 0117, REDROCK 0116)  |        |    |        |
| 17 | Foreclosure Deed recorded 4/17/14 (0001-0003)   |        |    |        |
| 18 | Assessor Correspondence to Vegas United dated 05/03/14 (CB000092-CB000097)  |        |    |        |
| 19 | Past Due Property Tax Notices to Borrower dated 06/09/14 (CB000343); 08/06/14 (CB000353); & 02/06/15 (CB000354)   |        |    |        |
| 20 | Notice of Default and Election to Sell recorded 03/02/15 (CB000103-CB000108)  |        |    |        |
| 21 | Cease and Desist Letter to Celtic dated April 30, 2015 (CB000180-CB000183)  |        |    |        |
| 22 | Tax Trustee Deed recorded 06/11/15 (CB000109 -CB000109A)  |        |    |        |
| 23 | Email chain between Jeffrey I. Orgill and Maricela Carrera, et al re: Clark County Trustee Auction -Parcel 178-15-511-042 dated 10/2015 (CB000138-CB000141) |        |    |        |
| 24 | Notice of Intent to Deed dated 10/13/15 (CB000143)  |        |    |        |
| 25 | Wire Confirmation from Celtic Bank to Bank of America in the amount of \$18,281.67 dated 10/29/15 (CB000142)  |        |    |        |
| 26 | Treasurer's Deed of Reconveyance recorded 11/05/15 (CB000110-CB000111)  |        |    |        |
| 27 | Re-recorded Foreclosure Deed recorded 4/4/16 (CB000442-CB000448)  |        |    |        |
| 28 | First American Title Insurance Company National Commercial Services dated 11/9/15 (CB000112- CB000133)  |        |    |        |
| 29 | Notices (REDROCK 0002- REDROCK 0036)  |        |    |        |
| 30 | Certified Mailings of Affidavits dated 10/20/11 (REDROCK 0048- REDROCK 0060)  |        |    |        |
| 31 | Certificates of Mailing with Affidavit of Service for Notice of Foreclosure Sale Recorded on 2/26/14 (REDROCK 0061- REDROCK 0081)                           |        |    |        |
| 32 | Certificate of Sale dated 3/21/14 (REDROCK 0082)  |        |    |        |
| 33 | Foreclosure Deed dated 4/15/14 (REDROCK 0083- REDROCK 0085)   |        |    |        |
| 34 | Excess Proceeds to Dues Accounting (REDROCK 0089- REDROCK 0109)   |        |    |        |
| 35 | Foreclosure Deed to Charles Schmidt (REDROCK 0110- REDROCK 0115)  |        |    |        |
| 36 | Notice to Proceed with HOA Sale (REDROCK 0119- REDROCK 0131)  |        |    |        |
| 37 | Charles Schmidt \$30,000 Payment (REDROCK 0140- REDROCK 0144)   |        |    |        |
| 38 | Notice of Foreclosure Sale/Affidavit of Mailing (REDROCK 0159- REDROCK 0174)  |        |    |        |
| 39 | Gibson HOA Permission Documents (REDROCK 0175- REDROCK 0178)  |        |    |        |
| 40 | Affidavit of Service -Gibson Road, LLC (REDROCK 0204-   | ✓      | ✓  | ✓      |

|    |  |        |    |        |
|----|--|--------|----|--------|
|    | REDROCK 0207; REDROCK 0209- REDROCK 0210)  | 8/9/17 | NO | 8/9/17 |
| 41 | Certificate of Mailing of Demand for Payment (REDROCK 0291- REDROCK 0299);   |        |    |        |
| 42 | Letter Request Notice of Delinquent Assessment/Recorded on 8/23/11, and Notice of Default and Election to Sue dated 10/14/11 (REDROCK 0303- REDROCK 0330)                          |        |    |        |
| 43 | Certified Mailings (REDROCK 0342- REDROCK 0359)  |        |    |        |
| 44 | Notice of Default and election to Sell Pursuant to the Lien for Delinquent Assessment (NOD) (REDROCK 0363- REDROCK 0368)   |        |    |        |
| 45 | Mailing Affidavit for NOD (REDROCK 0396- REDROCK 0410)   |        |    |        |
| 46 | Mailing Affidavit for Lien for Delinquent Assessments (REDROCK 0417- REDROCK 0424)   |        |    |        |
| 47 | Stewart Title Preliminary Title Report dated 07/13/14 (CB 000144- CB00179)   |        |    |        |
| 48 | Letter dated 04/30/15 (CB000180- CB0000183)  |        |    |        |
| 49 | Orgill Emails dated 06/05/14 (CB000187- CB000188)  |        |    |        |
| 50 | Shapiro, Esq. Letter dated 08/01/14 (CB000345)   |        |    |        |
| 51 | Shapiro Email dated 08/01/14 (CB000351- CB000352)  |        |    |        |
| 52 | Gibson Business Center Property Owner Association pursuant to Subpoena Duces Tecum dated 03/23/17 (the "HOA," and/or "Gibson HOA") Certificates of Mailing (GBC 000001- GBC000035) |        |    |        |
| 53 | Letter from J. Shapiro, Esq. to Red Rock Financial Services in HOA files with all policies and proofs of service (GBC000036- GBC000113)  |        |    |        |
| 54 | Affidavit of Mailing for Notice of Foreclosure Sale with related documents in HOA files (GBC 000158- GBC000176)  |        |    |        |
| 55 | HOA Notice of Sale with Pre Audit Checklist (GBC000250)  |        |    |        |
| 56 | Red Rock Financial Services Homeowners Progress Report (GBC000251- GBC000252)  |        |    |        |
| 57 | Certified Mail Celtic Bank Received dated 10/24/11 (GBC000345- GBC000362)  |        |    |        |
| 58 | First American Trustee's Sale Guarantee – HOA Assessment Lien (GBC000382 – GBC000395);   |        |    |        |
| 59 | Mailing and NOD (GBC000396- GBC000409)   |        |    |        |

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES;  
CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT;  
NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT;  
ORDER AND JUDGMENT RE: MEMORANDUM OF COSTS AND DISBURSEMENTS; NOTICE  
OF ENTRY OF ORDER AND JUDGMENT RE: MEMORANDUM OF COSTS AND  
DISBURSEMENTS; DISTRICT COURT MINUTES; EXHIBITS LIST

CELTIC BANK CORPORATION,

Plaintiff(s),

vs.

VEGAS UNITED INVESTMENT SERIES 105,  
INC; GIBSON ROAD, LLC,

Defendant(s),

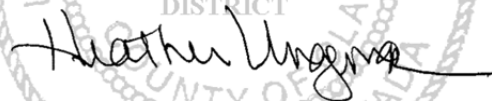
Case No: A-15-728233-C

Dept No: XXII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 8 day of November 2017.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk