

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*

VEGAS UNITED INVESTMENT SERIES )  
105, INC., A NEVADA DOMESTIC )  
CORPORATION, )  
Appellant, )  
vs. )  
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 WITH THE )  
LAWS OF THE STATE OF UTAH, )  
Respondents. )  
\_\_\_\_\_ )

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**APPEAL**

From the Eighth Judicial District Court,

The Honorable Susan H. Johnson, District Judge

District Court Case No. A-15-728233-C

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**JOINT APPENDIX VOLUME III**

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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, )  
 vs. ) Case No.  
 ) A-15-728233-C  
 VEGAS UNITED INVESTMENT SERIES ) Dept. No. XXII  
 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. )  
 \_\_\_\_\_ )

DEPOSITION OF CHARLES SCHMIDT  
PERSON MOST KNOWLEDGEABLE  
VEGAS UNITED INVESTMENT SERIES 105, INC.  
Taken on Tuesday, May 2, 2017, at 2:48 p.m.  
At 1731 Village Center Circle, Las Vegas, Nevada

Reported by: Diane E. Lewis, CCR#739, RPR

1 APPEARANCES:

2 For the Plaintiff, CELTIC BANK CORPORATION,  
3 successor-in-interest to SILVER STATE BANK by  
4 acquisition of assets from the FDIC as Receiver  
5 for Silver State Bank, a Utah banking corporation  
6 organized and in good standing under the laws of  
7 the State of Utah:

8 KELLY L. SCHMITT, ESQ.  
9 Sylvester & Polednak, Ltd.  
10 1731 Village Center Circle  
11 Las Vegas, Nevada 89134  
12 (702) 952-5200

13 For the Defendant, Vegas United Investment  
14 Series 105, Inc.:

15 ROGER P. CROTEAU, ESQ.  
16 Roger P. Croteau & Associates  
17 9120 West Post Road  
18 Suite 100  
19 Las Vegas, Nevada 89148  
20 (702) 254-7775

21 For the Defendant, Republic Silver State  
22 Disposal, Inc., dba Republic Services of  
23 Southern Nevada:

24 DONALD H. WILLIAMS, ESQ.  
25 (No appearance made)  
Williams & Associates  
612 South Tenth Street  
Las Vegas, Nevada 89101  
(702) 320-7755

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CHARLES SCHMIDT	
(By Ms. Schmitt)	4

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(Original exhibits attached to original transcript.)

1                   PURSUANT TO NRCP RULE 30(b)(4),  
2           the Court Reporter, Diane E. Lewis, with Manning,  
3           Hall & Salisbury, 617 S. Eighth Street, Suite A,  
4           Las Vegas, Nevada, states the deposition of  
5           Charles Schmidt, 30(B)(6) designee, is taking  
6           place at 1731 Village Center Circle, Las Vegas,  
7           Nevada, on Tuesday, May 2, 2017, at 2:48 p.m.  
8           Appearances of all parties present noted herein.

9                   --oOo--

10   Whereupon,

11                   CHARLES SCHMIDT

12   was called as a witness by the Plaintiff, and having  
13   been first duly sworn, was examined and testified as  
14   follows:

15                   DIRECT EXAMINATION

16   BY MS. SCHMITT:

17           Q.   Hi.   Good morning.

18           A.   Good morning.

19           Q.   Or actually, it's afternoon now.

20                   Can you please state and spell your name for  
21   the record.

22           A.   Charles Schmidt, S-C-H-M-I-D-T.

23           Q.   Mr. Schmidt, do you understand that you're  
24   here pursuant to a Notice of Deposition sent to the  
25   person most knowledgeable for Vegas United?

1 A. Okay. Correct.

2 Q. Can we agree that throughout this deposition  
3 today, that when I say "Vegas United," that I mean  
4 Vegas -- or that I'm referring to Vegas United  
5 Investment Series 105, Inc.?

6 A. Okay.

7 Q. Does that work for you?

8 A. Yes.

9 Q. Okay. Have you ever had your deposition taken  
10 before, Mr. Schmidt?

11 A. I have, yes.

12 Q. How many times have you had your deposition  
13 taken?

14 A. Thirty.

15 Q. Thirty times?

16 A. Uh-huh.

17 Q. When was the last time your deposition was  
18 taken?

19 A. Maybe two months ago.

20 Q. What type of case was it?

21 A. A real estate case.

22 Q. And just so that I'm clear, you've had your  
23 deposition taken in real estate cases over 30 times?

24 A. Approximately, yeah.

25 Q. Do you have a time period for those

1 depositions?

2 A. Over the last, I don't know, three years,  
3 maybe.

4 Q. Okay. Do you understand that the oath that  
5 you just took carries the same weight as -- carries the  
6 same penalties of perjury as if you were testifying in  
7 front of a judge in a court of law?

8 A. I do.

9 Q. Okay. Do you understand that everything  
10 that we're saying today is being taken down by a court  
11 reporter?

12 A. I do.

13 Q. Okay. Do you understand that at the  
14 conclusion of this examination, the court reporter is  
15 going to or you're going to be provided with a book  
16 that contains all of your answers and all of my  
17 questions?

18 A. I do.

19 Q. Okay. Do you understand that after this  
20 deposition, that you'll have the opportunity to review  
21 your deposition testimony to check it for accuracy  
22 and/or make any changes?

23 A. I do.

24 Q. Okay. And then I just have to caution you  
25 that if you make a substantive change to your

1 testimony, that I can comment upon that change at the  
2 time of trial. Do you understand?

3 A. Yes.

4 Q. Okay. And then, Mr. Schmidt, when I ask a  
5 question and you provide an answer, I'm going to assume  
6 that you've understood my question. Do you understand?

7 A. Yes.

8 Q. Okay. Mr. Schmidt, is there any reason why  
9 you can't give accurate testimony today?

10 A. No.

11 Q. Have you reviewed any documents in preparation  
12 for your deposition today?

13 A. No.

14 Q. No. Did you talk with anyone other than your  
15 counsel today about this deposition?

16 A. No.

17 Q. Can you tell me the business address for Vegas  
18 United?

19 A. 181 North Gibson.

20 Q. What type of business does Vegas United  
21 conduct, if any?

22 A. It's a real estate business.

23 Q. Real estate business. When you say "real  
24 estate business," can you elaborate on that?

25 A. It's a holding company for real estate.

1 Q. And so when you say "holding company for real  
2 estate," do members -- or strike that.

3 Mr. Schmidt, what is your title at Vegas  
4 United?

5 A. I'm the president.

6 Q. How many employees does Vegas United have?

7 A. None.

8 Q. Who is the owner of Vegas United?

9 A. A stockholder, mostly me.

10 Q. How many stockholders?

11 A. Probably one.

12 Q. One other than you?

13 A. No. Probably just me.

14 Q. So is it your testimony today that you're the  
15 sole owner of Vegas United?

16 A. Yes.

17 MS. SCHMITT: Mr. Schmidt, I'm going to hand  
18 you a copy of the deposition notice. I'd like to mark  
19 this as Exhibit 1, please.

20 (Plaintiff's Exhibit No. 1 was  
21 marked for identification.)

22 BY MS. SCHMITT:

23 Q. Mr. Schmidt, have you seen this document  
24 before?

25 A. Yes.

1 Q. Yes. Have you reviewed the topics that were  
2 set forth on pages 2 and 3 of this document?

3 A. Yes.

4 Q. Are you the person most knowledgeable for  
5 Vegas United on the topics one through seven that are  
6 contained in this deposition notice?

7 A. I am.

8 Q. When did you first become aware that you would  
9 be the Person Most Knowledgeable testifying on behalf of  
10 Vegas United today?

11 A. When I was served the notice.

12 Q. When you were served the notice?

13 A. Uh-huh, yes.

14 Q. And when you say "served the notice," was the  
15 notice provided to you by counsel?

16 A. It was.

17 Q. Did you speak with anyone other than your  
18 counsel regarding this deposition notice or the topics  
19 contained therein?

20 A. I did not.

21 Q. Okay. Mr. Schmidt, are you the Person Most  
22 Knowledgeable for topics one through seven as contained  
23 in this deposition notice?

24 A. I am.

25 Q. Okay. You can set that aside, Mr. Schmidt.

1 I'm handing you now a document entitled  
2 "Foreclosure Deed." I'd like to mark that as Exhibit 2,  
3 please.

4 (Plaintiff's Exhibit No. 2 was  
5 marked for identification.)

6 BY MS. SCHMITT:

7 Q. Mr. Schmidt, do you recognize this document?

8 A. I do.

9 Q. You do. Can you identify it for the record?

10 A. It's the foreclosure deed.

11 Q. Okay. And it's the foreclosure deed in  
12 relation to what?

13 A. In relation to the foreclosure of the property  
14 by the HOA.

15 Q. Okay. And can you identify the date that  
16 this document was recorded?

17 It's not a trick question. It's up on the  
18 top right.

19 A. I'm reading it. 4-17-2014.

20 Q. Thanks. And Mr. Schmidt, two lines under  
21 the date it says "Requestor: LVDG LLC." Do you see  
22 that?

23 A. I do.

24 Q. Can you identify who LVDG LLC is for the  
25 record.

1 A. It's another company in which I'm a member.

2 Q. What type of company is LVDG LLC?

3 A. An LLC.

4 Q. What type of business is LVDG?

5 A. It's real estate holdings as well.

6 Q. Okay. So you're part of two businesses that  
7 are real estate holdings companies?

8 A. At least.

9 Q. At least. How many others?

10 A. I don't have an exact number for you.

11 Q. I'm sorry?

12 A. I have no idea. I don't have an exact number  
13 for you. I don't -- I don't -- I don't know.

14 Q. Approximately five to ten?

15 A. Um, it could be.

16 Q. It could be? Higher than ten?

17 A. It could be somewhere under ten.

18 Q. Okay. Thank you.

19 Mr. Schmidt, do you know who prepared this  
20 foreclosure deed?

21 A. I do not. It looks like Red Rock Financial  
22 Services.

23 Q. Do you recognize the signature on --

24 A. The signature on?

25 Q. -- page 3.

1 A. Page 3, I do not.

2 Q. Okay. And then Mr. Schmidt, are you aware  
3 that my client is claiming that this document did not  
4 properly transfer the property from Gibson Road LLC to  
5 Vegas United?

6 MR. CROTEAU: Objection. Calls for a legal  
7 conclusion.

8 BY MS. SCHMITT:

9 Q. You can answer.

10 A. I have -- I haven't read all of the documents  
11 in your suit.

12 Q. Okay. What's your understanding of the  
13 lawsuit in this case today?

14 A. Uh, that you don't understand that the -- your  
15 secured interest is wiped out by the HOA foreclosure.

16 Q. Okay. And you're saying "you," meaning my  
17 client --

18 A. Correct.

19 Q. -- Celtic Bank?

20 A. Whoever has filed the lawsuit.

21 Q. Okay. And then, Mr. Schmidt, are you aware  
22 that this document, the foreclosure deed in front of  
23 you, that this omitted the proper legal description  
24 when it was originally recorded?

25 A. I'm not aware of that.

1 Q. You're not aware of that?

2 A. To what extent are you -- so it's your claim  
3 that something in here does not properly identify the  
4 property?

5 Q. That's my client's claim, yes.

6 A. Okay.

7 MS. SCHMITT: Mr. Schmidt, I'm going to hand  
8 you what I request to be marked as Exhibit 3.

9 (Plaintiff's Exhibit No. 3 was  
10 marked for identification.)

11 BY MS. SCHMITT:

12 Q. Have you seen this document before?

13 A. Oh, I have. Yes, I have.

14 Q. Okay. Did Vegas United receive this document?

15 A. Um, I've seen it before. So I believe we may  
16 have received it, yes.

17 Q. When you say you've seen it before, where  
18 would you see a document of this type?

19 A. At the Recorder's Office.

20 Q. At the Recorder's. How often do you go to the  
21 Recorder's Office?

22 A. Oh, not very often anymore.

23 Q. Do you typically go down to the Recorder's  
24 Office to see what's been recorded on your properties?

25 A. Um, if I need to see a copy of the document,

1 I do.

2 Q. Okay. Do you -- I'm sorry?

3 A. Just to clarify, the issue here is that it  
4 didn't further describe down to the lot. So it  
5 transferred a whole area of property, rather than  
6 getting down to the very parcel.

7 Q. What gives you that understanding?

8 A. Because I had to correct it with the --

9 Q. I'm sorry?

10 A. Because I had to correct it with the Recorder.

11 Q. Okay. When did you correct that issue with  
12 the Recorder?

13 A. I do not know.

14 Q. Okay. So what do you know -- what did Vegas  
15 United do upon receipt of this document?

16 A. Uh, corrected the legal description to  
17 further identify the property. In other words, this --  
18 this describes the center. It doesn't describe the  
19 center down to the individual property.

20 Q. Okay.

21 A. So it says "Part of Lot One." It doesn't say  
22 "This part of Lot One."

23 Q. And can you identify the date of the letter on  
24 Exhibit 3?

25 A. May 3rd, 2014.

1 Q. And upon receipt of this letter, did you seek  
2 legal advice?

3 A. No.

4 Q. No. Did you call the Assessor to ask for  
5 any information -- additional information regarding the  
6 substance of this letter?

7 A. I did -- I didn't call. I went down there.

8 Q. When did you go down there?

9 A. I don't -- I don't know. I don't have a date  
10 for you.

11 Q. Would it have been within a month of receiving  
12 this letter?

13 A. It could have been.

14 Q. Were you surprised to receive this type of  
15 letter?

16 A. No.

17 Q. And have you received a letter like this  
18 before?

19 A. Uh, I have -- I've had similar issues with the  
20 Recorder.

21 Q. And when you say "similar issues," would you  
22 file corrective deeds in those cases as well?

23 A. If that's what it required.

24 MS. SCHMITT: Can we mark this as Exhibit 4,  
25 please.

1 (Plaintiff's Exhibit No. 4 was  
2 marked for identification.)

3 BY MS. SCHMITT:

4 Q. I'm going to hand you what I'm now having  
5 marked as Exhibit 4.

6 A. Okay.

7 Q. Have you seen that document before?

8 A. I have.

9 Q. Do you know who prepared that document?

10 A. It would have likely been me.

11 Q. It would have likely been you?

12 A. Uh-huh.

13 Q. Do you know why this document was prepared?

14 A. To further describe the parcel in order to be  
15 in compliance with the Assessor.

16 Q. Do you know what date this document was  
17 prepared?

18 A. I know it was -- I don't know. No, I do not.

19 Q. Okay. Can you tell me what date this document  
20 was recorded?

21 A. 4-14-2016.

22 Q. Okay. Can you flip back to Exhibit 3.

23 A. Okay.

24 Q. And can you explain the time lapse between  
25 receiving the letter from the Assessor and re-recording

1 the deed?

2 A. The only thing that it accomplished by  
3 correcting the deed is to have the tax bills sent to  
4 the correct address. The fact that it was recorded  
5 would still have the same effect so you had to get  
6 the Assessor to change it. In their system, this is  
7 what they required.

8 Q. So do you believe that the original  
9 foreclosure deed accurately reflected the transfer of  
10 the property?

11 A. I do. This deed is simply additional  
12 information of the foreclosure deed.

13 Q. And what do you mean by "additional information  
14 of the foreclosure deed"?

15 A. As I explained, it says "Part of Lot One."

16 It was transferred in the original foreclosure  
17 deed, which is true, it's accurate.

18 The Assessor required this legal description  
19 of how many feet from the street and that kind of thing.  
20 So this is just additional information. This is not a  
21 change of the original foreclosure deed.

22 Q. Okay. Okay. Were you aware that prior to  
23 filing that corrective deed, that the owner was shown as  
24 Gibson Road LLC?

25 A. Well, when you say "shown," you mean at the

1 Assessor's Office?

2 Q. On the Assessor's page.

3 A. Okay. Well, yeah.

4 Q. And on the property ownership records?

5 A. I don't know what the ownership records -- I  
6 wouldn't describe those as ownership records. Those are  
7 Assessor records where they send the taxes. So they  
8 don't represent ownership. What represents ownership  
9 is the recordings of the deed.

10 Q. Okay. And you believe that the foreclosure  
11 deed was properly recorded?

12 A. True.

13 Q. And you believe that it's your testimony  
14 today that the foreclosure deed accurately reflected the  
15 transfer of property?

16 A. I do, yeah.

17 Q. Okay. You claim that Vegas United purchased  
18 the property at the foreclosure sale, and I believe the  
19 foreclosure sale was March 21, 2014.

20 A. Yeah.

21 Q. How did Vegas United learn about the sale?

22 A. Nevada Legal News.

23 Q. Is it your pattern and practice to review  
24 Nevada Legal News for properties?

25 A. It was at the time, yes.

1 Q. It was at the time.

2 Did you attend the HOA sale?

3 A. I did.

4 Q. How many other properties did Vegas United  
5 purchase that day?

6 A. Uh, just one. Just this property.

7 Q. Did you tour this property prior to purchasing  
8 it at the sale?

9 A. Um, I don't know if I went inside, but I did  
10 go to the property.

11 Q. I'm sorry, when you say you went through it,  
12 you drove around it?

13 A. I drove around it, right. I may have went in.  
14 There was a business there. So I may have, you know,  
15 went inside the front door and in the lobby there.

16 Q. Okay. When did you decide that you were going  
17 to attend the sale of this property?

18 A. A few days before the sale.

19 Q. Okay. Did you know a few days before the sale  
20 that you were going to at least bid on this property at  
21 the sale?

22 A. I did.

23 Q. Did you hire anybody to perform a preliminary  
24 title report prior to?

25 A. I did not, no.

1 Q. Did you perform any type of title search or  
2 title report?

3 A. I would have looked at the Recorder's and  
4 Assessor's Office.

5 Q. Do you recall seeing a recorded First Deed of  
6 Trust by my client, Celtic Bank?

7 A. I don't recall.

8 Q. Do you believe that in your review of the  
9 recorded documents, that you would have seen the first  
10 priority Deed of Trust had it been recorded?

11 A. Not necessarily.

12 Q. Why not necessarily?

13 A. Well, because it depends on if it shows in the  
14 record -- there's only certain ways to search -- if you  
15 search by parcel number. I don't believe that your deed  
16 showed up in the results.

17 Q. Did any other deed show up in your results?

18 A. I don't believe so. Well, I don't -- no, I  
19 don't believe so.

20 Q. Okay. Do you recall how you performed the  
21 search?

22 A. It would have been through the Recorder's  
23 Office.

24 Q. Did you do the search via parcel number?

25 A. Uh, yes. It would have been through the

1 parcel number. And then I would have searched the name  
2 of who also held it.

3 Q. And when you say "who also held it" --

4 A. Well, in other words, whose name the property  
5 was in, if it was Gibson Road LLC. So I may have done a  
6 search by them as well.

7 Q. Do you recall the opening bid for the  
8 property?

9 A. I don't know the exact number, no.

10 Q. Do you recall thinking that there were a lot  
11 of people at that HOA sale?

12 A. There were a lot of people there, yeah.

13 Q. Can you estimate how many people were there?

14 A. Forty to fifty.

15 Q. Forty to fifty. Do you recall how many people  
16 were bidding on the property?

17 A. Um, maybe ten.

18 Q. Ten?

19 A. Maybe eight or ten people.

20 Q. Were you surprised that that many people were  
21 bidding on the property?

22 A. No.

23 Q. Do you recall, Mr. Schmidt, how much you  
24 purchased the property for?

25 A. I believe it was 30,000.

1           Q. Do you believe that that price was reasonable  
2 for this property?

3           A. I do.

4           Q. What would you base your belief on?

5           A. I'm not really good with commercial property,  
6 but I would think that the property would be worth  
7 30,000 as an investment for us.

8           Q. When you were reviewing the property records  
9 prior to the sale, did you happen to notice what the  
10 property had previously sold for?

11          A. I did not.

12          Q. Do you recall whether your bid at the sale  
13 was equal to or in excess of the claimed HOA lien?

14          A. I believe that somewhere in the neighborhood  
15 of \$9,000 was the HOA lien. So yes.

16          Q. And then once -- was Vegas United the winning  
17 bidder at the HOA sale?

18          A. We were.

19          Q. Can you just kind of explain to me the  
20 process after you are the winning bidder. What happens  
21 next?

22          A. You present cashier's checks to the  
23 auctioneer, sign them over to them for an amount at  
24 least the number that you paid, usually more.

25          Q. When you say "usually more," why usually more?

1           A. Well, you have to bring cash to the auctions  
2 so you never know what you're going to win for it so  
3 you have to take multiples of cashier's checks down with  
4 you.

5           Q. Okay.

6           A. I guess you could take one big cashier's  
7 check and just hand it over and wait for change, but  
8 you know, the typical process is you try to get several  
9 different denominations so you can get as close as  
10 possible so your money is not waiting for a refund.

11          Q. Okay. How many cashier's checks did you bring  
12 down there that day?

13          A. Probably ten.

14          Q. Okay. How many cashier's checks did it take  
15 to purchase the property?

16          A. I don't -- I don't know.

17          Q. Okay.

18          A. Because I didn't know how many denominations I  
19 had that day.

20          Q. Okay. When you say "denominations," what are  
21 your typical denominations for the cashier's checks that  
22 you bring down to auctions?

23          A. I'd have like a 20, a thousand dollar one,  
24 a \$50,000 one, a couple of \$5,000 ones, a couple of  
25 \$10,000 ones.

1 Q. Okay.

2 A. It just depends on what I intend to spend  
3 that day or what I have available for cashing out.

4 Q. Okay. And then, Mr. Schmidt, how did you  
5 determine that you wanted to purchase this property?

6 A. I guess I don't understand. What do you  
7 mean by how did I determine? It's a property that was  
8 advertised. I typically buy HOA properties, and it  
9 fell in that category. So I don't know.

10 Q. Okay. When did you start buying HOA  
11 properties?

12 A. Um, either 2009 or 2011.

13 Q. Okay. Would you say that your purchases have  
14 increased since 2014?

15 MR. CROTEAU: Objection. Vague and ambiguous.

16 THE WITNESS: No.

17 BY MS. SCHMITT:

18 Q. No. How many properties would you say you  
19 purchased in 2009?

20 A. Very few. Two or three.

21 Q. Two or three. How about 2010?

22 A. Uh, maybe a dozen.

23 Q. 2011?

24 A. Uh, just to clarify, Vegas United Investments  
25 did not purchase any others besides this one.

1           Q. Thank you for that clarification. I  
2 appreciate that.

3           A. But as far as my knowledge of HOA properties,  
4 I was involved in transactions or bids for other  
5 properties.

6           Q. Beginning in 2009?

7           A. Correct.

8           Q. Okay. Thank you.

9           In connection with your purchase at the HOA  
10 sale, were you required to fill out any forms?

11          A. So I would be required to fill out what name  
12 I wanted it titled in, who the purchaser is, and where  
13 the deed should go.

14          Q. I'm sorry, I didn't mean to --

15          A. The address where the deed should go.

16          Q. Okay. And the address that you provided,  
17 I believe, was 2676 Ponte Vecchio Terrace, Henderson,  
18 Nevada 89052?

19          A. Correct.

20          Q. And was that your current -- or I'm sorry, was  
21 that your address?

22          A. That's my home address.

23          Q. Okay. So after the sale, did you head over to  
24 the property and take a look at it?

25          A. I would have, yes.

1 Q. Did you go over there and introduce yourself  
2 to the current occupants?

3 A. I did.

4 Q. At that time who was occupying the building?

5 A. A company called C.A.R.S., Convenient Auto  
6 Repair Services.

7 Q. Are they still occupying the property now?

8 A. No.

9 Q. Who is occupying the property now?

10 A. Uh, the property is being -- nobody per se.  
11 It's not leased.

12 Q. Is it currently vacant?

13 A. It's being used for storage.

14 Q. Okay. What do you got there?

15 A. A broken, apparently, toothpick holder. It  
16 just broke in my hand.

17 Q. Okay. Does anyone affiliated with Vegas  
18 United occupy the property today?

19 A. Yes.

20 Q. Okay. Has anyone affiliated with Vegas United  
21 ever occupied the property?

22 A. So I believe you would say that we occupy the  
23 property currently.

24 Q. What type of business is out of there right  
25 now?

1 A. It's not a business run out of there.

2 Q. So it's just -- just so that I understand,  
3 it's sitting there and --

4 A. Being used for storage.

5 Q. -- do you use it? Okay.

6 I'm handing you what I'm going to request the  
7 court reporter mark as Exhibit No. 5.

8 (Plaintiff's Exhibit No. 5 was  
9 marked for identification.)

10 BY MS. SCHMITT:

11 Q. Mr. Schmidt, have you seen this document  
12 before?

13 A. I may have. I'm not sure I looked at the  
14 document. I'm not sure I reviewed the document. I'm  
15 aware of the document.

16 Q. Okay. Would you have seen this document  
17 when you were down at the Recorder's Office checking out  
18 what has been recorded on the property?

19 MR. CROTEAU: Objection. Calls for  
20 speculation by the witness.

21 THE WITNESS: I don't believe so. This  
22 document didn't exist when I was doing my research,  
23 because this is a deed back from the trust of the  
24 Treasurer, uh, basically them signing off they were  
25 paid.

1 BY MS. SCHMITT:

2 Q. Say that again.

3 A. Basically them signing off saying they were  
4 paid.

5 Q. Okay. Do you know why Gibson Road LLC is  
6 listed as the owner in this document?

7 A. Because they were the trustee. They were  
8 the one, when it went into trust to the Treasurer, they  
9 were the owner of record then.

10 Q. Okay. And can you just review the bottom  
11 paragraph.

12 A. Okay.

13 Q. And is it your understanding that this  
14 indicates that the taxes were paid?

15 A. Yes.

16 Q. So who do you believe paid the taxes?

17 A. I do not know.

18 Q. Is the parcel number correct on this, do you  
19 know?

20 A. No, I don't know. It looks correct.

21 Q. Okay.

22 A. I think 042 is the parcel number.

23 Q. Okay. And I'm sorry, your testimony, I  
24 believe, was that you think that you saw this document;  
25 correct?

1           A. I'm aware of the document. I am familiar with  
2 these documents.

3           Q. Documents of this type, are they typical that  
4 you would review them?

5           A. So this -- you're asking me if I reviewed  
6 them. This document was not part of the record  
7 of documents available because this document wasn't  
8 recorded until 6-11 of 2015.

9           Q. Okay. And I understand that.

10                  Would you have reviewed this document any time  
11 after the date that it was recorded, 6-11-2015?

12           A. No, I wouldn't have reviewed the document, no.

13           MS. SCHMITT: Okay. I'm handing what I will  
14 request the court reporter to mark as Exhibit 6.

15                  (Plaintiff's Exhibit No. 6 was

16                  marked for identification.)

17 BY MS. SCHMITT:

18           Q. Mr. Schmidt, have you seen this document  
19 before?

20           A. No, I haven't. I have not seen it.

21           Q. Who was occupying the property as of  
22 October 13, 2015?

23           A. Um, probably a tenant of mine. Yeah, probably  
24 a tenant that I had in there.

25           Q. Do you know which tenant?

1 A. It was Mercedes Motor Werks.

2 Q. I'm sorry, say that again.

3 A. Mercedes Motor Werks.

4 Q. Do you believe that had Mercedes Motor Werks  
5 received this document, that they would have sent it to  
6 you?

7 A. Uh, perhaps, but it is not addressed to  
8 Mercedes Motor Werks or anything that -- I mean, it's  
9 addressed to Gibson Road LLC.

10 Q. And what address was it sent to?

11 A. The 181 Gibson.

12 Q. And is that the property that you claim you  
13 own?

14 A. It is. But I don't think somebody would open  
15 somebody else's mail at that property.

16 Q. Okay. Have you had the opportunity to review  
17 this document?

18 A. Yes. I'm reviewing it now.

19 Q. Okay. Take your time.

20 A. Oh, no, I see it.

21 Q. Oh, okay.

22 A. I'm ready.

23 Q. Is it your understanding that from a review  
24 of this document, that it indicates that the property  
25 taxes were delinquent from 2013 to 2015?

1 A. Yes.

2 Q. What action did you take to pay the  
3 outstanding property taxes?

4 A. I don't believe I took any action.

5 Q. Okay.

6 A. Again, I didn't receive the document.

7 Q. Okay. As a property owner, do you understand  
8 that property taxes are assessed and then property  
9 owners are required to pay those taxes?

10 A. Sure.

11 Q. Did it seem odd to you that you hadn't paid  
12 taxes since assuming ownership of the property?

13 A. Did it seem odd to me that I hadn't paid them?  
14 No.

15 Q. No?

16 A. The properties were delinquent, as you  
17 can see, from 2013. I think we were in the process of  
18 obtaining a number from the Assessor's Office.

19 Q. I'm sorry. I didn't mean to --

20 A. And we were obtaining a number to get them  
21 paid to bring them current.

22 Q. And when was that that you were contacting the  
23 Assessor's Office?

24 A. I don't know exactly. It would have been  
25 sometime after our ownership.

1 Q. I'm sorry, sometime after what?

2 A. Sometime after our ownership.

3 Q. Okay.

4 A. Probably why we were trying to get straight  
5 where the property taxes should go to, the change at the  
6 Assessor's Office. Because again, the Assessor's Office  
7 is not the Recorder's Office, they're the Assessor's  
8 Office.

9 Q. Okay. And what just made you make that  
10 distinction for me?

11 A. Well, because in the documents, they're made  
12 out to Gibson Road LLC, which the Assessor had a problem  
13 and was waiting for further clarification of this lot  
14 in order for their -- the way that they do business, to  
15 change what they have on record of who the tax  
16 statements go to.

17 So when you say it was, you know, shown to  
18 be Gibson Road LLC as the owner, that's the Assessor's  
19 Office, not the Recorder's Office. They don't have a  
20 legal effect on the property.

21 Q. Okay.

22 A. Where the Assessor decides that they need  
23 certain things doesn't necessarily have an effect of --  
24 they're not the Recorder's Office. They don't have  
25 anything to do with the deed. They have to do with

1 their own records of where they believe tax statements  
2 should go to.

3 Q. Okay. So is it your testimony that you  
4 didn't receive any tax statements because the corrective  
5 deed wasn't filed with the -- I'm sorry, wasn't recorded  
6 with the Recorder's Office?

7 A. Correct.

8 Q. Okay. Do you know who paid the outstanding  
9 taxes?

10 A. I know it was paid before we got our check  
11 there. I don't know who paid it. I do not know who  
12 paid it.

13 Q. I'll represent to you that my client Celtic  
14 Bank paid the outstanding taxes.

15 A. Okay.

16 Q. Does that ring a bell?

17 A. It makes sense if they believe they had a lien  
18 on the property.

19 Q. Why do you think -- at least in your  
20 experience, why do you think it makes sense if they had  
21 a lien on the property?

22 A. Well, if they believed that they -- that  
23 their borrower has not paid their taxes, it's usually an  
24 agreement that the bank would pay them for the borrower.  
25 So it would make sense that they would pay it since

1 their borrower wasn't paying anything.

2 Q. And why do you think that the lender would do  
3 that?

4 A. I don't know. Because that's sort of how it  
5 works.

6 Q. Okay. When you say it would make sense for  
7 the lender to pay it, is it your understanding that  
8 it would make sense because the lender would protect  
9 their interest in the property?

10 MR. CROTEAU: Objection. Calls for  
11 speculation by the witness.

12 THE WITNESS: Not to protect them from their  
13 property. They're just part of the mailing chain per  
14 title. So they get a bill, and they pay it.

15 BY MS. SCHMITT:

16 Q. Okay.

17 A. The majority of this bill is during the time  
18 they had a secured interest. So from 2013 they had one,  
19 2014 they had one. The majority of this bill is their  
20 borrower's failure to pay the taxes.

21 Q. Okay. So you believe that my client had a  
22 security interest in 2013?

23 A. Well, I believe they believe they did. I  
24 don't know if they had one or not because I'm not part  
25 of that. My ownership didn't happen until 4-17-2014,

1 and I believe these taxes go all the way back --  
2 it only shows 2013, but I think they go back further  
3 than that, for them to be this high. So yeah, I believe  
4 that they had a security in it -- they believed they  
5 had a security interest prior to my ownership, and these  
6 amounts represent that period of time.

7 MS. SCHMITT: Can I mark this as Exhibit 7,  
8 please.

9 (Plaintiff's Exhibit No. 7 was  
10 marked for identification.)

11 BY MS. SCHMITT:

12 Q. I'm handing you what I just requested the  
13 court reporter to mark as Exhibit 7. Have you seen that  
14 document before?

15 A. I have not.

16 Q. Can you identify the document for the record.

17 A. It's a Deed of Reconveyance from the  
18 Treasurer.

19 Q. Okay. Can you explain your understanding of  
20 this document.

21 A. It would be the Reconveyance deed where the  
22 Assessor is releasing their tax lien basically on this  
23 property.

24 Q. Okay. And why would the Assessor be releasing  
25 their tax lien against the property?

1 A. Uh, well, because they were paid.

2 Q. Okay. And pursuant to this document, can you  
3 identify who paid the taxes?

4 A. It doesn't say who paid the taxes. It says  
5 that you can mail it to Celtic Bank.

6 Q. Okay. Can you read it again and let me know  
7 what it says who paid the taxes.

8 A. Oh, Celtic Bank.

9 Q. Okay. And can you identify via this deed  
10 who -- to whom the Assessor reconveyed the property to?

11 A. I don't believe it says there. It says  
12 that it was paid by Celtic Bank, and it's entitled to a  
13 Reconveyance having been paid.

14 Q. This isn't a trick question.

15 A. Well, I understand it's not a trick question,  
16 but let's look at the words.

17 Q. Yeah.

18 A. It says, "Whereas, pursuant to N.R.S. statute,  
19 Gibson Road LLC, paid by Celtic Bank, is entitled to  
20 Reconveyance having paid on 10/29/2015 to the County  
21 Treasurer."

22 MR. CROTEAU: Objection. The document speaks  
23 for itself, basically.

24 BY MS. SCHMITT:

25 Q. Okay. And Mr. Schmidt, can you read the last

1 paragraph on that same page.

2 A. "Now, therefore ... as County Treasurer ...  
3 the above-described property, does hereby reconvey to  
4 Gibson Road LLC."

5 Okay. So I see that now.

6 Q. Okay. So it's your understanding that this  
7 document reconveyed the property to Gibson Road LLC?

8 A. Yes.

9 Q. And can you identify the date that this  
10 document was recorded?

11 A. 11-5-2015.

12 Q. Do you know why the Assessor would have  
13 reconveyed the property to Gibson Road LLC?

14 A. Because they were the original one that they  
15 took the tax lien and took it in trust to. It's not  
16 been my experience that it's taken and put into the  
17 trust -- of the County's trust and then reconveyed to  
18 any other part regardless of the ownership transactions  
19 that take place in that period of time.

20 Q. So it's your belief that had Vegas United  
21 paid the taxes, that the property would have still been  
22 reconveyed back to Gibson Road LLC?

23 A. Yes.

24 Q. Has that occurred in your experience?

25 A. Well, they're reconveying. They're writing

1 off their lien of what the current process of the tax  
2 sale is. So yes.

3 Q. Correct. But aren't you claiming that you  
4 are the owner of the property --

5 A. I am the owner.

6 Q. -- at least beginning April of 2014?

7 A. That's correct. Right. So the reconveyance  
8 is still -- if you sign a reconveyance for a note,  
9 then the note would still reconvey the property back  
10 to -- who? -- to the original note holder. I mean,  
11 we're only talking about their lien here. We're not  
12 talking about the property.

13 Q. Isn't the lien attached to the property?

14 A. Sure. But the lien that they put on is for  
15 Gibson Road LLC, because they were the record owner  
16 at the time that they put it in trust for the taxes.

17 Q. Okay. So what about the delinquent taxes  
18 for the, let's say, second half of 2014, 2015, and 2016  
19 that are showing here?

20 A. Those are still during the period of time when  
21 they already had it in trust to the county.

22 Q. Were you aware that the property was going to  
23 be reconveyed to Gibson Road LLC?

24 A. No, I wasn't. But again, this is the  
25 Assessor's records -- right? -- so the Assessor and the

1 Treasurer goes off their documents, which they get  
2 from the Recorder's, but they draw a conclusion from  
3 the Recorder's when it's a certain way.

4 Q. If you know -- oh, strike that.

5 A. In other words, they took trust of the  
6 property from Gibson Road LLC, the record owner at the  
7 time. They took it into trust of the county.

8 Q. Okay.

9 A. They have to release it back to who they took  
10 it from to reconvey it.

11 Q. Okay. Does that -- had you have known that  
12 this was occurring, would you have contacted the  
13 Assessor's Office and said, "Hey, I'm the owner of this  
14 property"?

15 A. No, because it's not a legal effect. This  
16 is not them somehow giving ownership of the property  
17 to someone. This doesn't have an effect on the title.  
18 This is just getting their tax lien off of the property.

19 Q. Okay.

20 A. And the Treasurer is not a dictator of  
21 ownership.

22 Q. Who is the dictator of ownership?

23 A. Well, the Recorder's -- well, whoever --  
24 the recorded documents in the record would show you who  
25 the ownership is.

1 Q. Okay. And the foreclosure deed that was  
2 recorded as a result of the sale?

3 A. Which transferred ownership.

4 Q. I'm sorry, say that again.

5 A. Which transferred ownership.

6 Q. Okay. Are you aware or at least sitting here  
7 today reviewing these documents, do you understand that  
8 the records, the transfer of ownership, wasn't indicated  
9 on the property records?

10 MR. CROTEAU: Objection. Calls for  
11 speculation by the witness. Lack of foundation. Calls  
12 for a legal conclusion.

13 THE WITNESS: This is the Treasurer and the  
14 Assessor's records. For their records, they don't  
15 dictate ownership. So they can't reconvey something  
16 to somebody else. They're not a transfer agent. They  
17 don't dictate ownership in the first place. They're  
18 out to collect their money, and they have a lien  
19 against the property, and they release their lien.

20 This reconveyance is just they have the power  
21 by N.R.S. to hold it in trust. They took it in trust,  
22 and so they reconveyed it back to who they took it from  
23 trust from.

24 BY MS. SCHMITT:

25 Q. Do you believe that had the foreclosure deed

1 that was recorded in April of -- I'm sorry, May of 2014,  
2 do you believe that had the property been accurately  
3 described, that Vegas United would be the record owner  
4 according to the Assessor?

5 MR. CROTEAU: Objection. Calls for  
6 speculation on the part of the witness. Lack of  
7 foundation. Calls for an opinion.

8 THE WITNESS: Again, the Assessor takes their  
9 information from the Recorder --

10 BY MS. SCHMITT:

11 Q. Correct.

12 A. -- and that's how they utilize the information.  
13 Because they didn't like the way the deed was worded  
14 has nothing to do with the ownership of the property.  
15 It has to do with their guidelines on what they do to  
16 change in their records, where the tax liens go, and who  
17 is responsible for the taxes.

18 Q. Okay.

19 A. It's not accurately reflected because they  
20 don't take that information for their guidelines. It  
21 does not have anything to do with the ownership of the  
22 property. It has to do with their guidelines.

23 Q. Okay. And when you're saying "guidelines,"  
24 what do you mean?

25 A. Whatever it is that they have requirements.

1 When they get over here and they say, well, you've  
2 transferred part of Lot One, but we would like you to  
3 really describe which exact part of Lot One before we  
4 change it in our records who we're going to send the  
5 tax statements to. That's their guidelines. That's  
6 what they require.

7 Q. Okay.

8 A. So because they don't like the way it's not  
9 further described and they didn't change it to our name  
10 doesn't have an effect on -- it doesn't have an effect  
11 on title.

12 Q. Okay. After you purchased the property, did  
13 you happen to do a search, a parcel number search,  
14 to confirm that the property was, in fact, transferred  
15 to Vegas United?

16 A. No, because there is no transfer. Just  
17 because the Assessor changes the name doesn't mean  
18 there's a transfer.

19 Q. I'm asking you -- thank you. I appreciate  
20 that.

21 I'm asking you: When you left the foreclosure  
22 sale, after the foreclosure sale, did you happen to do  
23 a property record search or a parcel number search to  
24 check out to make sure that the foreclosure deed was  
25 recorded properly or -- yeah, that the foreclosure deed

1 was recorded properly?

2 A. Well, I got a copy of the recorded deed so I  
3 didn't go check any records. I had my foreclosure deed.

4 Q. Okay.

5 A. I had no reason to go now and do -- you know,  
6 did they do it right, because they don't have an effect.  
7 Whether they did it right or not has no effect on  
8 whether I own the property or not.

9 Q. Okay. And you base that on what? What's your  
10 understanding?

11 A. My understanding was the Assessor does not  
12 dictate ownership; and if they don't like what a  
13 document looks like, then they would like that for  
14 their records in order to change who they indicate in  
15 their computer system and send the tax statements to.

16 Q. Okay. What was the delay in filing the  
17 re-recorded foreclosure deed?

18 A. The delay in us getting the information of  
19 what they wanted.

20 Q. So what were your -- what efforts did you  
21 undertake from receiving -- after you received the  
22 May 3rd, 2014, letter from the Assessor through the  
23 recording of the re-recorded deed?

24 A. So I didn't receive that letter. I didn't  
25 know about that letter. I'm not even sure what brought

1 it to our attention that wasn't transferred -- you know,  
2 it wasn't indicated. Probably us trying to pay these  
3 taxes, and they were still -- they still had Gibson Road  
4 LLC in their system.

5 Q. When you say you didn't receive the letter,  
6 aren't you located at 2676 Ponte Vecchio Terrace,  
7 Henderson, Nevada?

8 A. I am. So the letter -- I don't remember the  
9 exhibit number, but you're talking about the Notice of  
10 Intent to Deed?

11 Q. I'm sorry, Exhibit No. 3. It looks like this  
12 (indicating).

13 A. Oh, okay. So that letter. I'm sorry, ask  
14 your question again. What was the question about this?

15 MS. SCHMITT: Can you read my question back,  
16 please.

17 (Record read as follows:

18 "Question: So what were your -- what  
19 efforts did you undertake from receiving --  
20 after you received the May 3rd, 2014, letter  
21 from the Assessor through the recording of  
22 the re-recorded deed?")

23 THE WITNESS: Thank you.

24 We received this letter -- I don't remember  
25 getting the letter in the mail. I do remember making

1 an effort to pay the taxes and noticing that they then  
2 printed this at the desk for me, this letter, to show  
3 me what they had sent.

4 BY MS. SCHMITT:

5 Q. Okay. Can you recall in or around the time  
6 period that you would have gone there and received this  
7 letter?

8 A. It would have been somewhere right before  
9 the corrective deed was filed. So maybe within a  
10 couple of weeks before the corrective deed was filed.

11 Q. In 2016?

12 A. Yeah. Yeah. There was two different times  
13 that I went down there, because they didn't understand  
14 what they wanted either. So they gave me some  
15 guidelines -- they gave me basically the description  
16 that they wanted, which, as you can see, is pretty  
17 detailed. It's kind of difficult.

18 So it took some time to get them what they  
19 wanted. I had to go back down there and ask them  
20 again and find the certain guidelines of exactly what  
21 they wanted. Because the first guy said, well, we sent  
22 you this letter, and there's actually no reason that it  
23 shouldn't be done. They wanted a further description.  
24 The first guy wasn't as helpful in actually getting the  
25 requirement done.

1 Q. Okay.

2 A. So there was some -- there was some difficulty  
3 there. And again, we were trying to pay the taxes  
4 and trying to get that situated, basically, what their  
5 requirements -- what they wanted, the Assessor.

6 Q. Okay. Can you look at the back page of the  
7 May 3rd, 2014, letter.

8 A. May 3rd, 2014, back page, okay.

9 Q. Isn't this -- please take a second to look at  
10 it.

11 A. Uh-huh.

12 Q. Isn't this the accurate legal description that  
13 you included on your corrective deed?

14 A. Correct.

15 MR. CROTEAU: Objection. Calls for  
16 speculation on the part of the witness.

17 MS. SCHMITT: Okay. I'm sorry, Roger.

18 MR. CROTEAU: Yeah.

19 BY MS. SCHMITT:

20 Q. So my understanding is that the Assessor  
21 provided Vegas United on May 3rd, 2014, the legal  
22 description that was to be included in the re-recorded  
23 deed.

24 MR. CROTEAU: Objection. Relevance.

25 THE WITNESS: They provided, I believe, this,

1 which is the second-to-the-last page.

2 BY MS. SCHMITT:

3 Q. And I'm not trying to trick you. I'm just  
4 trying to understand the delay. That's all.

5 A. Right. So they provided this (indicating) --

6 MR. CROTEAU: "This" being the second page  
7 that is crossed out.

8 THE WITNESS: Right. That's titled by them  
9 as "Exhibit A," the second-to-the-last page, not the  
10 back page, but the second-to-the-last page. Annual  
11 notice. They didn't -- so this wasn't correct.

12 They sent this and said this is what they  
13 needed. We went back, and they said, no, you have to  
14 have "East" here. This is where the guy wrote this in.

15 BY MS. SCHMITT:

16 Q. Okay. And just so that I understand, so  
17 you're saying that they sent you this legal description,  
18 Exhibit A?

19 A. They sent it with their letter, right. So  
20 you're saying that they provided me with the legal  
21 description. I'm saying this is the legal description  
22 that they provided me with.

23 MS. SCHMITT: Okay.

24 MR. CROTEAU: "This" being the one with the  
25 "X" through it.

1           THE WITNESS: The one with the "X" through it  
2 that says "Unofficial Copy," correct, but without the  
3 handwritten "East." This is how difficult they wanted  
4 to be.

5           So they said, here's what we need it to say,  
6 something like this. When we took it back down there  
7 the first time, they said, "No, no, no. You need to  
8 have 'East.' You need to put this in here. We're only  
9 providing this as an example of a legal description  
10 that was prior recorded on the property. We're not  
11 saying this is the legal description. We're saying  
12 this is the prior one. We can't help you with it.  
13 It needs to further describe what part of Lot One you  
14 purchased."

15          Q. So is it your testimony that you received  
16 notice of the inaccurate legal description prior to this  
17 May 3rd, 2014, letter?

18          A. No. The May 3rd, 2014, letter did not include  
19 this back page.

20          Q. How do you know that?

21          A. Because we drew this page up. Because we drew  
22 this page to go with the corrective deed.

23          Q. And when you say you drew this page, who?

24          A. I did.

25          Q. So it's your testimony today that this legal

1 description was not attached to the May 3rd, 2014,  
2 letter?

3 A. This legal description was.

4 Q. The incorrect legal description?

5 A. No, it's not incorrect. It's not incorrect.

6 Q. Okay.

7 A. It's their correct one, right, because, again,  
8 the deed says "Part of Lot One."

9 Q. Correct.

10 A. XXXXX "Part of Lot One." They said you need  
11 to further describe what part of Lot One you did, and  
12 this is their -- the one marked "Unofficial Copy" is  
13 their example.

14 However, when we went down to do it, you see  
15 how it's marked on the back page, that's their back  
16 page, that's why it has a stamp on it.

17 Q. What's the date of that stamp?

18 A. Oh, you know what, no, it's not. This is a  
19 prior recorded, February 6. So this is their example  
20 that they gave --

21 Q. Okay.

22 A. -- of what it needed to say.

23 Q. Okay.

24 A. But when we went down there, they put this  
25 "East" -- their example was not good enough.

1 Q. Okay.

2 A. So it needed it -- and you'll see this one now  
3 has "East."

4 MR. CROTEAU: This is the last page of that  
5 exhibit.

6 THE WITNESS: The last page of the exhibit  
7 has "East." And there was something other -- some  
8 tweaking they needed to have, because we're in the map  
9 section now of the county.

10 BY MS. SCHMITT:

11 Q. Okay. So turn to the last page.

12 A. Uh-huh.

13 Q. Do you see the watermark that says "Unofficial  
14 Copy"?

15 A. Uh-huh.

16 Q. Okay. Who wrote "Good legal" on that page?

17 A. The person at the desk.

18 Q. In front of you?

19 A. I assume. I mean, the person in front of me  
20 marked up several different papers and gave them to me.

21 Q. And when was this?

22 A. Whenever I was down there trying to conform  
23 to what they wanted the description to be attached to  
24 the deed. They just wanted a description attached to  
25 the deed. They didn't want to change the deed.

1 Q. So let me understand your testimony today.

2 Your testimony is that you went down -- and  
3 correct me if I'm wrong -- you went down to the Assessor  
4 to try to figure out what was going on with the deed;  
5 correct?

6 A. Uh-huh, what they needed to put to change the  
7 name and get the taxes sent to us.

8 Q. Okay. Were you provided with this last page,  
9 the legal description, at that time?

10 A. I was not provided with that last page. I was  
11 provided with the second-to-the-last page.

12 Q. Which is?

13 A. Which was part of the original letter that  
14 they sent.

15 Q. Okay.

16 A. Which is just a copy that they printed in  
17 their records of a prior legal description of the  
18 property that they believed to be good.

19 Q. And it's your testimony that you created this  
20 legal description?

21 A. I created -- well, you have the re-recorded  
22 deed. Is that one of these?

23 Q. Yes. I believe it's Exhibit 4. It's right  
24 under here.

25 A. We prepared this as a final which is an

1 accounting of what they required, because their record,  
2 they went back in the record to find a former legal  
3 description to give me an example. As you'll see, it's  
4 the same document.

5 Q. Correct.

6 A. This document was not provided by them like  
7 this (indicating).

8 Q. When you're saying "this document," what are  
9 you referring to?

10 A. The description of the "thence" and the south  
11 this many feet, this many feet. This was provided in  
12 this form, the second-to-the-last page. This is what  
13 they provided (indicating).

14 Q. Okay.

15 A. This is the results of what they provided,  
16 combined with the maps that they needed to have.

17 Q. So it's your testimony today that this last  
18 page, the legal description on the last page that's  
19 affixed to Exhibit 3, was not part of this May 3rd,  
20 2014, letter?

21 A. I don't believe so, no, it wasn't.

22 You could make sense of that as why would  
23 they send two separate copies in two separate formats to  
24 say this is what it needs to say.

25 Q. That's what I was going to ask you.

1 MR. CROTEAU: Probably the wrong address.

2 How you doing for time?

3 MS. SCHMITT: What time is it?

4 MR. CROTEAU: Almost 4:00.

5 I'm supposed to be in the dentist's chair at  
6 4:00.

7 MS. SCHMITT: Well, had your witness shown up  
8 on time, you'd be in the dentist chair.

9 THE WITNESS: I was trying to get him out of a  
10 dentist appointment. Don't you think that's better?

11 MS. SCHMITT: I'm sure he appreciates that.

12 Q. So have you run into this issue with the legal  
13 description on other properties that you purchased?

14 A. No, I haven't.

15 Q. Okay.

16 A. This is the first time I had that kind of  
17 problem.

18 Q. And who did you work with at the Assessor's  
19 page to correct this legal description?

20 A. Whoever is in the back in the map section.  
21 You have to take a number. You go. They call somebody  
22 from a desk that doesn't typically work the counter.

23 Q. Okay.

24 A. It was a process.

25 Q. And when do you believe you began this process?

1           A. I honestly do not know when. It wasn't really  
2 a priority at the time because the property wouldn't  
3 have gone to sale for a tax deed for a very long time  
4 still. In other words, there wasn't an imminent threat  
5 right now of being sent to the tax sale to be saved.

6           Q. Okay.

7           A. We had no real urgency to get their records  
8 corrected for where they wanted to send the tax bill.

9           Q. Okay. When did Vegas United start receiving  
10 tax bills for the property?

11          A. I honestly don't know.

12          Q. Has Vegas United paid the property taxes for  
13 2016?

14          A. Yes, I believe so.

15          Q. Are the taxes current as we sit here today?

16          A. I believe so. I believe so.

17          MS. SCHMITT: All right. I think I have no  
18 further questions.

19          MR. CROTEAU: Thanks.

20          MS. SCHMITT: We've got to get Roger to a  
21 dentist appointment. Off the record.

22                 (Whereupon, the deposition was  
23 concluded at 3:55 p.m.)

24                         \*       \*       \*       \*       \*

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON
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[illegible]

\* \* \* \* \*

I, CHARLES SCHMIDT, witness herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

CHARLES SCHMIDT, Witness

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public

## 1 CERTIFICATE OF REPORTER

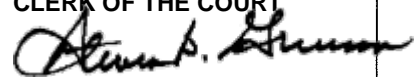
2 STATE OF NEVADA )

SS:

3 COUNTY OF CLARK )  
45 I, Diane E. Lewis, Certified Court Reporter  
6 No. 739 and Notary Public for the County of Clark, State  
7 of Nevada, do hereby certify:8 That I reported the taking of the deposition  
9 of the witness, CHARLES SCHMIDT, commencing on Tuesday,  
10 May 2, 2017, at 2:48 p.m.11 That prior to being examined the witness was  
12 by me duly sworn to testify to the truth.13 That the foregoing transcription is a true,  
14 complete, and accurate transcription of the stenographic  
15 notes of the testimony taken by me in the matter  
16 entitled herein to the best of my knowledge, skill, and  
17 ability.18 That prior to the completion of the  
19 proceedings, the reading and signing of the transcript  
20 was requested by the witness or a party.21 I further certify that I am not a relative  
22 or employee of an attorney or counsel of any of the  
23 parties, nor a relative or employee of an attorney or  
24 counsel involved in said action, nor a person  
25 financially interested in the action.IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 9th day of May, 2017.

---

22 Diane E. Lewis, CCR No. 739  
23 Registered Professional Reporter  
24  
25



**PTED**  
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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. V

**PLAINTIFF'S PRE-TRIAL  
DISCLOSURES**

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

Pursuant to NRCP 16.1(a)(3), CELTIC BANK CORPORATION, successor-in-interest to SILVER STATE BANK by acquisition of assets from the FDIC as Receiver for Silver State Bank ("Plaintiff"), by and through its attorneys, the law firm of Sylvester & Polednak, Ltd., hereby produces its Pre-Trial Disclosures as follows:

**I.**

**WITNESSES**

1. Brian Zern  
Celtic Bank Corporation  
c/o Allyson R. Noto, Esq.  
Kelly L. Schmitt, Esq.  
SYLVESTER & POLEDNAK, LTD.  
1731 Village Center Circle  
Las Vegas, NV 89134
2. Charles Schmidt  
Vegas United Investment Series 105, Inc.  
c/o Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
ROGER P. CROTEAU & ASSOCIATES  
9120 W. Post Road, Suite 100  
Las Vegas, Nevada 89148

**B. Plaintiff may offer the following witnesses at trial if the need arises:**

1. Jeffrey Orgill  
Celtic Bank Corporation  
c/o Allyson R. Noto, Esq.  
Kelly L. Schmitt, Esq.  
SYLVESTER & POLEDNAK, LTD.  
1731 Village Center Circle  
Las Vegas, NV 89134

**C. Plaintiff may subpoena the following witnesses for trial:**

1. Person Most Knowledgeable  
First American Title Insurance Company  
2500 Paseo Verde Parkway, #120  
Henderson, NV 89074
2. Julia Thompson  
Custodian of Records/ NRCP 30(b)(6) Witness  
Red Rock Financial Services, LLC  
c/o CSC Services of Nevada, Inc.

2215-B Renaissance Drive  
Las Vegas, NV 89119

3. Stephanie Jordan  
Custodian of Records/ NRCP 30(b)(6) Witness  
Gibson Business Center Property Owner Association  
c/o Marwest Commercial Real Estate Services  
8861 W. Sahara, Ste. 260  
Las Vegas, NV 89117
4. Khamphanh Ennis  
Declarant for Gibson Business Center Property Owner Association  
c/o Marwest Commercial Real Estate Services  
8861 W. Sahara, Ste. 260  
Las Vegas, NV 89117

**D. Plaintiff expects that the following witnesses may be presented by means of a deposition transcript:**

1. Plaintiff does not anticipate presenting any witnesses by means of deposition unless it becomes necessary due to unavailability.

**II.**

**EXHIBITS**

**A. Plaintiff expects to present the following evidence at trial:**

	Description	Beginning Bates	Ending Bates
1.	Promissory Note dated 12/09/05 and Allonge	CB000001	CB000005
2.	Unconditional Guarantee – Mark Blackwell dated 12/09/05	CB000006	CB000008
3.	Unconditional Guarantee – Blackwell General Engineering, Inc. dated 12/09/05	CB000009	CB000011
4.	Unconditional Guarantee – Las Vegas Pipeline, LLC dated 12/09/05	CB000012	CB000014
5.	Unconditional Guarantee – Blackwell Environmental, LLC dated 12/09/05	CB000015	CB000017
6.	Re-Recorded Deed of Trust recorded 01/23/06	CB000018	CB000056
7.	Re-Recorded Assignment of Rents recorded 01/23/06	CB000057	CB000081
8.	Assignment of Deed of Trust dated 11/09/09	CB000082	CB000087
9.	Assignment of Assignment of Rents recorded 11/09/09	CB000088	CB000089

1	10.	Assignment of Subordination Agreement - Lease recorded 11/09/09	CB000090	CB000091
2	11.	Correspondence to Vegas United from Assessor dated 05/03/14	CB000092	CB000097
3	12.	Declaration of Default and Demand for Sale	CB000098	CB000101
4	13.	Gibson Default Notice dated 02/18/15	CB000102	CB000102
5	14.	Notice of Default and Election to Sell Under Deed of Trust recorded 03/02/15	CB000103	CB000108
6	15.	Tax Trustee Deed recorded 06/11/15	CB000109	CB000109
7	16.	Treasurer's Deed of Reconveyance recorded 11/05/15	CB000110	CB000111
8	17.	Preliminary Title Report dated 11/09/15	CB000112	CB000133
9	18.	Real Property and Special Tax Statement for Fiscal Year 2015-2016	CB00134	CB000136
10	19.	Office of the County Treasurer Tax Payment Wire Information	CB00137	CB00137
11	20.	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
12	21.	Wire Confirmation from Celtic Bank to Bank of America in the amount of \$18,281.67 dated October 29, 2015	CB000142	CB000142
13	22.	Documents produced by Red Rock Financial Services, Inc. pursuant to Subpoena Duces Tecum dated March 23, 2017	REDROCK0001	REDROCK0435
14	23.	Documents produced by Gibson Business Center Property Owner Association pursuant to Subpoena Duces Tecum dated March 23, 2017	GBC000001	GBC000434
15	24.	Declaration of Custodian of Record	GBC000435	GBC000435
16	25.	Notice of Intent to Deed	CB000143	CB000143
17	26.	Stewart Title Preliminary Report dated 7/1/14	CB000144	CB000170
18	27.	Wire Information	CB000171	CB000171
19	28.	Email chain between Jeff Orgill and James Shapiro re: Mark Blackwell – Gibson Road LLC	CB000172	CB000173
20	29.	Email chain between Jeff Orgill and Maricela Carrera re: Clark County Trustee Auction – Parcel 178-15-511-042	CB000174	CB000177
21	30.	Correspondence from Roger Croteau & Associates to Sylvester & Polednak	CB000178	CB000179
22	31.	Cease and Desist Letter dated April 30, 2015	CB000180	CB000183
23	32.	American Modern Home Insurance Certificate	CB000184	CB000186

1		from 2014 - 2016		
2	33.	Email chain between Jeff Orgill and Mark Blackwell re Delinquent Gibson Road LLC dated June 5, 2014	CB000187	CB000187
3	34.	Email chain between Jeff Orgill and Mark Blackwell re Gibson Road LLC dated June 17, 2014	CB000188	CB000188
4	35.	Certified Receipt and Second Notice of Default and Intent to Accelerate dated April 6, 2010	CB000189	CB000190
5	36.	Financial Notices – Demand dated November 7, 2011	CB000191	CB000205
6	37.	Loan Payment – Late Notice dated June 11, 2014	CB000206	CB000206
7	38.	First Notice of Default and Intent to Accelerate dated October 7, 2009	CB000207	CB000207
8	39.	Second Notice of Default and Intent to Accelerate dated June 2, 2010	CB000208	CB000208
9	40.	Second Notice of Default and Intent to Accelerate dated August 23, 2010	CB000209	CB000209
10	41.	Correspondence to Gibson Road, LLC from Celtic Bank re Important Notice Regarding Your Existing Loan dated August 30, 2010	CB000210	CB000211
11	42.	Correspondence to Gibson Road, LLC from Celtic Bank re Important Notice Regarding Your Existing Loan dated October 27, 2010	CB000212	CB000213
12	43.	Financial Notices – Demand dated May 18, 2011	CB000214	CB000234
13	44.	Third Notice of Default and Intent to Accelerate dated August 25, 2011	CB000235	CB000235
14	45.	Financial Notice – Demand (Las Vegas Pipeline, LLC) dated August 30, 2011	CB000236	CB000237
15	46.	Financial Notices – Demand dated September 6, 2011	CB000238	CB000247
16	47.	First Notice of Default and Intent to Accelerate dated January 27, 2012	CB000248	CB000248
17	48.	Notice of Intent to Sell Real Property dated December 26, 2011	CB000249	CB000250
18	49.	Certified receipt and return mail	CB000251	CB000252
19	50.	Past Due Notice dated January 26, 2012	CB000253	CB000253
20	51.	Fourth Notice of Default and Intent to Accelerate dated February 26, 2012	CB000254	CB000254
21	52.	Past Due Notice dated March 15, 2012	CB000255	CB000255
22	53.	Certified Receipt - Gibson Road, LLC and Mark Blackwell and Fifth Notice of Default and Intent to Accelerate dated April 2, 2012	CB000256	CB000262

1	54.	Past Due Property Taxes Second Notices dated October 18, 2012	CB000263	CB000267
2	55.	Financial First Notices – Demand dated December 11, 2012	CB000268	CB000282
3	56.	Past Due Notice dated December 18, 2012	CB000283	CB000283
4	57.	Financial Second Notices – Demand dated February 5, 2013	CB000284	CB000293
5	58.	Past Due Notice dated February 20, 2013	CB000294	CB000294
6	59.	Sixth Notice of Default and Intent to Accelerate	CB000295	CB000295
7	60.	Past Due Notice dated May 13, 2013	CB000296	CB000296
8	61.	Certified Receipt and Past Due Property Taxes First Notice dated May 20, 2013	CB000297	CB000305
9	62.	Notice of Requirement to Provide Proof of Insurance	CB000306	CB000307
10	63.	Past Due Property Taxes Notices dated July 17, 2013	CB000308	CB000311
11	64.	Past Due Property Taxes Notice dated October 1, 2013	CB000312	CB000312
12	65.	Past Due Property Taxes Notice dated December 4, 2013	CB000313	CB000313
13	66.	Financial First Notices – Demand dated December 6, 2013	CB000314	CB000325
14	67.	Financial Second Notices – Demand dated January 9, 2014	CB000326	CB000337
15	68.	Past Due Property Taxes Notice dated February 11, 2014	CB000338	CB000338
16	69.	Past Due Property Taxes Notice dated April 7, 2014	CB000339	CB000339
17	70.	Correspondence to Gibson Road, LLC from Celtic Bank re: Proof of Coverage dated May 19, 2014	CB000340	CB000341
18	71.	Correspondence to Gibson Road, LLC from Celtic Bank re: Proof of Coverage dated June 2, 2014	CB000342	CB000342
19	72.	Past Due Property taxes Notice dated June 9, 2014	CB000343	CB000343
20	73.	Correspondence to Gibson Road, LLC from Celtic Bank re: Proof of Coverage dated June 30, 2014	CB000344	CB000344
21	74.	Correspondence from James E. Shapiro, Esq to Jeff Orgill re lost title to Secured Property dated August 1, 2014	CB000345	CB000345
22	75.	Email chain from Mariela Sueldo and J. Shapiro, et al re Gibson Road LLC – Forceplaced Insurance dated August, 2014	CB000346	CB000348
23	76.	Email chain from Mariela Sueldo and J. Shapiro, et al re Gibson Road LLC – Forceplaced Insurance	CB000349	CB000352

	dated August, 2014		
77.	Past Due Property Taxes Notice dated August 6, 2014	CB000353	CB000353
78.	Past Due Property Taxes Notice dated February 6, 2015	CB000354	CB000354
79.	Covenant, Conditions and Restrictions recorded March 18, 2004	CB000355	CB000385

**B. If the need arises, Plaintiff may also present the following evidence at trial:**

Plaintiff anticipates requesting the Court take judicial notice of the CC&R's recorded on March 18, 2004.

**III.**

**PLAINTIFF'S OBJECTIONS TO DEFENDANT'S EXHIBITS**

Plaintiff reserves the right to object to Defendant's exhibits within fourteen (14) days after timely service of Defendant's pre-trial disclosures.

Plaintiff objects to any witness that was not timely disclosed as a witness by Defendant during discovery.

Plaintiff objects to any documents that were not timely disclosed by Defendant during discovery.

**IV.**

**PLAINTIFF'S DEMONSTRATIVE EXHIBITS**

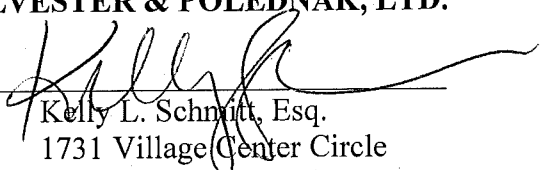
1. Enlargements of any of the Disclosed Documents listed above.

Plaintiff reserves the right to utilize any evidence or call any witness as designated by any other party to this litigation, and any other documents or witnesses produced via NRCP Rule 16.1, via discovery responses or via an Order of the Court by any party.

DATED this 30<sup>th</sup> day of June, 2017.

**SYLVESTER & POLEDNAK, LTD.**

By

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

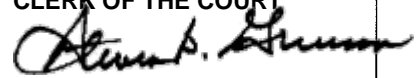
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD. and that on the 30<sup>th</sup> day of June, 2017, I caused to be served a copy of the above-entitled document on the party set forth below via the Court e-filing system where an email address is provided and/or by depositing the same in the United States Mail, first class, postage prepaid, addressed to those not electronically mailed as follows:

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

Donald H. Williams, Esq.  
**WILLIAMS & ASSOCIATES**  
612 South Tenth Street  
Las Vegas, Nevada 89101  
Email: [dwilliams@dhwlawlv.com](mailto:dwilliams@dhwlawlv.com)  
*Attorney for Republic Silver State Disposal,  
Inc. dba Republic Services of Southern  
Nevada*

  
An employee of SYLVESTER & POLEDNAK, LTD.



1 **ANOTC**  
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  
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13 *Attorneys for Celtic Bank Corporation*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

23 Plaintiff,

24 v.

25 VEGAS UNITED INVESTMENT SERIES  
26 105, INC., a Nevada domestic corporation;  
27 GIBSON ROAD, LLC, a Nevada limited  
28 liability company; GIBSON BUSINESS  
29 CENTER PROPERTY OWNER  
30 ASSOCIATION, a Nevada non-profit  
31 corporation; REPUBLIC SILVER STATE  
32 DISPOSAL, INC. dba REPUBLIC  
33 SERVICES OF SOUTHERN NEVADA, a  
34 foreign corporation; DOE Individuals I  
35 through X; and ROE Corporations and  
36 Organizations I through V, inclusive; DOE  
37 Individuals I through X; and ROE  
38 Corporations and Organizations I through V,  
39 inclusive,

40 Defendants.

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

**AMENDED NOTICE OF 2.67  
CONFERENCE**

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

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

Counterclaimant,

v.

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

Counter-Defendants.

**AMENDED NOTICE OF 2.67 CONFERENCE**

PLEASE TAKE NOTICE that pursuant to EDCR 2.67, Plaintiff, by and through Allyson R. Noto, Esq. and Kelly L. Schmitt, Esq., attorney at the law offices of Sylvester & Polednak, Ltd. has rescheduled the 2.67 Conference, due to Vegas United Investment Series 105, Inc.'s Counsel's failure to appear for the originally scheduled 2.67 Conference, in the above-referenced matter, for July 28, 2017, at 1:00 p.m. telephonically. Counsel for the parties shall meet and confer pursuant to EDCR 2.67 in connection with the above-entitled action, and shall fully perform all obligations imposed by EDCR 2.67 in all respects at said time.

DATED this 28<sup>th</sup> day of July, 2017.

**SYLVESTER & POLEDNAK, LTD.**

By: /s/ Allyson R. Noto  
Allyson R. Noto, Esq.  
Kelly L. Schmitt, Esq.  
1731 Village Center Circle  
Las Vegas, Nevada 89134  
*Attorneys for Celtic Bank Corporation*

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

**CERTIFICATE OF SERVICE**

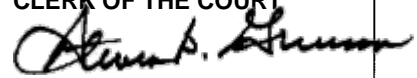
I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD. and that on the 28<sup>th</sup> day of July, 2017, I caused to be served a copy of the above-entitled document on the party set forth below via the Court e-filing system where an email address is provided and/or by depositing the same in the United States Mail, first class, postage prepaid, addressed to those not electronically mailed as follows:

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

Donald H. Williams, Esq.  
**WILLIAMS & ASSOCIATES**  
612 South Tenth Street  
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Email: [dwilliams@dhwlawlv.com](mailto:dwilliams@dhwlawlv.com)  
*Attorney for Republic Silver State Disposal,  
Inc. dba Republic Services of Southern  
Nevada*

/s/ Kelly Easton  
An employee of SYLVESTER & POLEDNAK, LTD.

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



PMEM  
SYLVESTER & POLEDNAK, LTD.  
ALLYSON R. NOTO, ESQ.  
Nevada Bar No. 8286  
KELLY L. SCHMITT, ESQ.  
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Email: [kelly@sylvesterpolednak.com](mailto:kelly@sylvesterpolednak.com)  
*Attorneys for Celtic Bank Corporation*

**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

**JOINT PRE-TRIAL MEMORANDUM**

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

Counterclaimant,

v.

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

Counter-Defendants.

### JOINT PRE-TRIAL MEMORANDUM

CELTIC BANK CORPORATION, successor-in-interest to SILVER STATE BANK by acquisition of assets from the FDIC as Receiver for Silver State Bank ("Celtic Bank" and/or "Plaintiff"), by and through its attorneys, Allyson R. Noto, Esq. and Kelly L. Schmitt, Esq., of the law firm of Sylvester & Polednak, Ltd., and VEGAS UNITED INVESTMENT SERIES 105, INC. ("Vegas United" and/or "Defendant") by and through its attorney, Roger P. Croteau, Esq., of the law firm of Roger P. Croteau & Associates hereby submit the following Pre-Trial Memorandum pursuant to E.D.C.R. 2.67.

The Pre-Trial Conference pursuant to EDCR 2.67 was held on July 28, 2017 at 1:00 p.m. at the law offices of Sylvester & Polednak, Ltd., Allyson R. Noto, Esq. and Kelly L. Schmitt, Esq. attended on behalf of Celtic Bank; and Roger P. Croteau, Esq., attended on behalf of Vegas United.

#### I.

### BRIEF STATEMENT OF STIPULATED FACTS

#### A. Plaintiff's Loan Documents

1. On or about January 18, 2006, Gibson Road, LLC as Borrower executed a Promissory Note (the "Note") wherein Silver State Bank ("Silver State"), Plaintiff's predecessor

1 in interest, agreed to loan Seven Hundred Forty-Eight Thousand, Dollars and 00/100  
2 (\$748,000.00) to Borrower.

3 2. On or about December 9, 2005, and in order to secure payment of the Note,  
4 Borrower executed and delivered to Silver State a first priority deed of trust (the "Deed of  
5 Trust"). Plaintiff alleges that the Deed of Trust encumbers 181 N. Gibson Road, Henderson,  
6 Nevada (the "Property"); however, the Deed of Trust does not reflect either the Property's  
7 address or the corresponding assessor's parcel number on its face. The Deed of Trust was  
8 recorded in Book No. 20051230 as Instrument No. 0002937 in the Official Records of the Clark  
9 County Recorder's Office on December 30, 2005 and re-recorded on January 23, 2006 in Book  
10 No. 20060123 as Instrument No. 0000482.

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

14 4. On September 24, 2009, the FDIC as Receiver for Silver State assigned the Note  
15 and Deed of Trust to Plaintiff. The Assignment of Deed of Trust was recorded in Book No.  
16 20091109 as Instrument No. 0001572 in the Official Records of the Clark County Recorder's  
17 Office on November 9, 2009 (the "Assignment of DOT").

18 **B. The Association's Lien and Foreclosure Documents**

19 5. On August 23, 2011, Red Rock Financial Services ("Red Rock") as agent for the  
20 Gibson Business Center Property Owners Association recorded a Lien for Delinquent  
21 Assessments ("Assessment Lien").

22 6. The Assessment Lien references that the Lien is "in accordance with Nevada  
23 Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions,  
24 herein also called CC&Rs, recorded on 10/24/1994, in Book Number , as Instrument Number  
25 19940240000285 and including any and all Amendments and Annexations et seq. of Official  
26 Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner."  
27 There are no CC&Rs recorded with Instrument Number 19940240000285 in the Official Records  
28 of Clark County Nevada.

1           7.     There is a document recorded as First Amendment to Declaration of Protective  
2 Covenants, Conditions and Restrictions ("First Amendment") recorded in the Recorder's Office  
3 of the Clark County Recorder with an Instrument Number of 199410240000285.

4           8.     On October 14, 2011, a Notice of Default ("NOD") was recorded by Red Rock.

5           9.     The NOD references the recorded Assessment Lien.

6           10.    The NOD was sent by certified mail, return receipt requested to Celtic Bank at the  
7 address set forth on the Assignment of DOT and signed for by a Celtic Bank employee.

8           11.    On February 26, 2014, Red Rock Financial Services recorded a Notice of  
9 Foreclosure Sale which references the Assessment Lien recorded on August 23, 2011 and the  
10 NOD recorded on October 14, 2011.

11          12.    The Notice of Foreclosure Sale further states that the sale "will be made to satisfy  
12 the indebtedness secured by the Lien, with interest thereon, as provided in the Declaration of  
13 Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number , as  
14 Instrument Number 19940240000285 of the Official Records in the Office of the Recorder and  
15 any subsequent amendments or updates that may have been recorded."

16          13.    The Notice of Sale was sent to Celtic Bank at the address set forth on the  
17 Assignment of DOT by way of certified mail, return receipt requested but was not signed for by  
18 Celtic Bank.

19          14.    The Association foreclosure sale took place on March 21, 2014.

20          15.    Vegas United was the highest bidder at the foreclosure sale, paying Thirty  
21 Thousand Dollars (\$30,000.00).

22          16.    On April 17, 2014, Vegas United recorded a Foreclosure Deed.

23 **C.     Clark County Treasurer Documents**

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

27          18.    On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed  
28 which deeded the Property to Clark County.

19. On October 29, 2015, Celtic Bank paid the past due taxes to the Clark County Treasurer in the amount of \$18,281.67, redeeming the Property in the name of Plaintiff's Borrower.

20. On November 5, 2015, the Clark County Treasurer recorded a Treasurer's Deed of Reconveyance.

**D. Vegas United's Amended Foreclosure Deed**

21. On April 4, 2016, Defendant re-recorded its Foreclosure Deed.

**BRIEF STATEMENT OF PLAINTIFFS FACTS**

**LOAN DOCUMENTS**

**A. Plaintiff's Right to Enforce Its Deed of Trust**

1. On or about January 18, 2006, Gibson Road, LLC as Borrower executed a Promissory Note (the "Note") wherein Silver State Bank ("Silver State"), Plaintiff's predecessor in interest, agreed to loan Seven Hundred Forty-Eight Thousand, Dollars and 00/100 (\$748,000.00) to Borrower.

2. On or about December 9, 2005, and in order to secure payment of the Note, Borrower executed and delivered to Silver State a first priority deed of trust (the "Deed of Trust") encumbering 181 N. Gibson Road, Henderson, Nevada (the "Property"). The Deed of Trust was recorded in Book No. 20051230 as Instrument No. 0002937 in the Official Records of the Clark County Recorder's Office on December 30, 2005 and re-recorded on January 23, 2006 in Book No. 20060123 as Instrument No. 0000482.

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

4. On September 24, 2009, the FDIC as Receiver for Silver State assigned the Note and Deed of Trust to Plaintiff. The Assignment of Deed of Trust was recorded in Book No. 20091109 as Instrument No. 0001572 in the Official Records of the Clark County Recorder's Office on November 9, 2009 (the "Assignment of DOT").

///

5. Collectively, the Note, Deed of Trust and Assignment of DOT are referred herein as (the "Loan Documents.")

**B. The Association's Lien and Foreclosure Documents Reference CC&Rs Which Do Not Incorporate NRS 116.**

6. On August 23, 2011, Red Rock Financial Services ("Red Rock") as purported agent for the Gibson Business Center Property Owners Association recorded a Lien for Delinquent Assessments ("Assessment Lien") which listed the owner of the Property as "Trustee Clark County Treasurer, c/o Gibson Road, LLC."

7. The Assessment Lien also provided a legal description which identified the entirety of Gibson Business Park and did not identify the particular parcel which was to be liened.

8. The Assessment Lien also references that the Lien is "in accordance with Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&Rs, recorded on 10/24/1994, in Book Number , as Instrument Number 19940240000285 and including any and all Amendments and Annexations et seq. of Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner."

9. There are no CC&Rs recorded with Instrument Number 19940240000285 in the Official Records of Clark County Nevada.

10. There is a document recorded as First Amendment to Declaration of Protective Covenants, Conditions and Restrictions ("First Amendment") with an Instrument Number of 199410240000285 (which is one number different than the Instrument Number referenced in the Association Lien).<sup>1</sup>

<sup>1</sup> The First Amendment is a publicly recorded document. A certified copy will be available at the time of trial for the Court's review. Plaintiff requests that the Court take judicial notice of the First Amendment pursuant to NRS 47.130. A "court can take judicial notice of facts in recorded documents that are not subject to reasonable dispute." *Wasiak v. Cal-Western Reconveyance Corporation, et al*, 2012 WL 1068733 \*2 (D. Nev.2012) (citing *Lund v. Harbor View Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-3*, 2011 WL 5470580, \*1 n.1 (D.Nev. June 21, 2011). (Emphasis added). A court may judicially notice undisputed public record. *Disabled Rights Action Committee v. Las Vegas Events, Inc.*, 375 F.3d 861, 15A.D. Cases 1336, NLDR R201, 04 Cal Daily Op. Serv. 6223, 2004 Daily Journal D.A.R. 8476 (9<sup>th</sup> Cir.2004) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9<sup>th</sup> Cir.2001). Courts may take judicial notice of public records at any time. NRS 47.170.

1 11. The First Amendment amends that certain document entitled Declaration of  
2 Protective Covenants, Conditions and Restrictions ("1989 Master CC&Rs") which were  
3 recorded by Declarant AmPac Development Company in 1989 as Instrument Number  
4 198909110000173.<sup>2</sup>

5 12. Neither the 1989 Master CC&Rs nor the 1994 Amendment to the 1989 Master  
6 CC&Rs incorporate, reference, or mention NRS 116 or provide any language that a lien for  
7 delinquent assessments prime a first priority deed of trust.

8 13. In fact, Section 8.09 of the 1989 Master CC&Rs fails to provide the lien for  
9 delinquent assessments with "super-priority" status, stating only as follows:

10 8.09 Liens to Secure Assessments. All Assessments, including interest and  
11 other amounts due with respect to unpaid assessments, shall constitute, and shall  
12 be secured by, a separately valid and existing lien on the portion of the Premises  
13 to which they relate, and upon all Improvements at any time erected or  
14 constructed thereon. The provisions of Nev. Rev. Stat. Section 278A.170 are  
15 incorporated herein by this reference.

16 14. And, Section 11.03 of the 1989 CC&Rs state:

17 11.03 Protection of Encumbrances

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

27 15. NRS 116 was enacted in 1991. The 1989 Master CC&Rs were recorded prior to  
28 NRS 116 being enacted and as such, have no reference to NRS 116 nor any "super-priority"  
status of an HOA lien.

16. The First Amendment recorded in 1994 also has no reference to NRS 116. Its

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<sup>2</sup> The CC&Rs are a publicly recorded document. A certified copy will be available at the time of trial for the Court's review. Plaintiff requests that the Court take judicial notice of the First Amendment pursuant to NRS 47.130 and NRS 47.170.

1 stated purpose was to remove some of the property originally encumbered by the Declarant of  
2 the 1989 Master CC&Rs.

3 17. On October 14, 2011, a Notice of Default ("NOD") was recorded by Red Rock.

4 18. The NOD references the recorded Assessment Lien and includes the same  
5 incorrect legal description and incorrect Instrument Number.

6 19. The NOD was sent by certified mail, return receipt requested to Plaintiff and  
7 signed for by a Plaintiff employee.

8 20. The NOD references that the obligation under "Covenants Conditions and  
9 Restrictions recorded on 10/24/1994" (albeit with an incorrect Instrument Number) "has been  
10 breached."

11 21. As the NOD and Assessment Lien were presumably trying to reference the 1994  
12 Amendment to the Master CC&Rs, Plaintiff had no notice, constructive or otherwise, that its  
13 security interest was at risk for non-payment of Association assessments.

14 22. On October 21, 2011, in conjunction with the Association's foreclosure, Red  
15 Rock obtained a Trustee's Sale Guarantee ("TSG") which provides an exception to title related  
16 to the 1989 Master CC&Rs which specifically provides:

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

23. The TSG also indicates that the Deed of Trust recorded and assigned to Plaintiff  
encumbers the Property subject to this dispute.

///

1           24. On December 21, 2011, Plaintiff received correspondence from Red Rock,  
2 Trustee for the Association, advising "[t]he Association's Lien for Delinquent Assessment is  
3 **Junior only to the Senior Lender/Mortgage Holder.**"

4           25. Plaintiff was the Senior Lender/Mortgage Holder in 2011 and thus, the letter sent  
5 by Red Rock specifically advised Plaintiff that its security interest was senior to the Assessment  
6 Lien recorded in 2011. The letter was therefore consistent with the representations in the  
7 Assessment Lien and the NOD that the Association foreclosure was pursuant to documents that  
8 did not provide for a super-priority lien position over Plaintiff's Deed of Trust.

9           26. On February 26, 2014, Red Rock recorded a Notice of Foreclosure Sale which  
10 again references the Assessment Lien recorded August 23, 2011 and the NOD recorded on  
11 October 14, 2011.

12           27. The Notice of Foreclosure Sale further states that the sale "will be made to satisfy  
13 the indebtedness secured by the Lien, with interest thereon, as provided in the Declaration of  
14 Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number , as  
15 Instrument Number 19940240000285 of the Official Records in the Office of the Recorder and  
16 any subsequent amendments or updates that may have been recorded."

17           28. There is no such Instrument Number in the Official Records in the Office of the  
18 Recorder but presumably, the Notice of Sale was attempting to reference the 1994 Amendment  
19 to the 1989 Master CC&Rs.

20           29. There are no documents recorded in the Office of the Recorded which amend or  
21 update the 1994 Amendment to the 1989 Master CC&Rs.

22 **C. The 2004 CC&Rs Are Recorded After the 1989 Master CC&Rs and Are a Separate  
23 Encumbrance on the Property.**

24           30. The Gibson Business Center Property Owners Association (the "Association")  
25 was not formed until December 16, 2003.

26           31. On March 18, 2004, Declarant, Gibson American Pacific, LLC, recorded a  
27 Declaration of Covenants, Conditions and Restrictions (2004 CC&Rs) for the Association as  
28 Book No. 20040318, Instrument Number 03472.

1           32. The 2004 CC&Rs do not amend the 1989 Master CC&R's nor the 1994 First  
2 Amendment but are rather a separate encumbrance recorded against the Property and recite that  
3 "each owner of a parcel of land within the Project shall have appurtenant to it a membership in  
4 the Gibson Business Center Property Owners Association Inc., a Nevada nonprofit corporation  
5 (the 'Association'), which will administer this Declaration."

6           33. Article II of the 2004 CC&Rs provide in the General Declaration that "Declarant  
7 hereby declares that all of the Project, including the Real Property, is hereby made subject to this  
8 Declaration and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or  
9 otherwise used, improved or transferred in whole or in part, subject to this Declaration and the  
10 Master Declaration."

11           34. The "Master Declaration" is a defined term in the 2004 CC&Rs and states that  
12 "Master Declaration" shall mean that certain Declaration of Protective Covenants, Conditions  
13 and Restrictions of record as recorded by American Pacific Development Company, a Nevada  
14 Corporation and applicable to the Real Property together with certain other adjoining real  
15 property, and the terms and conditions of which are incorporated herein by this reference."

16           35. Thus, the 2004 CC&Rs make it clear that there are two separate sets of CC&Rs  
17 which encumber the Property.

18           36. The 2004 CC&Rs also provide in the Recitals that "[t]he Real Property shall not  
19 be subject to the provisions of the Uniform Common Interest Ownership Act, codified in Chapter  
20 116 of the Nevada Revised Statutes ("NRS") except to the extent permitted under NRS  
21 278A.170."

22           37. NRS 278A.170 sets forth the procedure for enforcing payment of an assessment  
23 for the maintenance of common open space and is thus inapplicable to this matter.

24           38. In the same TSG referenced above received by Red Rock related to the  
25 foreclosure sale there is another exception to title which states:

26           8. COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
27 ASSESSMENTS, LIENS, CHARGES, TERMS AND PROVISIONS IN THE  
28 DOCUMENT RECORDED **MARCH 18, 2004** IN BOOK **20040318** AS  
INSTRUMENT NO. 03472 OF OFFICIAL RECORDS, WHICH PROVIDE  
THAT A VIOLATION THEREOF SHALL NOT DEFEAT OR RENDER

1 INVALID THE LIEN OF ANY FIRST MORTGAGE OR DEED OF TRUST  
2 MADE IN GOOD FAITH AND FOR VALUE, BUT DELETING ANY  
3 COVENANT, CONDITION OR RESTRICTION INDICATING A  
4 PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE,  
5 COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR  
6 NATIONAL ORIGIN, TO THE EXTENT SUCH COVENANTS, CONDITIONS  
7 OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(c), OF THE  
8 UNITED STATES CODES.

9 NOTE 1: DOCUMENTS DECLARING MODIFICATIONS THEREOF  
10 RECORDED MAY 14, 2004 IN BOOK 20040514 AS INSTRUMENT NO.  
11 05758 OF OFFICIAL RECORDS AND RECORDED MAY 26, 2004 IN BOOK  
12 20040526 AS INSTRUMENT NO. 04268 OF OFFICIAL RECORDS AND  
13 RECORDED JULY 14, 2004 IN BOOK 20040714 AS INSTRUMENT NO.  
14 04161 OF OFFICIAL RECORDS.

15 39. None of the documents related to the foreclosure sale which is the subject of the  
16 instant matter reference the 2004 CC&Rs.

17 40. There are no documents that have been disclosed in this Litigation or, upon  
18 information and belief exist, that would indicate to the Plaintiff or any other person that the  
19 Plaintiff's first priority Deed of Trust would be extinguished upon the foreclosure sale.

20 41. As noted above on February 26, 2014, a Notice of Sale was recorded by the  
21 Association.

22 42. The Notice of Sale was sent to Plaintiff's former address by way of certified mail,  
23 return receipt requested but was not delivered nor signed for by Plaintiff.

24 43. The Association foreclosure sale took place on March 21, 2014. 70 people  
25 attended the Association's foreclosure sale and 3 people bid on the Property.

26 44. As further evidence that the foreclosure sale was held pursuant to a breach of the  
27 1989 Master CC&R's or the 1994 Amendment to the 1989 Master CC&Rs, the 2004 CC&Rs  
28 also provide that "no foreclosure sale shall occur until the lapse of sixty (60) days following  
delivery of notice of such pending sale to any Mortgagee or such Owner and the failure of such  
Owner or Mortgagee to fully cure such violation."<sup>3</sup>

<sup>3</sup> Plaintiff can only assume the foreclosure sale was pursuant to the 1989 Master CC&Rs as there is no recorded document called "CC&Rs, recorded on 10/24/1994, in Book Number , as Instrument Number 19940240000285" which is the description throughout all of the recorded documents associated with the foreclosure sale. A fair guess

45. The Notice of Sale was not delivered to Plaintiff nor did 60 days elapse between the Notice of Sale and the actual sale of the Property thus providing further evidence that the foreclosure sale was not held pursuant to the 2004 CC&Rs. Only 23 days elapsed between the recording of the Notice of Sale and the actual sale date.

**D. Plaintiff Redeems the Property from the Clark County Treasurer.**

46. On June 3, 2013, the County Treasurer placed a lien on the Property for past due taxes recorded in Book No. 20131226 as Instrument No. 00891 in the Official Records of the Clark County Recorder's Office.

47. As a result of Borrower's default under the Loan Documents, a Notice of Default by Plaintiff was recorded March 2, 2015 in Book No. 20150302 as Instrument No. 0003758 in the Official Records of the Clark County Recorder's Office ("Celtic NOD").

48. On April 30, 2015, after recording the Celtic NOD, Plaintiff was notified for the first time that there was a claim by Vegas United that the foreclosure sale at issue in this case wiped out Plaintiff's first priority Deed of Trust pursuant to *SFR Investments Pool 1, LLC v. US Bank, N.A.* 334 P.3d 408 (2014).

49. On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed which deeded the Property to Clark County.

50. On October 13, 2015, the Clark County Treasurer sent a Notice of Intent to Deed to the Property c/o Plaintiff's Borrower, Gibson Road, LLC.

51. On October 29, 2015, Plaintiff paid the past due taxes to the Clark County Treasurer in the amount of \$18,281.67 to redeem the Property.

52. On November 5, 2015, the Clark County Treasurer recorded a Treasurer's Deed of Reconveyance reconveying title to the Property to Plaintiff's Borrower Gibson Road, LLC.

**E. The Foreclosure Sale Did Not Transfer Title to the Defendant Free and Clear of Plaintiff's First Priority Deed of Trust.**

53. As set forth above, the recorded documents related to the foreclosure sale, as well as correspondence sent to Plaintiff from Red Rock all evidence that the foreclosure sale at issue

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would be that the Notices are attempting to reference Instrument Number 199410240000285 which is the 1994

1 in this case, if anything, was held pursuant to the 1989 Master CC&Rs and did not extinguish  
2 Plaintiff's first priority Deed of Trust, although it cannot be fairly said that none of the recorded  
3 documents properly reference any existing CC&Rs at all.

4 54. It is clear that a sale took place on March 21, 2014 conducted by Red Rock.

5 55. A purported "Foreclosure Deed" was recorded April 17, 2014 in Book No.  
6 20140417 as Instrument No. 03282 in the Official Records of the Clark County Recorder's  
7 Office.

8 56. The Foreclosure Deed contained the same incorrect legal description of the  
9 Property as contained in both the NOD and the Notice of Foreclosure Sale.

10 57. On May 3, 2014, the Clark County Assessor sent correspondence to Vegas United  
11 advising of "difficulties" in processing the "Foreclosure Deed" and requesting corrective action  
12 by Vegas United by way of correcting the legal description of the Property to describe the  
13 particular part of the Property for which the foreclosure took place.

14 58. On April 4, 2016, over two years after the purported foreclosure sale and after  
15 Plaintiff had already redeemed the Property from the Clark County Treasurer, Defendant  
16 recorded an Amended Foreclosure Deed to correct the legal description of the Foreclosure Deed  
17 recorded in May of 2014.

#### 18 **BRIEF STATEMENT OF DEFENDANT'S ALLEGED FACTS**

19 1. On or about September 11, 1989, a Declaration was recorded as Instrument No.  
20 890911-00173 in the Official Records of the Clark County Recorder, thereby creating the Gibson  
21 Business Center Property Owners Association (*the "Association"*) and perfecting a lien in favor  
22 of the Association on all real property located within the premises it governed, including but not  
23 limited to the Property. The Declaration was re-recorded on March 18, 2014, as Instrument No.  
24 20040318-03472.

25 2. The lien having been recorded prior to any other liens is first in right and first in  
26 time as to all other interests recorded after the Declaration with the exception of liens for real  
27 estate taxes and other governmental assessments.

1           3.       On or about December 30, 2005, Silver State Bank recorded the Deed of Trust in  
2 the Official Records of the Clark County Recorder as Instrument No. 200512300002937 ("*First*  
3 *Deed of Trust*"). The First Deed of Trust was subsequently re-recorded on January 23, 2006, as  
4 Instrument No. 200601230000482.

5           4.       Celtic Bank subsequently became the holder and/or owner of the First Deed of  
6 Trust by way of an assignment recorded in the Official Records of the Clark County Recorder on  
7 or about November 9, 2009, as Instrument No. 200911090001572.

8           5.       The Assignment of DOT identified an address for Celtic Bank Corp. of 340 East  
9 400 South, Salt Lake City, Utah 84111. Celtic Bank did not subsequently record any document  
10 against the Property providing notice of any other address.

11           6.       By virtue of its ownership of the Property, Former Owner was a member of the  
12 Association and accordingly was obligated to pay Association assessments pursuant to the terms  
13 of the CC&Rs.

14           7.       At some point in time during its ownership of the Property, Former Owner failed  
15 to pay the Association assessments related to the Property.

16           8.       As a result of the failure of Former Owner to pay the Association assessments,  
17 Association recorded one or more Notices of Delinquent Assessment Lien ("*Association Lien*")  
18 with the Office of the Recorder of Clark County, Nevada.

19           9.       Thereafter, Association recorded a Notice of Default and Election to Sell with the  
20 Office of the Recorder of Clark County, Nevada.

21           10.       After the expiration of 90 days from the recording and mailing of the Notice of  
22 Default, Association caused a Notice of Trustee's Sale to be recorded with the Office of the  
23 Recorder of Clark County, Nevada.

24           11.       On or about March 21, 2014, Association caused a foreclosure sale ("*Association*  
25 *Foreclosure Sale*") to be conducted pursuant to the powers conferred by the Nevada Revised  
26 Statutes 116.3116, 116.31162, 116.31163 and/or 116.31164; the CC&Rs; the Notice of  
27 Delinquent Assessment Lien; and the Notice of Default and Election to Sell.

28       ///

12. Vegas United purchased the Property by successfully bidding at the Association Foreclosure Sale, paying valuable consideration in the amount of Thirty Thousand Dollars (\$30,000.00).

13. On or about April 17, 2014, a Foreclosure Deed was recorded in the Official Records of the Clark County Recorder as Instrument No. 20140417-0003282, vesting title to the Property in the name of Vegas United.

14. The Association Foreclosure Sale complied with all requirements of law, including but not limited to, the recording and mailing of copies of the Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

15. The Association incurred charges within the nine (9) months immediately preceding the initiation of the Association foreclosure action that constituted super priority amounts.

16. The foreclosure of the HOA Lien served to extinguish all subordinate liens in the Property, including the Deed of Trust, pursuant to Nevada law as interpreted by the Nevada Supreme Court in the matter of SFR Investments.

17. Former Owner's ownership interest in the Property was extinguished by the foreclosure of the Association Lien.

18. Celtic Bank's security interest in the Property, if any, was extinguished by the foreclosure of the Association Lien and the First Deed of Trust was rendered null, void and unenforceable.

19. By virtue of its purchase of the Property at the Association Foreclosure Sale, Vegas United became the sole owner of all right, title and interest in the Property free and clear of any encumbrances of the Celtic Bank and/or the Former Owner.

## II.

### CLAIMS FOR RELIEF AND AFFIRMATIVE DEFENSES

#### A. Claims for Relief on Plaintiff's Complaint:

1. Judicial Foreclosure of Deed of Trust.

**B. Claims for Relief on Defendant's Counterclaim:**

1. Quiet Title/Declaratory Relief; and
2. Slander of Title.

**C. Defendant's Defenses to Plaintiff's Complaint:**

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

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

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

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

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

6. The damages which are alleged to have been incurred by the Plaintiff, if any, are the direct result, in whole or in part, of acts or omissions of the Plaintiff and/or its authorized agents and representatives, and this answering party is not responsible for any such damages.

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

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

9. Defendant is a bona fide purchaser for value.

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

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

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

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

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

12 **D. Plaintiff's Defenses to Defendant's Counterclaim:**

13           1. Counter-Claimant fails to state a claim upon which relief may be granted.

14           2. Plaintiff has been required to obtain the services of an attorney to defend this  
15 action and a reasonable sum should be awarded Celtic Bank as and for attorney fees and costs of  
16 suit incurred herein.

17           3. Counter-Claimant's Counterclaim on file herein is barred in whole or in part, by  
18 the doctrine of unclean hands.

19           4. Counter-Claimant's Counterclaim is barred by the doctrine of estoppel.

20           5. Counter-Claimant's Counterclaim is barred by the doctrine of waiver.

21           6. Counter-Claimant's Counterclaim is barred by the doctrine of laches.

22           7. The damages, if any, which Counter-Claimant has allegedly suffered are caused  
23 in whole or in part by the acts or omissions of the Counter-Claimant or its agents and  
24 representatives.

25           8. Plaintiff avers that Counter-Claimant's injuries and damages, if any, were  
26 contributed to and caused by Counter-Claimant's own acts and negligence, which negligence  
27 was greater than Plaintiff's negligence, if any.

1           9.     Any damages or injuries sustained by Counter-Claimant came as a result of an  
2 intervening cause over Celtic bank had no control.

3           10.    Counter-Claimant has failed to mitigate its damages.

4           11.    To the extent the HOA's foreclosure sale was valid, Counter-Claimant took title  
5 of the Property subject to Plaintiff's first priority Deed of Trust, thereby preventing any  
6 extinguishment of the Plaintiff's interest in the Property.

7           12.    Counter-Claimant voluntarily knew and understood the risks and thereby assumed  
8 such risks.

9           13.    The HOA foreclosure sale by which Counter-Claimant took its alleged interest  
10 was commercially unreasonable if it extinguished Plaintiff's interest in the Property.

11           14.    Granting Counter-Claimant's demand in the Counterclaim would result in  
12 Counter-Claimant becoming unjustly enriched.

13           15.    NRS 116 is unconstitutional, facially and as applied, under the constitution of  
14 Nevada and/or the United States of America.

15           16.    Counter-Claimant's Counterclaim is barred by the statute of limitations.

16           17.    The HOA's sale did not comply with the provisions of NRS 116.31162-NRS  
17 116.31165 or NRS 107.090 and is therefore void and without effect.

18           18.    A senior deed of trust beneficiary cannot be deprived of its property interest in  
19 violation of the Due Process Clause of the constitution of Nevada and/or the United States of  
20 America.

21           19.    The "Foreclosure Deed" recorded on March 17, 2014 did not transfer title of the  
22 Property to Counter-Claimant.

23           20.    Counter-Claimant is not a bona fide purchaser.

24           21.    The Voluntary Payment Doctrine does not apply in this action.

25           22.    A justiciable controversy does not exist between Counter-Claimant and this  
26 answering Plaintiff.

27           23.    Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may  
28 not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry

1 from the filing of Counter-Claimant's Counterclaim. In the event further investigation or  
2 discovery in this case reveals the applicability of any additional affirmative defenses, including  
3 but not limited to those affirmative defenses enumerated to NRCP 8(c), Counter-Claimant  
4 reserves the right to specifically assert any such defenses. The defenses contained in NRCP 8(c)  
5 are incorporated herein by reference for the specific purpose of not waiving any such defenses.

6 **III.**

7 **CLAIMS OR DEFENSES TO BE ABANDONED**

8 Plaintiff and Defendant are not abandoning any claims at this time.

9 **IV.**

10 **STIPULATED EXHIBITS**

- 11 1. Declaration of Protective Covenants, Conditions and Restriction Gibson Business  
12 Park, Phase One, Clark County Covenant, Conditions and Restrictions recorded 09/11/89  
13 (CB0000386-CB000434);
- 14 2. First Amendment to Declaration of Protective Covenants, Conditions and Restriction  
15 Gibson Business Park, Phase One, Clark County recorded 10/24/94 (CB000435-CB000439);
- 16 3. Covenant Condition and Restrictions recorded 03/18/04 (CB000355-CB000385);
- 17 4. Promissory Note dated 12/09/05 and Allonge (CB0000001 – CB000005);
- 18 5. Re-Recorded Deed of Trust recorded 01/23/06 (CB000018- CB000056);
- 19 6. Assignment of Rents Recorded 01/23/06 (CB000057- CB000081);
- 20 7. Assignment of Deed of Trust recorded 11/09/09 (CB000082- CB000083);
- 21 8. Assignment of Rents Recorded 11/09/09 (CB000084 – CB000085);
- 22 9. Lien for Delinquent Assessments recorded 08/23/11 (REDROCK0047);
- 23 10. Notice of Default and Election to Sell recorded 10/14/11 (REDROCK0060;  
24 REDROCK0054; and REDROCK0346);
- 25 11. First American Title Trustee's Sale Guarantee dated 10/21/11 (GBC000382-  
26 GBC000394);
- 27 12. Red Rock Financial letter to Celtic Bank and other entities dated 12/ 21/11  
28 (REDROCK0312, 0311, 0313-0317));

13. Email from Ashley Panon/Red Rock to Sjones@marwestre.com dated 8/12/13 (CB000440-CB000441);
14. Tax Trustee Certificate recorded 12/26/13 (REDROCK0189);
15. Notice of Sale recorded 02/26/14 (REDROCK0075-REDROCK0081, REDROCK0071);
16. Red Rock Emails dated 03/21/14 re: sale (REDROCK0117, REDROCK0116);
17. Foreclosure Deed recorded 4/17/14 (001-003);
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 Foreclousre 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);
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);

- 1 50. Shapiro, Esq. Letter dated 08/01/14 (CB000345);
- 2 51. Shapiro Email dated 08/01/14 (CB000351- CB000352);
- 3 52. Gibson Business Center Property Owner Association pursuant to Subpoena Duces
- 4 Tecum dated 03/23/17 (the "HOA," and/or "Gibson HOA") Certificates of Mailing (GBC
- 5 000001- GBC000035);
- 6 53. Letter from J. Shapiro, Esq. to Red Rock Financial Services in HOA files with all
- 7 policies and proofs of service (GBC000036- GBC000113);
- 8 54. Affidavit of Mailing for Notice of Foreclosure Sale with related documents in
- 9 HOA files (GBC 000158- GBC000176);
- 10 55. HOA Notice of Sale with Pre Audit Checklist (GBC000250);
- 11 56. Red Rock Financial Services Homeowners Progress Report (GBC000251-
- 12 GBC000252);
- 13 57. Certified Mail Celtic Bank Received dated 10/24/11 (GBC000345- GBC000362);
- 14 58. First American Trustee's Sale Guarantee – HOA Assessment Lien (GBC000382 –
- 15 GBC000395);
- 16 59. Mailing and NOD (GBC000396- GBC000409).
- 17
- 18
- 19

20 **V.**

21 **LIST OF WITNESSES**

22 **A. Plaintiff's List of Witnesses:**

- 23 1. Brian Zern
- 24 Celtic Bank Corporation
- 25 c/o Allyson R. Noto, Esq.
- 26 Kelly L. Schmitt, Esq.
- 27 SYLVESTER & POLEDNAK, LTD.
- 28 1731 Village Center Circle
- Las Vegas, NV 89134

2. Charles Schmidt  
Vegas United Investment Series 105, Inc.  
c/o Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
ROGER P. CROTEAU & ASSOCIATES  
9120 W. Post Road, Suite 100  
Las Vegas, Nevada 89148

3. Julie Skinner  
First American Title Insurance Company  
National Commercial Services  
2500 Paseo Verde Parkway, Suite 120  
Henderson, NV 89074  
(702) 731-4131

**B. Defendant's List of Witnesses:**

1. Charles Schmidt  
Vegas United Investment Series 105, Inc.  
c/o Roger P. Croteau, Esq.  
Timothy E. Rhoda, Esq.  
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3. Karen Klagues  
Person Most Knowledgeable/Board President  
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2507 Bonniewood Court  
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4. Stephanie Jordan  
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Gibson Road Property Owners Association  
C/O Marwest Commercial Real Estate Services, LLC, Registered Agent  
8861 West Sahara, Suite 260  
Las Vegas, Nevada 89117  
(702) 215-8148

VI.

ANTICIPATED ISSUES OF LAW

**A. Plaintiff's Anticipated Issues of Law:**

1. Plaintiff's right to enforce its first priority Deed of Trust and judicially foreclose on the Property;
2. Alternatively, whether the Association sale was conducted pursuant to NRS 116;
3. Whether inadequate Foreclosure Notices require the Association sale be set aside;
4. Whether equity demands that Quiet Title in favor of Defendant be denied;
5. Whether Defendant is a Bona Fide Purchaser;
6. Whether Defendant can assert a claim for Slander of Title;
7. Whether Defendant is equitably estopped from owning the Property free and clear of Plaintiff's first priority Deed of Trust;
8. Whether the treasurer's reconveyance transferred title of the Property free and clear of any encumbrances;
9. Whether the Association sale was conducted in violation of the CC&Rs;
10. Whether the Association sale was commercially reasonable;
11. Whether the Voluntary Payment Doctrine applies; and
12. Whether Defendant has been unjustly enriched.

**B. Defendant's Anticipated Issues of Law:**

1. Whether the Deed of Trust complied with NRS 111.310 et seq.
2. Whether the security interest evidenced by the Deed of Trust ever attached to the subject property.
3. Whether the Deed of Trust was extinguished as a matter of law as a result of the Association Sale.
4. Whether the Association sale complied or substantially complied with NRS 116.
5. Whether Defendant is a bona fide purchaser for value.
6. Whether equity demands that Celtic Bank be barred from recovery based upon its failure to take action to protect its alleged security interest.

VII.

**EVIDENTIARY ISSUES**

The Parties have stipulated that all exhibits are to be admitted for all purposes except for any objections pursuant to NRS 48.025 and NRS 48.035. The Parties have further stipulated that neither the originals nor certified copies of any exhibits are required.

VIII.

**DEPOSITION DESIGNATION/OBJECTIONS**

None at this time.

IX.

**AGREEMENTS AS TO LIMITATION OR EXCLUSION OF EVIDENCE**

Defendant is limited to relying upon any witnesses and exhibits listed in Plaintiff's Pre-Trial Disclosures.

X.

**ADDITIONAL MATTERS FOR THE COURT TO CONSIDER**

None at this time.

**XI.**

**ESTIMATED TIME FOR TRIAL**

1-2 days.

DATED this 4<sup>th</sup> day of August, 2017.

**SYLVESTER & POLEDNAK, LTD.**

**ROGER P. CROTEAU & ASSOCIATES**

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