

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

**JOINT APPENDIX VOLUME IV**

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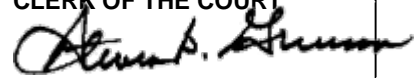
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1 **MEMO**

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

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

26 Defendants.

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

**CELTIC BANK CORPORATION'S  
E.D.C.R. 7.27 CIVIL TRIAL  
MEMORANDUM**

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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.

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**CELTIC BANK CORPORATION'S  
E.D.C.R. 7.27 CIVIL TRIAL MEMORANDUM**

COMES NOW, Plaintiff CELTIC BANK CORPORATION ("Plaintiff"), by and through its attorneys, the law firm of Sylvester & Polednak, Ltd., hereby submit its Civil Trial Memorandum Pursuant to Eighth Judicial District Court Rule 7.27.

**I. STATEMENT OF UNDISPUTED FACTS**

**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

1 agent for the Gibson Business Center Property Owners Association recorded a Lien for  
2 Delinquent Assessments ("Assessment Lien") which listed the owner of the Property as "Trustee  
3 Clark County Treasurer, c/o Gibson Road, LLC."

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

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

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

14 10. There is a document recorded as First Amendment to Declaration of Protective  
15 Covenants, Conditions and Restrictions ("First Amendment") with an Instrument Number of  
16 199410240000285 (which is one number different than the Instrument Number referenced in the  
17 Association Lien).

18 11. The First Amendment amends that certain document entitled Declaration of  
19 Protective Covenants, Conditions and Restrictions ("1989 Master CC&Rs") which were  
20 recorded by Declarant AmPac Development Company in 1989 as Instrument Number  
21 198909110000173.

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

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

27 8.09 Liens to Secure Assessments. All Assessments, including interest and  
28 other amounts due with respect to unpaid assessments, shall constitute, and shall  
be secured by, a separately valid and existing lien on the portion of the Premises



1 to which they relate, and upon all Improvements at any time erected or  
2 constructed thereon. The provisions of Nev. Rev. Stat. Section 278A.170 are  
3 incorporated herein by this reference.

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

5 11.03 Protection of Encumbrances

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

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

18 16. The First Amendment recorded in 1994 also has no reference to NRS 116. Its  
19 stated purpose was to remove some of the property originally encumbered by the Declarant of  
20 the 1989 Master CC&Rs.

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

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

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

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

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

24 22. On October 21, 2011, in conjunction with the Association's foreclosure, Red

1 Rock obtained a Trustee's Sale Guarantee ("TSG") which provides an exception to title related  
2 to the 1989 Master CC&Rs which specifically provides:

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

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

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

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

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

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

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

4           29.     There are no documents recorded in the Office of the Recorder which amend or  
5 update the 1994 Amendment to the 1989 Master CC&Rs.

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

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

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

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

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

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

28          35.     Thus, the 2004 CC&Rs make it clear that there are two separate sets of CC&Rs

1 which encumber the Property.

2 36. The 2004 CC&Rs also provide in the Recitals that "[t]he Real Property shall not  
3 be subject to the provisions of the Uniform Common Interest Ownership Act, codified in Chapter  
4 116 of the Nevada Revised Statutes ("NRS") except to the extent permitted under NRS  
5 278A.170."

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

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

10 8. COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
11 ASSESSMENTS, LIENS, CHARGES, TERMS AND PROVISIONS IN THE  
12 DOCUMENT RECORDED **MARCH 18, 2004** IN BOOK **20040318** AS  
13 INSTRUMENT NO. 03472 OF OFFICIAL RECORDS, WHICH PROVIDE  
14 THAT A VIOLATION THEREOF SHALL NOT DEFEAT OR RENDER  
15 INVALID THE LIEN OF ANY FIRST MORTGAGE OR DEED OF TRUST  
16 MADE IN GOOD FAITH AND FOR VALUE, BUT DELETING ANY  
17 COVENANT, CONDITION OR RESTRICTION INDICATING A  
PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE,  
COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR  
NATIONAL ORIGIN, TO THE EXTENT SUCH COVENANTS, CONDITIONS  
OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(c), OF THE  
UNITED STATES CODES.

18 NOTE 1: DOCUMENTS DECLARING MODIFICATIONS THEREOF  
19 RECORDED **MAY 14, 2004** IN BOOK **20040514** AS INSTRUMENT NO.  
20 **05758** OF OFFICIAL RECORDS AND RECORDED **MAY 26, 2004** IN BOOK  
21 **20040526** AS INSTRUMENT NO. **04268** OF OFFICIAL RECORDS AND  
RECORDED **JULY 14, 2004** IN BOOK **20040714** AS INSTRUMENT NO.  
**04161** OF OFFICIAL RECORDS.

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

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

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

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

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

5           44.     As further evidence that the foreclosure sale was held pursuant to a breach of the  
6 1989 Master CC&Rs or the 1994 Amendment to the 1989 Master CC&Rs, the 2004 CC&Rs also  
7 provide that "no foreclosure sale shall occur until the lapse of sixty (60) days following delivery  
8 of notice of such pending sale to any Mortgagee or such Owner and the failure of such Owner or  
9 Mortgagee to fully cure such violation."<sup>1</sup>

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

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

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

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

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

25          49.     On June 11, 2015, the Clark County Treasurer recorded a Tax Trustee Deed

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiff can only assume the foreclosure sale was pursuant to the 1989 Master CC&Rs as there is no recorded  
28 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  
would be that the Notices are attempting to reference Instrument Number 199410240000285 which is the 1994

1 which deeded the Property to Clark County.

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

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

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

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

10 53. As set forth above, the recorded documents related to the foreclosure sale, as well  
11 as correspondence sent to Plaintiff from Red Rock all evidence that the foreclosure sale at issue  
12 in this case, if anything, was held pursuant to the 1989 Master CC&Rs and did not extinguish  
13 Plaintiff's first priority Deed of Trust, although it cannot be fairly said that none of the recorded  
14 documents properly reference any existing CC&Rs at all.

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

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

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

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

25 58. On April 4, 2016, over two years after the purported foreclosure sale and after  
26 Plaintiff had already redeemed the Property from the Clark County Treasurer, Defendant  
27 recorded an Amended Foreclosure Deed to correct the legal description of the Foreclosure Deed

1 recorded in May of 2014.

2 **II. FACTS TO BE ESTABLISHED AT TRIAL**

3 59. It is anticipated that Mr. Charles Schmidt, as Person Most Knowledgeable for  
4 Vegas United will testify consistent with his deposition testimony related to his knowledge of the  
5 recorded documents in this matter.

6 60. Mr. Schmidt testified that he is the sole stockholder of Vegas United, which is a  
7 real estate holding company and has invested in over a dozen association foreclosure properties.

8 61. Mr. Schmidt testified that he learned about the foreclosure sale at issue in this  
9 case from reviewing the notice in Nevada Legal News.

10 62. The notice in Nevada Legal News provided that the sale was to satisfy "the  
11 indebtedness secured by said Lien, with interest thereon as provided in the Declaration of  
12 Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number , as  
13 Instrument Number 19940240000285 of the Official Records in the Office of the Recorder and  
14 any subsequent amendments or updates that may have been recorded."

15 63. There is no Declaration of Covenants, Conditions and Restrictions, recorded on  
16 10/24/1994, in Book Number , as Instrument Number 19940240000285 recorded in the Office of  
17 the Recorder.

18 64. Mr. Schmidt further testified that he looked at documents related to the Property  
19 at the Recorder's and Assessor's office by way of parcel search and the name of the owner.

20 65. The documents available to be reviewed at the Recorder's office related to this  
21 foreclosure sale are the Assessment Lien, the NOD, and the Notice of Foreclosure Sale, all of  
22 which reference Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book  
23 Number, as Instrument Number 19940240000285 of the Official Records in the Office of the  
24 Recorder, which is a document that does not exist.

25 66. Even if Mr. Schmidt testifies that he understood the referenced document to be  
26 the 1994 Amendment, he must concede that the 1994 Amendment amends the 1989 Master  
27 CC&Rs which do not incorporate NRS 116.

28 67. Mr. Schmidt cannot be a bona fide purchaser because he either had actual

1 knowledge, constructive notice of, or reasonable cause to know that there existed a defect in, or  
2 adverse rights, title or interest to the Property at issue in this case related to Plaintiff's first  
3 priority Deed of Trust.

4 68. Mr. Schmidt knew either 1) there was a defect in the notice provided because it  
5 referenced that the sale was to satisfy indebtedness pursuant to a document that does not exist; or  
6 2) Vegas United was purchasing the property to satisfy indebtedness pursuant to the 1994  
7 Amendment amending the 1989 Master CC&Rs which does not incorporate NRS 116 and  
8 specifically provides that "no violation or breach of, or failure to comply with, any provision of  
9 this Declaration, and no action to enforce any such provision, shall affect, defeat, render invalid  
10 or impair the lien of any mortgage, deed of trust or other lien on any Lot or part of the Premises  
11 taken in good faith and for value; nor shall any violation, breach, failure to comply or action to  
12 enforce affect, defeat, render invalid or impair the title or interest of the holder of any such  
13 mortgage, deed of trust or other lien or title of any interest acquired by any purchaser upon  
14 foreclosure of any such mortgage, deed of trust or other lien, or result in any liability, personal or  
15 otherwise, of any such holder or purchaser."

16 69. Julie Skinner, the Senior Underwriter for National Commercial Services at First  
17 American Title Company will testify at the time of trial. She has worked in the title industry for  
18 over 30 years.

19 70. After establishing her experience and her personal knowledge of the Property at  
20 issue in this case, Ms. Skinner will testify that FATCO, pursuant to her direction as title officer,  
21 prepared a Title Insurance Commitment dated November 9, 2015 for the Property.

22 71. Ms. Skinner's testimony will establish that Celtic Bank's Deed of Trust  
23 encumbers the Property at issue in this case.

24 72. Ms. Skinner will further testify that the APN numbers set forth on Celtic Bank's  
25 Deed of Trust were changed over time but that the change in APN number for this Property does  
26 not affect whether or not the Deed of Trust is properly recorded against the Property.

27 73. Ms. Skinner will also explain to the Court that based upon her 31 years of  
28 experience, the 1989 CC&Rs and the 2004 CC&Rs are two separate encumbrances.



1           74. Ms. Skinner will testify a modification to the 1989 CC&Rs was recorded on  
2 10/24/1994 in Book 941024 as Instrument 00285.

3           75. Ms. Skinner will testify based upon her review of the documents that the 2004  
4 CC&Rs do not amend or modify the 1989 CC&Rs.

5           76. Based upon her review of the documents, Ms. Skinner will testify there is no  
6 Declaration of Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book  
7 Number , as Instrument Number 19940240000285 recorded in the Office of the Recorder.

### 8                           III. LEGAL STANDARD

9           Rule 7.27. Filing of civil trial memoranda. Unless otherwise ordered by the  
10 court, an attorney may elect to submit to the court in any civil case, a trial  
11 memoranda of points and authorities at any time prior to the close of trial. The  
12 original trial memoranda of points and authorities must be filed and a copy of the  
13 memoranda must be served upon opposing counsel at the time of or before  
14 submission of the memoranda to the court.

### 15                           IV. LEGAL ARGUMENT

#### 16           1.     **THE CC&RS GOVERNING THE FORECLOSURE SALE DO NOT 17 INCORPORATE NRS 116 AND WERE RECORDED PRIOR TO ITS 18 ENACTMENT SO VEGAS UNITED PURCHASED THE PROPERTY 19 SUBJECT TO CELTIC BANK'S FIRST PRIORITY DEED OF TRUST.**

20           Plaintiff is entitled to judicially foreclose on its Deed of Trust because Vegas United took  
21 the Property subject to Plaintiff's first priority Deed of Trust.

22           Vegas United relies upon the holding in *SFR Investments Pool 1, LLC v. US Bank N.A.*,  
23 334 P.3d 408 (2014) and its progeny to claim that Plaintiff cannot judicially foreclose and to  
24 prevail on its claim for quiet title. However, neither *SFR* nor any of the recent Nevada Supreme  
25 Court decisions interpreting NRS 116 apply to the instant matter. In reaching its decision, the  
26 *SFR* Court held that although the CC&Rs at issue in that case contained a mortgage savings  
27 clause, that clause did not apply because the CC&Rs in that case were recorded after the  
28 Uniform Act was enacted and NRS 116.1104 provides that the "provisions [of Chapter 116] may  
not be varied by agreement, and rights conferred by it may not be waived...except as *expressly*  
provided in, NRS 116." (Emphasis added). *Id.* at 419.

          The *SFR* Court acknowledged that there may be a contractual right to subordinate the

1 superpriority lien to a first deed of trust when there is no statute implicated. *Id.* at 419 n.7 citing  
2 *Coral Lakes Community Ass'n v. Busey Bank, N.A.*, 30 So.3d 579 (Fla.Dist.Ct.App.2010). In  
3 *Coral Lakes*, the CC&Rs contained a subordination clause that was in place before the statute  
4 limiting the ability to subrogate association liens took effect. *Id.* at 581-84 & 582 n.3. The  
5 *Coral Lakes* court refused to enforce the statute because disturbing the prior contractual  
6 relationship "would implicate constitutional concerns about the impairment of vested contractual  
7 rights." *Id.* at 584.

8 Here, the foreclosure sale was conducted, as can best be reasonably ascertained from the  
9 deficient notices, pursuant to CC&Rs that do not incorporate NRS 116. Thus, unlike in *SFR*,  
10 there is no statute limiting the ability to subrogate the association liens.

11 As noted above, all of the notices provided in this case, including the Assessment Lien,  
12 the NOD, and the Notice of Foreclosure Sale reference CC&Rs that were allegedly recorded on  
13 10/24/1994 (despite referencing an Instrument Number that does not exist). The only document  
14 recorded against the Property at issue in this case on 10/24/1994 was the 1994 Amendment  
15 which by its own language amended the 1989 Master CC&Rs. The 1994 Amendment does not  
16 reference, incorporate, or otherwise mention NRS 116. The Court may take judicial notice that  
17 NRS 116 was not enacted until 1991 so the 1989 Master CC&Rs obviously do not incorporate  
18 NRS 116 and there is no statute limiting the ability to subrogate Plaintiff's Deed of Trust to the  
19 Assessment Lien.

20 The contractual language of the 1989 Master CC&Rs does not include any language that  
21 would give rise to "super-priority" status of any assessment lien. Section 8.09 provides:

22 8.09 Liens to Secure Assessments. All Assessments, including interest and other  
23 amounts due with respect to unpaid assessments, shall constitute, and shall be secured by,  
24 a separately valid and existing lien on the portion of the Premises to which they relate,  
and upon all Improvements at any time erected or constructed thereon. The provisions of  
Nev. Rev. Stat. Section 278A.170 are incorporated herein by this reference.

25 ///

26 ///

27 ///

1 In fact, the 1989 Master CC&Rs have a contractual Mortgage Savings Provision which  
2 states:

3 11.03 Protection of Encumbrances

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

10 Further, additional evidence in this case supports the fact that the foreclosure sale was  
11 conducted pursuant to CC&Rs which do not allow the Assessment Lien to prime Plaintiff's first  
12 priority Deed of Trust. Specifically, the evidence establishes that on October 21, 2011, in  
13 conjunction with the Association's foreclosure, Red Rock obtained a Trustee's Sale Guarantee  
14 which provides an exception to title related to the 1989 Master CC&Rs and provides:

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

23 In addition, on December 21, 2011, Plaintiff received correspondence from Red Rock  
24 Financial Services, Trustee for the Association, advising "[t]he Association's Lien for  
25 **Delinquent Assessment is Junior only to the Senior Lender/Mortgage Holder.**"

26 Further, Red Rock sent an e-mail to the Association on August 12, 2013 which attached a  
27 form advising the Board of Directors that there were two possible "outcomes" related to the  
28 foreclosure sale; 1) if a 3<sup>rd</sup> party buyer steps in but that would "usually only occur if there is

1 equity and/or no mortgage”; or 2) the property reverted back to the Association and “the first  
2 mortgage would remain on the property.”

3 Accordingly, all of the evidence in this case is consistent with the understanding of the  
4 Association and Red Rock that the foreclosure sale was conducted pursuant to the 1989 CC&Rs  
5 and any purchaser (whether a 3<sup>rd</sup> party buyer or the Association in the event of a credit bid)  
6 would take the property subject to Plaintiff’s first priority Deed of Trust. Under no set of  
7 circumstances pursuant to the CC&Rs referenced in the Assessment Lien, the NOD or the Notice  
8 of Foreclosure Sale could foreclosure of the Assessment Lien have extinguished Plaintiff’s first  
9 priority deed of trust. As a result, when Vegas United purchased the Property at the  
10 Association’s foreclosure sale, it took the Property subject to Plaintiffs Deed of Trust.

11 Notwithstanding the fact that NRS 116 does not apply in this case, the holding in *SFR*  
12 cannot be extended to apply in this instance as the plain language of the 1989 Master CC&Rs  
13 which are the controlling contract in this case, unequivocally state that the first deed of trust  
14 maintains a superior position to the Assessment Lien.

15 **2. IF, DESPITE THE ACTUAL NOTICE TO PLAINTIFF, THE COURT**  
16 **DETERMINES THE FORECLOSURE SALE WAS CONDUCTED**  
17 **PURSUANT TO NRS 116, EQUITY DEMANDS THAT QUIET TITLE IN**  
18 **FAVOR OF VEGAS UNITED BE DENIED AND THE SALE SET ASIDE.**

19 It has long been held that in the proper case, “the trial court may set aside a trustee’s sale  
20 upon the grounds of fraud or unfairness.” *Nevada Land and Mortgage Company v. Hidden*  
21 *Wells Ranch, Inc.*, 83 Nev. 501, 435 P.2d 198 (1968). As the Nevada Supreme Court recently  
22 explained in *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105 (2016), “[h]istory and  
23 basic rules of statutory interpretation confirm our view that courts retain the power to grant  
24 equitable relief from a defective foreclosure sale when appropriate despite NRS 116.31166.” *Id.*  
25 at 1111.

26 [4] The *Shadow Wood* Court explained:

27 In 1912, the Legislature adopted statutes to govern quiet title actions that largely  
28 stand today. *Compare* Revised Laws of Nev., ch. 62, §§ 5514-5526 (1912), *with*  
NRS 40.010-.130. And in *Clay v. Scheeline Banking & Trust Co.*, the court  
recognized that the statute authorizing a person to bring a quiet title claim against  
another who claims adversely, now numbered NRS 40.010, essentially codified

1 the court's existing equity jurisprudence, stating that "there is practically no  
2 difference in the nature of the action under our statute and as it exists independent  
3 of statute." 40 Nev. 9, 16-17, 159 P. 1081, 1082 (1916). So, a person who brings a  
4 quiet title action may, consistent with NRS Chapter 40 and our long-standing  
equitable jurisprudence, invoke the court's inherent equitable powers to resolve  
the competing claims to such title. *Id.*

5 In *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, Slip Copy (2017) 2017  
6 WL 1423938 the Court confirmed that although *Shadow Wood* recognized that NRS  
7 116.31166(2) "gives conclusive effect that [an Association] foreclosure sale properly complied  
8 with NRS 116.31162 through NRS 116.31164's requirements such as default, notice, and  
9 publication of the notice...that the conclusive recitals did not prevent the courts from setting  
10 aside foreclosure sales based on equity principles such as fraud, oppression, or unfairness."  
11 (citing *Shadow Wood* . at ----, 366 P.3d at 1111-12 ("[S]uch recitals do not defeat equitable  
12 relief in a proper case; rather, such recitals are conclusive, *in the absence of grounds for*  
13 *equitable relief.*" (internal quotation marks omitted)).

14 In Nevada, in order to satisfy the minimum requirements of due process, there must be  
15 compliance with the statutory requirements of notice. *Bogart v. Lathrop*, 90 Nev. 230, 523 P.2d  
16 838 (1974). An inadequate description of the property has rendered a sale void because adequate  
17 notice was not given. *Jackson v. Harris*, 64 Nev. 339, 183 P.2d 161 (1947)(See also;  
18 *Provenzano v. Clark County*, 73 Nev. 348, 319 P.2d 855 (1957).

19 If the Court determines that the Assessment Lien, the NOD, and the Notice of Sale  
20 establish that the foreclosure sale was conducted pursuant to CC&Rs that incorporate NRS 116,  
21 which is vigorously disputed by Plaintiff, the sale must be set aside based upon equity principles.  
22 It would be fundamentally unfair to allow Plaintiff's first priority Deed of Trust to be wiped out  
23 based upon the actual notices Plaintiff received. To wit:

24 1) Every notice provided to Plaintiff references "CC&Rs" that were recorded  
25 on 10/24/1994. There are no CC&Rs recorded against the Property on 10/24/1994;

26 2) Every notice provided to Plaintiff references an Instrument Number that  
27 does not exist in the Recorder's Office of Clark County;  
28

1                   3) Every notice provided to Plaintiff includes a property description that is  
2 incorrect and does not identify the specific parcel to be foreclosed upon;

3                   4) The Notice of Foreclosure Sale specifically provides that the sale will be  
4 made "to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the  
5 Declaration of Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book  
6 Number, as Instruments Number 19940240000285 of the Official Records in the Office of the  
7 Recorder and any subsequent amendments or updates that may have been recorded." No  
8 amendments or updates to any document recorded against the Property on 10/24/1994 exist.

9                   5) Red Rock, as the Association's agent, affirmatively represented to  
10 Plaintiff in its letter of December 21, 2011 that the Assessment Lien was junior to its first  
11 priority Deed of Trust thus lulling Plaintiff into believing it was not required to take any action to  
12 protect its security interest;

13                  6) Vegas United knew that the "Foreclosure Deed" it originally recorded  
14 was defective and did nothing about it for over two years thus allowing the Clark County  
15 Treasurer to continue to send delinquent tax notices to Plaintiff's Borrower;

16                  7) Vegas United did not redeem the property from the Clark County  
17 Treasurer even while claiming it was the owner of the Property, thus creating a situation wherein  
18 Plaintiff was again lulled into believing that its security interest was only threatened for its  
19 Borrower's non-payment of taxes;

20                  8) Plaintiff paid the taxes to redeem the Property based upon its  
21 understanding from the recorded documents, the letter from Red Rock, and the Clark County  
22 Treasurer's notices that it still had a valid security interest in the Property.

23                  As the Court in *Shadow Wood* proclaimed, "[w]hen sitting in equity, however, courts  
24 must consider the entirety of the circumstances that bear upon the equities." *Shadow Wood* at  
25 1115 (citing *In re Petition of Nelson*, 495 N.W.2d 200, 203 (Minn.1993) (considering whether  
26 the totality of the circumstances supported granting equitable relief to set aside a sale when the  
27 former owner had failed to act during the redemption period); see also *La Quinta Worldwide*  
28 *LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir.2014) (remanding for reconsideration

of a district court's decision granting a permanent injunction because the district court's analysis did not discuss a fact relevant to the weighing of the equities); *Murray v. Cadle Co.*, 257 S.W.3d 291, 301 (Tex.App.2008) (considering the totality of the circumstances to determine whether to uphold the lower court's equitable subrogation decision); *Savage v. Walker*, 185 Vt. 603, 969 A.2d 121, 125 (2009) (noting trial courts should consider the totality of the circumstances to determine if a constructive trust, an equitable remedy, was warranted). This includes considering the status and actions of all parties involved, including whether an innocent party may be harmed by granting the desired relief. *Smith v. United States*, 373 F.2d 419, 424 (4th Cir.1966) ("Equitable relief will not be granted to the possible detriment of innocent third parties."); see also *In re Vlasek*, 325 F.3d 955, 963 (7th Cir.2003) ("[I]t is an age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties."); *Riganti v. McElhinney*, 248 Cal.App.2d 116, 56 Cal.Rptr. 195, 199 (1967) ("[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.").

In the instant case, all of the circumstances set forth above support this Court setting aside the sale. Plaintiff is the only "innocent" party in this entire case. In addition to the actual notice received by Plaintiff from the Association's agent Red Rock that its security interest was not in jeopardy, Vegas United failed to act to redeem the Property from the Clark County Treasurer even while holding itself out as owner of the Property free and clear of Plaintiff's security interest. Accordingly, equity demands that the sale to Vegas United be set aside.

### 3. VEGAS UNITED IS NOT A BONA FIDE PURCHASER.

In order to be entitled to Quiet Title/Declaratory Relief, Vegas United must establish that it is a bona fide purchaser. The issue of bona fide purchaser status concerns a buyer's knowledge of competing interests.

The burden is on Vegas United to prove it is a bona fide purchaser. *Price v. Ward*, 26 Nev. 387 (1902) ("The burden is on the purchaser to show that he did not have notice of a third person's title") *Moore v. De Bernardi*, 47 Nev. 33 (1923) (burden is on purchaser to establish bona fide purchaser status). The Nevada Supreme Court cited to both *Moore* as well as *Bailey* in

1 *Shadow Wood*. In *Bailey* the burden of establishing bona fide purchaser status was directly at  
2 issue and the Nevada Supreme Court held:

3 “The authorities are practically unanimous in holding that, in a suit by one  
4 asserting prior equity, unless exceptional circumstances exist, the duty devolves  
5 upon the defendant, who seeks to establish a superior equity upon the basis that he  
6 is a bona fide purchaser, to both allege and prove all of the essential elements  
7 constituting him such bona fide purchaser, that is to say, a purchaser for a  
valuable consideration without notice of the prior agreement and the equity  
resulting therefrom.” *Bailey v. Butner*, 64 Nev. 1 (1947).

8 Once someone is put on inquiry notice of something as basic as whether or not the  
9 property was free and clear of a mortgage or whether or not they were going to be trespassed, in  
10 Nevada this shifts the burden of proof for bona fide purchaser status to the party asserting the  
11 status. *Berge v. Fredericks*, 95 Nev. 183, 591 P.2d 246 (1979). Legitimate questions of  
12 possession raise a presumption against bona fide purchaser status in favor of the party moving to  
13 set aside the transaction. *Brophy Mining Co. v. Brophy & Dale Gold & Silver Mining Co.*, 15  
14 Nev. 101 (1880).

15 NRS 111.180 sets forth when a purchaser of real property is considered to be a bona fide  
16 purchaser. Specifically, “[a]ny purchaser who purchases an estate or interest in any real property  
17 in good faith and for valuable consideration and who does not have actual knowledge,  
18 constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights,  
title or interest to, the real property is a bona fide purchaser.” (Emphasis added).

19 “A subsequent purchaser is bona fide under common-law principles if it takes the  
20 property “for a valuable consideration and without notice of the prior equity, and without notice  
21 of facts which upon diligent inquiry would be indicted and from which notice would be imputed  
22 to him, if he failed to make such inquiry.” *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d  
23 1105 (2016)(citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis  
24 omitted); also citing *Moore v. De Bernardi*, 47 Nev. 33, 54. 220 P. 544, 547 (1923) (“The  
25 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent  
26 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual  
27 or constructive.”).



1 In the instant matter, pursuant to NRS 111.180, Vegas United cannot be a bona fide  
2 purchaser because it had actual knowledge, constructive notice of, or reasonable cause to know  
3 that the obligation and breach for delinquent assessments claimed in the Assessment Lien, the  
4 NOD, the Notice of Sale and Nevada Legal News (all of which were publicly recorded  
5 documents) related to indebtedness secured by what was identified as "the Declaration of  
6 Covenants, Conditions and Restrictions, recorded on 10/24/1994, in Book Number , as  
7 Instrument Number 1994024000285 of the Official Records in the Office of the Recorder and  
8 any subsequent amendments or updates that may have been recorded."

9 Vegas United's President, Charles Schmidt, testified that he reviewed the "recorded  
10 documents" and found the foreclosure sale via Nevada Legal News. In addition to the recitation  
11 in the recorded documents Mr. Schmidt reviewed that the indebtedness was secured by CC&Rs  
12 recorded in 1994, the Instrument Number is incorrect, the legal description of the property is  
13 incorrect, and the Assessor's office told Mr. Schmidt a month after the sale that his Foreclosure  
14 Deed was defective. Thus, he could not have taken the property without notice of facts which  
15 upon diligent inquiry would lead him to understand that there was a defect in, or adverse rights,  
16 title or interest to, the real property because every single notice related to the foreclosure sale  
17 cited to either 1) a document that did not exist; or 2) a document that even if it had been properly  
18 identified did not incorporate the super-priority provisions of NRS 116.

19 NRS 111.325 also provides support that Vegas United is not a bona fide purchaser. The  
20 statute provides that "[e]very conveyance of real property within this State hereafter made, which  
21 shall not be recorded as provided in this chapter, shall be void as against any subsequent  
22 purchaser, in good faith and for a valuable consideration, of the same real property, or any  
23 portion thereof, where his or her own conveyance shall be first duly recorded."

24 In order to be entitled to the status of a bona fide purchaser without notice under NRS  
25 111.325, Plaintiff must show that legal title had been transferred back to its Borrower before  
26 Plaintiff had notice of the prior conveyance to Vegas United. *Berge v. Fredericks*, 95 Nev. at 188  
27 (citing *Moore v. De Bernardi*, 47 Nev. 55, 220 P.2d at 547 (1923). *Moresi v. Swift*, 15 Nev. 215,  
28 223 (1880); *Boskowitz v. Davis*, 12 Nev. 446, 466 (1877)). Plaintiff can meet that burden.

1 In addition, pursuant to NRS 111.325, Vegas United is also precluded from status of bona  
2 fide purchaser because title did not transfer to Vegas United prior to the Property being  
3 redeemed by Plaintiff and reconveyed to its Borrower. As set forth above, on December 26,  
4 2013, the County Treasurer placed a lien on the Property for past due taxes recorded in Book No.  
5 20131226 as Instrument No. 00891 in the Official Records of the Clark County Recorder's  
6 Office.

7 Vegas United purchased the Property on March 21, 2014 and recorded a "Foreclosure  
8 Deed" but received notice in May of 2014 that the "Foreclosure Deed" had an incorrect legal  
9 description and was required to be corrected. Title did not vest in Vegas United due to the  
10 incorrect legal description. Vegas United did nothing to attempt to correct the defective  
11 Foreclosure Deed until April of 2016.

12 As a result of Borrower's default under the Loan Documents, Plaintiff caused to be  
13 recorded the Celtic NOD on March 2, 2015.

14 On April 30, 2015, after recording the Celtic NOD, Plaintiff was notified for the first time  
15 by counsel for Vegas United that there was a claim by Vegas United that the foreclosure sale at  
16 issue in this case wiped out Plaintiff's first priority Deed of Trust pursuant to *SFR Investments*  
17 *Pool 1, LLC v. US Bank, N.A.*, 334 P.3d 408 (2014). However, even though Vegas United  
18 claimed to have foreclosed on the Property and taken title, it did not pay the taxes due and title  
19 remained in trust with the Clark County Treasurer for Plaintiff's Borrower. On June 11, 2015,  
20 after the foreclosure sale and after Vegas United was notified of its defective Foreclosure Deed,  
21 the Clark County Treasurer recorded a Tax Trustee Deed which deeded the Property to Clark  
22 County. Again, title had not vested in Vegas United when the Clark County Treasurer deeded  
23 the property to Clark County.

24 On October 13, 2015, the Clark County Treasurer sent a Notice of Intent to Deed to the  
25 Property c/o Plaintiff's Borrower, Gibson Road, LLC. On October 29, 2015, based upon its  
26 understanding that its first priority Deed of Trust remained on the Property, Plaintiff paid the past  
27 due taxes to the Clark County Treasurer in the amount of \$18,281.67 to redeem the Property.  
28

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

3 It was only thereafter that Vegas United corrected the legal description on its Foreclosure  
4 Deed and re-recorded it with the Clark County Recorder's Office, six months after the Property  
5 was reconveyed to Plaintiff's Borrower.

6 Thus, under either NRS 111.180 or NRS 111.325 Vegas United is not a bona fide  
7 purchaser and is not entitled to Quiet Title/Declaratory Relief that it purchased the Property free  
8 and clear of Plaintiff's first priority Deed of Trust.

9 **4. VEGAS UNITED CANNOT ASSERT A CLAIM FOR SLANDER OF**  
10 **TITLE BECAUSE IT IS NOT A BONA FIDE PURCHASER**

11 Under Nevada law, the elements for a claim of slander of title are "(1) false and  
12 malicious communications, (2) disparaging to one's title in land, (3) causing special  
13 damage." *Wilkinson v. Deutsche Bank Nat'l Trust Co.*, Case No. 2:12-CV-00253, 2012 WL  
14 4194509, at \*3 (D. Nev. Sept. 17, 2012) (citing *Higgins v. Higgins*, 103 Nev. 443, 445, 744 P.2d  
15 530 (1987)). To support its slander of title cause of action Vegas United claims that by virtue of  
16 its purchase of the Property at the Association sale: (1) it became the sole owner of all right, title  
17 and interest in the Property free and clear of any encumbrances; (2) that Plaintiff knew or should  
18 have known that its Deed of Trust was extinguished as a result of the Association sale; and (3)  
19 that the Celtic NOD has impugned its title causing damages.

20 Celtic's NOD can hardly be considered a "malicious communication" supporting a claim  
21 for slander of title. Recall on March 2, 2015, as a result of Borrower's default, Plaintiff caused  
22 to be recorded the Celtic NOD as allowed for under the Loan Documents. Despite the alleged  
23 Association sale almost a year before, title to the Property was held by the treasurer as trustee in  
24 the name of Plaintiff's Borrower.

25 It is undisputed Vegas United failed to perfect title post the Association sale allowing the  
26 Property to remain deeded to the treasurer prior to Plaintiff's redemption of the Property in  
27 October 2015, more than eight months after Celtic's NOD was recorded. Additionally, it is  
28 undisputed that despite learning that its alleged "Foreclosure Deed" hadn't properly recorded,

Vegas United waited over two years to take corrective action. At the time the Celtic NOD was recorded, Vegas United was not the owner of record for the Property. Vegas United's claim for slander of title is groundless.

**5. VEGAS UNITED IS EQUITABLY ESTOPPED FROM OWNING THE PROPERTY FREE AND CLEAR OF PLAINTIFF'S FIRST PRIORITY DEED OF TRUST.**

If despite the arguments above this Court determines: 1) the foreclosure sale was not conducted pursuant to the 1989 Master CC&Rs; 2) that the foreclosure sale was conducted pursuant to NRS 116 and the 2004 CC&R's; and 3) Vegas United is a bona fide purchaser, Vegas United is still equitably estopped from owning the Property free and clear of Plaintiff's security interest. The elements of estoppel are as follows:

"(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped."

*NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997) (quoting *Chequer, Inc. v. Painters & Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)). "Equitable estoppel functions to prevent the assertion of legal rights that inequity and good conscience should not be available due to a party's conduct." *In re Harrison Living Trust*, 112 P.3d 1058, 1061-1062 (Nev. 2005), quoting *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 853, 839 P.2d 606, 611 (1992). Assuming this Court has determined in agreement with Vegas United that the "true state of facts" are that the foreclosure sale was properly conducted pursuant to NRS 116, thereby extinguishing Plaintiff's security interest, based upon Vegas United's conduct post foreclosure it is equitably estopped from owning the Property free and clear of Plaintiff's security interest.

For equitable estoppel to apply, Vegas United must be apprised of the "true state of facts." Based upon the "true state of facts" Vegas United caused to be recorded the Foreclosure Deed, albeit a defective deed, purporting to hold itself out as owner of the Property after the foreclosure sale. Despite its alleged ownership from March 2014, the date of the purported

1 foreclosure sale, through April 2016, the date the purported Amended Deed was recorded on the  
2 Property, Plaintiff's Borrower remained owner of record.

3 During this time period, in contravention of its alleged ownership interest Vegas United  
4 allowed property taxes and waste disposal services to become delinquent. Vegas United also  
5 failed to record the amended deed with the correct legal description for over two years despite  
6 the county requesting corrective action be taken less than one month after the defective  
7 "Foreclosure Deed" was recorded.

8 Plaintiff, relying upon the plain and unambiguous language of the 1989 CC&Rs, the  
9 *defective* notices including the Assessment Lien, NOD, Notice of Sale, "Foreclosure Deed," the  
10 Nevada Legal News Publication, the Red Rock letter stating that the Assessment Lien is junior  
11 only to that of a senior lender, and the fact that the Property remained in the name of Plaintiff's  
12 borrower up until April 2016, was ignorant to the "true state of facts" as it may be determined by  
13 this Court. Being ignorant of the "true state of facts" in late October 2015, Plaintiff, to its  
14 detriment, paid delinquent taxes in the amount of \$18,281.67 to the County Treasurer to protect  
15 its interest in the Property and to prevent a tax sale of the Property. During this time Plaintiff also  
16 paid \$21,426.00 in forced placement insurance to protect the Property.

17 Despite "claiming" to be owner of the Property as a result of the foreclosure sale, Vegas  
18 United did not act as owner of the Property. In addition to its failure to perfect title despite  
19 notice from the county that the corrective action was required to be recorded, Vegas United did  
20 not redeem the Property from the Clark County Treasurer and allowed additional taxes and waste  
21 disposal services to become delinquent. Despite the sale occurring in March 2014, it was not  
22 until April 2016, one year after Plaintiff initiated nonjudicial foreclosure and six months after  
23 Plaintiff initiated the instant action for judicial foreclosure, that Vegas United recorded its  
24 Amended Deed. This Amended Deed however, was recorded after reconveyance of the Property  
25 free and clear of all encumbrances back to Plaintiff's Borrower.

26 Equity and good conscience prevent Vegas United from claiming that it "owns" the  
27 Property free and clear of Plaintiff's security interest. As such, Vegas United is equitably  
28 estopped from claiming that it owns the Property free and clear of Plaintiff's security interest.

1                   **6. TITLE TO THE PROPERTY WAS RECONVEYED TO CELTIC'S**  
2                   **BORROWER BY THE CLARK COUNTY TREASURER FREE AND**  
3                   **CLEAR OF ANY ENCUMBRANCES.**

4                   The Legislature has established a statutory scheme for the collection of property taxes  
5                   that, while amended from time to time, has endured since 1957. *Casazza v. A-*  
6                   *Allstate Abstract Co.*, 102 Nev. 340, 344, 721 P.2d 386, 389 (1986) (describing the statutory  
7                   framework NRS Chapter 361 establishes for collecting property taxes). If property taxes become  
8                   delinquent, NRS 361.570(1) provides that a tax certificate shall issue, "authoriz[ing] the county  
9                   treasurer, as trustee for the State and county, to hold [the] property described in the certificate for  
10                  the period of 2 years ... unless sooner redeemed." Assuming the 2 years pass with no redemption,  
11                  the next step is issuance of a tax deed of the property, again to the county treasurer "in trust for  
12                  the use and benefit of the State and county...." NRS 361.585(1). But even then, the Legislature  
13                  gives "owners and others holding interests in property conveyed to the county treasurer  
14                  following the two-year redemption period an additional opportunity to protect their  
15                  interests." *Casazza*, 102 Nev. at 344, 721 P.2d at 389 (citing NRS 361.585(3) and (4)).

16                  Until the county gives notice of sale or otherwise finally disposes of the property, "any  
17                  person specified in subsection 4 [of NRS 361.585] is entitled to have the property reconveyed  
18                  upon payment to the county treasurer" of the delinquent taxes, plus penalties, interest, and  
19                  costs. NRS 361.585(3). Subsection 4 of NRS 361.585 provides for reconveyance to one or more  
20                  of the [following] persons ..., as their interests may appear of record:

- 21                  (a) The owner.  
22                  (b) The beneficiary under a note and deed of trust.  
23                  (c) The mortgagee under a mortgage.  
24                  (d) The creditor under a judgment.

25                  .....  
26                  (f) The person holding a contract to purchase the property before its conveyance to the  
27                  county treasurer.

- 28                  .....  
                 (h) The successor in interest of any person specified in this subsection.

Reconveyance under NRS 361.585, as distinct from conveyance under 361.595, "is in the nature  
of a redemption, and divests the county of its title to the

1 property.” *Casazza*, 102 Nev. at 347, 721 P.2d at 391. It does not give the redeeming party “any  
2 interest greater than the interest he previously held.” *Id.* at 347, 721 P.2d at 390.

3 In the instant case, due to unpaid taxes, pursuant to NRS 361.570 the county tax receiver  
4 issued a certificate to the county treasurer authorizing the county treasurer to hold the Property  
5 for a two-year redemption period. NRS 361.570(1). During this two-year period, the owner of  
6 the property or his successor may redeem the property by paying delinquent taxes, plus penalties,  
7 interest and cost. NRS 361.570(3)(a) and (4). If the property is not redeemed, title to the  
8 property vests in the county immediately upon the expiration of the two-year redemption period.  
9 NRS 361.570(3)(b). Because the Property at issue was not redeemed during the two-year  
10 statutory period, a tax deed pursuant to NRS 361.590 was issued to the County Treasurer as  
11 trustee for the state and county. This deed was free of all encumbrances. NRS 361.590(5).

12 To protect its interest in the Property on October 29, 2015, Plaintiff paid \$18,281.67 to  
13 the Clark County Treasurer and the Property was reconveyed from the County as trustee to  
14 Plaintiff’s Borrower on November 5, 2015. Thereafter, Vegas United filed its “Amended Deed,”  
15 despite title to the Property being reconveyed to Plaintiff’s Borrower free and clear of all  
16 encumbrances.

17 To the extent that Plaintiff made payments for taxes and insurance on the Property while  
18 Vegas United was “owner,” Vegas United has been unjustly enriched. It is undisputed based  
19 upon the tax certificate issued by the treasurer, tax trustee deed, and emails between Plaintiff and  
20 the treasurer’s office that the Property was to be sold at the Spring 2016 tax sale. Notably as of  
21 October 2015, the owner of record for the Property remained in the name of Plaintiff’s Borrower.  
22 It is undisputed that in an effort to protect its security interest, Plaintiff paid the delinquent taxes  
23 in their entirety and the Property was reconveyed back to Plaintiff’s Borrower on November 5,  
24 2015 free and clear of the Association’s lien because Vegas United paid the lien when it took the  
25 Property subject to Plaintiff’s first Deed of Trust.

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1           7.     **IF THE COURT DETERMINES THAT THE FORECLOSURE SALE WAS**  
2               **PROPERLY CONDUCTED PURSUANT TO NRS 116 AND THE 2004**  
3               **CC&RS, THE SALE WAS CONDUCTED IN VIOLATION OF THE**  
4               **CC&RS.**

5           Even if this Court determines that the foreclosure sale was conducted pursuant to NRS  
6           116 and the 2004 CC&Rs, the sale was conducted in violation of the clear and unambiguous  
7           contractual provisions requiring the lapse of sixty (60) days between *delivery* of the notice of  
8           sale and the actual sale. The 2004 CC&Rs Section 10.2 Enforcement of Liens provides in  
9           relevant part:

10                   “Notwithstanding anything contained herein to the contrary, no such  
11                   foreclosure sale shall occur until the lapse of sixty (60) days following  
12                   *delivery* of notice of such pending sale to any Mortgagee of such Owner  
13                   and the failure of such Owner or Mortgagee to fully cure such violation.”  
14                   (emphasis added)

15           “The rules of construction governing the interpretation of contracts apply to the interpretation of  
16           restrictive covenants for real property.” *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66  
17           (2004). In interpreting a contract, “a specific provision will qualify the meaning of a general  
18           provision.” *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P. 3d 507, 510 (2003). Nevada law makes  
19           it clear that rules governing CC&Rs are the same as rules governing other contracts. *Tompkins v.*  
20           *Buttrum Construction Company of Nevada*, 99 Nev. 142, 659 P.2d 865 (1983).

21           In *Tompkins*, the Nevada Supreme Court determined that “[t]he rules governing the  
22           construction of covenants imposing restrictions on the use of real property are the same as those  
23           applicable to any contract, i.e., the words must be given their plain, ordinary and popular  
24           meaning.” *citing South Shore Homes Ass’n v. Holland Holiday’s*, 219 Kan. 744, 549 P.2d 1035,  
25           1042 (Kan.1976); *Collins v. Goetsch*, 59 Haw. 481, 583 P.2d 353, 355 (Hawaii 1978). Here, the  
26           CC&Rs require the lapse of sixty (60) days following *delivery* of the Notice of Sale before a  
27           foreclosure sale shall occur. Black’s Law Dictionary defines delivery as:

28                   n 1. [t]he formal act of transferring or conveying something, such as a deed; the  
                    giving or yielding possession or control of something to another. 2. The thing so  
                    transferred or conveyed *vb*.

          The Notice of Sale was recorded by the Association on February 26, 2014. Plaintiff did not



1 receive the Notice of Sale as evidenced by no returned certified mail receipt. As the Notice of  
2 Sale was not delivered to Plaintiff, the foreclosure sale was conducted in violation Section 10.2  
3 of the CC&Rs.

4 Assuming for argument's sake, that this Court considers the Notice of Sale "delivered" as  
5 of the recordation date on February 26, 2014, the March 21, 2014 sale was still conducted in  
6 violation of the CC&Rs sixty (60) day requirement. Only 23 days elapsed between the notice  
7 and sale. Thus the Association's foreclosure sale was conducted contrary to, and in violation of,  
8 the CC&Rs. The CC&Rs are clear and must be interpreted by their plain meaning.

9 **8. THE FORECLOSURE SALE NOTICES COUPLED WITH THE**  
10 **LANGUAGE OF THE 1989 MASTER CC&RS CHILLED THE MARKET**  
11 **SO THE SALE WAS COMMERCIALY UNREASONABLE AND**  
12 **UNFAIR TO CELTIC BANK.**

13 In this case, the sale may be set aside also on the basis that the sale was not commercially  
14 reasonable. The sales price for the Property, utilizing Vegas United's own Declaration of Value  
15 was only 8% of the value of the Property. Vegas United paid \$30,000 for a Property it claims at  
16 the time of the foreclosure sale was worth 358,734.00. Plaintiff understands that the law in  
17 Nevada is clear; and *Shadow Wood* reiterated the precedent that "inadequacy of price, however  
18 gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must  
19 be in addition proof of some element of fraud, unfairness, or oppression as accounts for and  
20 brings about the inadequacy of price." *Shadow Wood*, 366 P.3d at 1110 (citing *Golden v.*  
21 *Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963) (quoting *Oller v. Sonoma Cty. Land Title Co.*, 290  
22 P.2d 880, 882 (Cal. Ct. App. 1955)); see also *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d. 528, 530  
23 (1982). (foreclosure of an HOA lien); and *Brunzell v. Woodbury*, 85 Nev. 29, 449 P.2d 158  
24 (1969).

25 The United Supreme Court has held that "a court of equity owes a duty to the creditors  
26 seeking its assistance in subjection property to the payment of debts, to see that the property  
27 brings something like its true value in order that, to the extent of that value, the debts secured  
28 upon the property may be paid; that it owes them something more than to merely take care that  
the forms of law are complied with, and that the purchaser is guilty of no fraudulent act...

1 *Ballentyne v. Smith*, 205 U.S. 285 (1907) The Court in *Ballentyne* went on to say, “[b]ut if there  
2 be great adequacy [in price], slight circumstances of unfairness in the conduct of the party  
3 benefited by the sale will be sufficient to justify setting it aside. (citing *Graffam v. Burgess*, 117  
4 U.S. 180, 191, 192, 29 L. ed. 839, 842, 843, 6 Sup. Ct. Rep. 686.) The Court held that “[i]t is  
5 difficult to formulate any rule more definite than this, and each case stand upon its own peculiar  
6 facts.” *Id.*

7 It has been held by the District Court of Nevada that in order to find that a sale was not  
8 commercially reasonable, the purported low price at foreclosure must be caused by some fraud,  
9 oppression, or unfairness; and must be attributable to the creditor or the buyer at auction.  
10 *Deutsche Bank National Trust Company v. TBR I, LLC*, Slip Copy 2016 WL 3965195 (2016)

11 In *TBR I*, the Court said that “generally ... a court is warranted in invalidating a sale  
12 where the price is less than 20 percent of fair market value, and, absent other foreclosure defects,  
13 is usually not warranted in invalidating a sale that yields in excess of that amount.” *Id.* Plaintiff  
14 has, therefore, sufficiently demonstrated that the price of the property was “grossly inadequate”  
15 as defined by the Restatement of Property Mortgages Section § 8.3.

16 Further, “as the Nevada Supreme Court has previously held, ‘[a] wide discrepancy  
17 between the sale price and the value of the collateral compels close scrutiny into the commercial  
18 reasonableness of the sale.’” *TBR I* at \*4(citing *Levers v. Rio King Land and Investment*  
19 *Company*, 560 P .2d 917, 920 (Nev. 1977); *Shadow Wood*, 132 Nev. Adv. Op. at \*6.)

20 *TBR I* also discussed what additional analysis must be performed related to commercial  
21 reasonableness and stated “the few Nevada cases that have discussed commercial reasonableness  
22 state, ‘every aspect of the disposition, including the method, manner, time, place, and terms,  
23 must be commercially reasonable.’” (citing *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 98,  
24 560 P .2d 917, 920 (1977). This includes “quality of the publicity, the price obtained at the  
25 auction, [and] the number of bidders in attendance.” *Id.* (citing *Dennison v. Allen Grp Leasing*  
26 *Corp.*, 110 Nev. 181, 186, 871 P .2d 288, 291 (1994); *Savage Constr. V. Challenge----Cook*, 102  
27 Nev. 34, 37, 714 P .2d 573, 574 (1986)). “When a sale price is demonstrably inadequate, courts  
28 in equity may invalidate a sale upon a showing of any slight defect in the sale.” *Id.*

Chilled bidding can and is a type of unfairness sufficient to set aside a foreclosure sale. *Gelfert v. National City Bank* 313 U.S. 221, 232 (1941). Misunderstanding as to the risk associated with a particular piece of real property which causally relate to chilled bidding do constitute unfairness to set aside a sale. *Golfland Enteertainment Ctrs. v. Peaks Inv.* 119 F.3d 852, 860 (10th Cir 1997); *United States v. Clinger* 2002 U.S. Dist. LEXIS 20458 (D.Colo 2002); also *United States v. Tempelman* 2002 U.S. Dist. LEXIS 3111 (D.NH 2002).

In the instant matter, all of the documents recorded in this case regarding the foreclosure sale reference that the sale is being conducted pursuant to "CC&Rs" recorded in 1994. As discussed above, giving every reasonable inference (despite an incorrect Instrument Number) that Red Rock was referencing the 1994 Amendment amending the 1989 Master CC&Rs, all potential buyers would be on notice that the purchaser of the Property at the foreclosure sale was taking the Property subject to Plaintiff's first priority Deed of Trust. The 1989 Master CC&Rs state:

11.03 Protection of Encumbrances

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

Thus, no potential purchaser would be on notice or have any indication that the Property would be obtained free and clear of Plaintiff's Deed of Trust which would chill the market for the Property and cause a depressed purchase price.<sup>2</sup>

Further evidence of this is found in the number of bidders on the Property. Red Rock sent a synopsis by email to the Association recapping the sale. In the email, it was detailed that 70 people attended the foreclosure sale but only three (3) actually bid on the Property.

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<sup>2</sup> Article XIII of the 2004 CC&Rs has mortgage savings protections and provide an additional basis for Celtic to argue that Defendant took title subject to Celtic's DOT.

1 It can fairly be determined that the Assessment Lien, the Notice of Default, the Notice of  
2 Foreclosure Sale, referencing "CC&Rs" recorded in 1994 which could only be related to the  
3 1989 Master CC&Rs coupled with the language in the 1989 Master CC&Rs protecting Plaintiff's  
4 first priority Deed of Trust "chilled" the bidding at the sale if only 3 of 70 people bid on the  
5 Property. Accordingly, the low price was "caused" by the unfairness related to the language of  
6 the notices and the sale must be set aside as commercially unreasonable.

7 **9. THE VOLUNTARY PAYMENT DOCTRINE DOES NOT APPLY**

8 Vegas United has raised the affirmative defense that Plaintiff's payment of the taxes to  
9 redeem the property is subject to the Voluntary Payment Doctrine. In *Nevada Ass'n Serv., Inc. v.*  
10 *Eighth Jud. Dist. Ct.*, 337 P.3d 1250 (2014), the Nevada Supreme Court explained:

11 Because the voluntary payment doctrine is an affirmative defense, the  
12 defendant bears the burden of proving its applicability. See *Schwartz v. Schwartz*,  
13 95 Nev. 202, 206 n. 2, 591 P.2d 1137, 1140 n. 2 (1979) (stating that a defendant  
14 beats the burden of proving each element of an affirmative defense). Once a  
15 defendant shows that a voluntary payment was made, the burden shifts to the  
16 plaintiff to demonstrate that an exception to the voluntary payment doctrine  
17 applies. See *Randazzo v. Harris Bank Palatine, N.A.*, 262 F.3d 663, 666 (7<sup>th</sup>  
18 Cir.2001) (noting that "a plaintiff who voluntarily pays money to reply to an  
19 incorrect or illegal claim of right cannot recover that payment unless he can show  
20 fraud, coercion, or mistake of fact"). If an exception applies, a plaintiff is not  
21 precluded from recovering a payment that is made without protest. See *Ross v.*  
22 *City of Geneva*, 43 Ill.App.3d 976, 2 Ill.Dec. 609, 357 N.E.2d 829, 836 (1976)  
23 (stating that "the mere payment, without protest, ...does not constitute waiver of  
24 a right to recovery" when an exception applies), *aff'd*, 71 Ill.2d 27, 15 Ill.DEC.  
25 658, 373 N.E.2d 1342, 1347 (1978). Therefore, we first address whether  
26 petitioners have demonstrated that this affirmative defense applies before  
27 considering whether Elsinore established that an exception to the voluntary  
28 payment doctrine exists.

22 The court recognized the exception to the voluntary payment doctrine in *Nevada Ass'n*  
23 *Servs., Inc* citing *Cobb v. Osman*, 83 Nev. 415, 421, 433 P.2d 259, 263 (1967). The court  
24 explained that "[i]t is well settled that one is not a volunteer or stranger when he pays to save his  
25 interest in his property." In *Cobb*, because the seller had paid the mortgage to save his interest in  
26 two other properties that secured the mortgage, the *Cobb* court concluded that the voluntary  
27 payment doctrine did not prevent the seller from recovering damages from the buyer for her  
28 failure to pay the mortgage. *Id* at 422, 433 P.2d at 263.

1 In the instant matter, Plaintiff believed that the Clark County Treasurer's Intent to Deed  
2 and the Tax Deed were a threat to its interest in the Property. Indeed, all information received by  
3 the Plaintiff indicated that if the past due taxes were not paid, Plaintiff's security interest would  
4 be extinguished. Accordingly, Plaintiff paid \$18,281.67 to the Clark County Treasurer to  
5 redeem the Property and the Property was reconveyed to Plaintiff's Borrower. The exception to  
6 the voluntary payment doctrine thus applies and Plaintiff has not waived its right to recover the  
7 amounts paid to the Clark County Treasurer to redeem the Property.

8 **10. VEGAS UNITED HAS BEEN UNJUSTLY ENRICHED BY PLAINTIFF**

9 Unjust enrichment exists where a benefit is conferred on a party by another, the party  
10 appreciates the benefit, and acceptance and retention of such benefit takes place "under  
11 circumstances such that it would be inequitable for him to retain the benefit without payment of  
12 the value thereof." *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273  
13 (1981) (internal quotation omitted). Additionally, the Nevada Supreme Court has recognized that  
14 unjust enrichment "applies to situations where there is no legal contract but where the person  
15 sought to be charged is in possession of money or property which in good conscience and justice  
16 he should not retain but should deliver to another [or should pay for]." *Leasepartners Corp., v.*  
17 *The Robert L. Brooks Trust Dated November 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187  
18 (1997).

19 To date, Vegas United has appreciated and retained the benefit of Plaintiff preventing the  
20 Property from being sold at the Spring 2016 tax sale, to Plaintiff's detriment. In addition to the  
21 payment for delinquent taxes, Vegas United has also appreciated and retained the benefit of  
22 Plaintiff's disbursement for forced placed insurance. Recall, during Vegas United's alleged  
23 "ownership," Plaintiff's Borrower remained the owner of record requiring Plaintiff to incur  
24 \$21,426.00 in forced placement insurance to protect the Property. Vegas United is in possession  
25 of money and/or the Property that in good conscience and justice belongs to Plaintiff. Thus,  
26 Plaintiff is entitled to either the Property or a monetary award for the amount which Vegas  
27 United has been unjustly enriched.

28 ///

11. VEGAS UNITED HAS WAIVED THE ABILITY TO OBJECT TO  
PLAINTIFF'S WITNESSES AND EXHIBITS AT TRIAL

Vegas United is precluded from objecting to Plaintiff's witnesses or exhibits at the time of trial and accordingly all of Plaintiff's witnesses and exhibits are admitted for all purposes save for an objection to relevance. NRCP 16.1(a)(3) requires that the opposing parties lodge any necessary objections to pre-trial disclosures, and that any objections not made in writing (other than objections under NRS § 48.025 and 48.035) are waived. NRCP 16.1(a)(3), in relevant part provides:

Unless otherwise directed by the court, ***these disclosures must be made at least 30 days before trial.*** Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the ground therefor, that may be made to the admissibility of materials identified under subparagraph (C). ***Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause.***

NRCP 16.1(a)(3) (emphasis added).

Pursuant to NRCP 16.1 and consistent with this Court's Scheduling Order, Plaintiff served its Pre-Trial Disclosures on June 30, 2017. Pursuant to NRCP 16.1(a)(3), Vegas United was required to object to Plaintiff's disclosures by July 14, 2017. Vegas United, however, failed to file *any* objections as required. NRCP 16.1(a)(3) expressly states that objections not so disclosed, other than objections under NRS 48.025 and 48.035 shall be deemed waived. The Nevada Supreme Court has instructed Nevada trial courts to enforce the timeliness provisions of the Nevada Rules:

The timeliness provisions written into the rules will, as a general proposition, be enforced by the courts in order to promote the timely and efficient processing of cases. In effect, these provisions recognize judicial commitment to the proposition that "justice delayed is justice denied." We therefore commend the district courts and discovery commissioners for their vigilance in promoting reasonable diligence on the part of counsel.

*Dougan v. Gustaveson*, 108 Nev. 517, 522-3, 835 P.2d 795, 799 (Nev. 1992), *overruled on other grounds*, *Scrimmer v. Eighth Judicial Dist. Ct. ex rel. County of Clark*, 116 Nev. 507, 998 P.2d

1 1190 (Nev. 2000). Having failed to object to Plaintiff's Pre-Trial disclosures, Vegas United is  
2 precluded from objecting to any witnesses and exhibits at the time of trial, other than relevance  
3 objections, as allowed for under NRS 48.025 and NRS 48.035. Accordingly, Plaintiff is entitled  
4 and must be allowed to use and introduce at trial all witnesses and documents disclosed pursuant  
5 to NRCP 16.1 (a)(3), without objection.

#### 6 IV. CONCLUSION

7 In light of the foregoing, Plaintiff respectfully requests this Court enter judgment in its  
8 favor against the Defendant as follows:

9 1. For entry of Judgment and Decree of Judicial Foreclosure:

- 10 i. determining that Plaintiff holds a valid and enforceable first priority  
11 interest in the Property;  
12 ii. determining the order of priority of any other parties claiming an interest  
13 in the Property;  
14 iii. ordering the Property to be sold to satisfy the Note; and  
15 iv. directing the Sheriff in and for Clark County to proceed and sell the  
16 Property according to the provisions of law relating to sales on execution  
17 and,

18 2. Denying Defendant's Request to Quiet Title and Declaratory Relief;

19 3. Denying Defendant's Request for Judgment for Slander of Title and;

20 4. For such other and further relief as the Court may deem just and appropriate.

21 DATED this 8<sup>th</sup> day of August, 2017

22 SYLVESTER & POLEDNAK, LTD.

23 By: /s/ Kelly L. Schmitt

24 Allyson R. Noto, Esq.

25 Kelly Schmitt, Esq.

26 1731 Village Center Circle

27 Las Vegas, NV 89134

28 *Attorneys for Plaintiff*

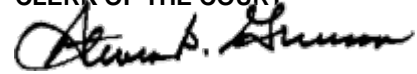
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of SYLVESTER & POLEDNAK, LTD. and that on the 8<sup>th</sup> day of August, 2017, I caused to be served a copy of the above-entitled document on the party set forth below via the Court e-filing system where an email address is provided and/or by depositing the same in the United States Mail, first class, postage prepaid, addressed to those not electronically mailed as follows:

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

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





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8 (702) 320-7760 (Facsimile)  
*Attorneys for Republic Services, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

WILLIAMS & ASSOCIATES

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

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

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

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

...

...

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

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

6 WILLIAMS & ASSOCIATES

7   
8 DONALD H. WILLIAMS, ESQ.

9 Nevada Bar No. 5548

10 DREW J. STARBUCK, ESQ.

11 Nevada Bar No. 13964

12 612 South Tenth Street

13 Las Vegas, Nevada 89106

14 *Attorneys for Republic Services, Inc.*

Stipulated and agreed this 19<sup>th</sup> day of  
July, 2017.

SYLVESTER & POLEDNAK, LTD

15   
16 ALLYSON R. NGTO, ESQ.

17 Nevada Bar No. 8286

18 KELLY L. SCHMITT, ESQ.

19 Nevada Bar No. 10387

20 1731 Village Center Circle

21 Las Vegas, NV 89134

22 *Attorneys for Celtic Bank Corporation*

23 Stipulated and agreed this 19 day of  
24 July, 2017.

25 ROGER P. CROTEAU & ASSOCIATES

26   
27 ROGER P. CROTEAU, ESQ.

28 Nevada Bar No.

TIMOTHY E. RHODA, ESQ.

Nevada Bar No.

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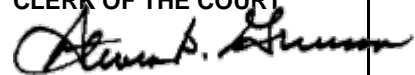
*Attorneys for Vegas United Investment*

*Series 105, Inc.*

IT IS SO ORDERED this 1<sup>st</sup> day of August, 2017.

  
DISTRICT COURT JUDGE

A-15-728233-C



1 **NOTC**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
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11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Defendant*  
13 **VEGAS UNITED INVESTMENT**  
14 **SERIES 105, INC.**

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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 )  
with the laws of the State of Utah, )

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

Plaintiff, )

vs. )

**NOTICE OF SUPPLEMENTAL  
AUTHORITY**

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; DOE Individuals I through X; and ROE )  
Corporations and Organizations I through V, )

Defendants. )

//

//

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

11 **NOTICE OF SUPPLEMENTAL AUTHORITY**

12 COMES NOW, Defendant, VEGAS UNITED INVESTMENT SERIES 105, INC., by  
13 and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby provides  
14 as a supplemental authority the attached decision entered by the Nevada Supreme Court in the  
15 matter of *Bldg. Energetix Corp. v. EHE, LP*, 294 P.3d 1228 (Nev. Feb. 14, 2013). Said decision  
16 is provided for the Court's benefit while considering the interplay between N.R.S. Chapter 361  
17 and N.R.S. Chapter 116, an issue that arose at the trial of this matter.

18 DATED this 15<sup>th</sup> day of August, 2017.

19 ROGER P. CROTEAU & ASSOCIATES, LTD.

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

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 15<sup>th</sup> day of August, 2017, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

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

Sylvester & Polednak, Ltd.

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

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

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

/s/ Timothy E. Rhoda

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

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*294 P.3d 1228, \*; 2013 Nev. LEXIS 10, \*\*;  
 129 Nev. Adv. Rep. 6*

BUILDING **ENERGETIX** CORPORATION, A NEVADA CORPORATION; AND GARY HILL, Appellants,  
 vs. EHE, LP, A NEVADA LIMITED PARTNERSHIP; JEWEL LEWIS, TRUSTEE OF THE JEWEL LEWIS  
 TRUST; K.M. KROYER, TRUSTEE OF THE KM. KROYER TRUST; AND JOSEPH S. LOUDEN,  
 Respondents.

No. 57203

SUPREME COURT OF NEVADA

294 P.3d 1228; 2013 Nev. LEXIS 10; 129 Nev. Adv. Rep. 6

February 14, 2013, Filed

#### **PRIOR HISTORY: [\*\*1]**

Appeal from a district court order granting a deficiency judgment under NRS 40.455 after foreclosure. Third Judicial District Court, Lyon County; David A. Huff ▼, Judge.

**DISPOSITION:** Affirmed.

#### **CASE SUMMARY**

**PROCEDURAL POSTURE:** Respondent mortgagor sought a deficiency judgment in the Third Judicial District Court, Lyon County (Nevada), under Nev. Rev. Stat. § 40.455, after a nonjudicial foreclosure. The trial court granted the judgment, and appellant mortgagor sought review.

**OVERVIEW:** A treasurer's deed issued after the mortgagee foreclosed but before it recorded its trustee's deed. After it paid back taxes, interest, and penalties, the county issued it a reconveyance deed under Nev. Rev. Stat. § 361.585(3) and (4). The supreme court held the county's delinquent-tax certificate did not bar the mortgagee from buying the property at foreclosure because the certificate and tax deed did not make the county treasurer the property's "owner," such that a nonjudicial foreclosure sale could not extinguish the mortgagor's ownership, as Nev. Rev. Stat. §§ 361.570 and 361.585 both said "the owner" was the title holder of record, not the county. There was no fatal inconsistency between the mortgagee acquiring the mortgagor's title through a nonjudicial foreclosure sale and then obtaining a reconveyance deed from the county because "without. right of redemption" in Nev. Rev. Stat. § 107.080(5) addressed redemption rights of the grantor of the deed of trust being foreclosed, not the purchaser's rights as against a county treasurer, so the reconveyance deed was valid and did not undermine the trustee's deed, and the mortgagee was the legitimate


grantee of both deeds.


**OUTCOME:** The trial court's judgment was affirmed.


**CORE TERMS:** foreclosure sale, nonjudicial, reconveyance, certificate, delinquent-tax, purchaser, deed, county treasurer, redemption, redeem, trustee's deed, right of redemption, deficiency judgment, tax certificate, grantor, property taxes, credit bid, foreclosure, delinquent, collection, treasurer, validly, deed of trust, successor in interest, redemptioner, recorded, redeemed, notice, nonjudicial foreclosure, tax deed

## LEXISNEXIS® HEADNOTES


 Hide


Real Property Law > Deeds > Types > Tax Deeds 


Real Property Law > Nonmortgage Liens > Tax Liens 


**HN1**  Nev. Rev. Stat. ch. 361 provides for a treasurer's deed to issue after the two-year redemption period to redeem property from a delinquent tax certificate expires. Nev. Rev. Stat. §§ 361.585(1), 361.390. More Like This Headnote


Civil Procedure > Appeals > Standards of Review > General Overview 

Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures > Deficiency Judgments 


**HN2**  A district court's deficiency determination ordinarily receives deferential review. More Like This Headnote | *Shepardize*: Restrict By Headnote

Civil Procedure > Appeals > Standards of Review > De Novo Review 

Civil Procedure > Appeals > Standards of Review > Fact & Law Issues 


Governments > Legislation > Interpretation 

**HN3**  Statutory interpretation involves law, not fact, so de novo review applies. More Like This Headnote


Real Property Law > Nonmortgage Liens > Tax Liens 

Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 

Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Liens 


**HN4**  The issuance of a delinquent-tax certificate is only a first step in the tax collection process. If property taxes become delinquent, Nev. Rev. Stat. § 361.570(1) provides that a tax certificate shall issue, authorizing the county treasurer, as trustee for the State and county, to hold the property described in the certificate for the period of 2 years, unless sooner redeemed. Assuming the 2 years pass with no redemption, the next step is issuance of a tax deed of the property, again to the county treasurer, in trust for the use and benefit of the State and county. Nev. Rev. Stat. § 361.585(1). But even then, the legislature gives owners and others holding interests in property conveyed to the county treasurer following the two-year redemption period an additional opportunity to protect their interests. Nev. Rev. Stat. § 361.585(3), (4). More Like This Headnote



Real Property Law > Nonmortgage Liens > Tax Liens 


Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 


Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Liens 


**HN5**  When a tax deed on real property has been issued to a county treasurer, until the county gives notice of sale or otherwise finally disposes of the property, any person specified in Nev. Rev. Stat. § 361.585(4) is entitled to have the property reconveyed upon payment to the county treasurer of the delinquent taxes, plus penalties, interest, and costs. Nev. Rev. Stat. § 361.585(3). Nev. Rev. Stat. § 361.585(4) provides for reconveyance to one or more of certain persons, as their interests may appear of record. [More Like This Headnote](#)

Real Property Law > Nonmortgage Liens > Tax Liens 


Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 

Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Liens 


**HN6**  See Nev. Rev. Stat. § 361.585(4)(a) - (d), (f), (h).


Real Property Law > Nonmortgage Liens > Tax Liens 


Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 


**HN7**  When a tax deed on real property has been issued to a county treasurer, reconveyance under Nev. Rev. Stat. § 361.585, as distinct from conveyance under Nev. Rev. Stat. § 361.595, is in the nature of a redemption, and divests the county of its title to the property. It does not give the redeeming party any interest greater than the interest he or she previously held. [More Like This Headnote](#)

Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 

**HN8**  When a tax deed on real property has been issued to a county treasurer, Nev. Rev. Stat. §§ 361.570 and 361.585 both repeatedly refer to "the owner" as the title holder of record, not the county, and contemplate successorship despite the existence of the tax certificate or deed. Thus, Nev. Rev. Stat. § 361.570(2)(c) requires the tax certificate to state the name of the owner or taxpayer of each property, if known. Nev. Rev. Stat. § 361.570(4) states that before the owner or his or her successor redeems the property, he or she must also pay the county treasurer holding the certificate any additional taxes, penalties and costs. And Nev. Rev. Stat. § 361.585(4)(a) and (h) list the "owner" and "successor in interest of any person specified in this subsection" as among the persons entitled to reconveyance. [More Like This Headnote](#)

Governments > Legislation > Interpretation 

**HN9**  The preeminent canon of statutory interpretation requires a court to presume that the legislature says in a statute what it means and means in a statute what it says there. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures > General Overview 


Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 


**HN10** When a tax deed on real property has been issued to a county treasurer, Nev. Rev. Stat. §§ 361.570 and 361.585 both recognize that the "owner" remains the title holder of record until the right to redeem or obtain reconveyance has expired. These statutes acknowledge that post-certificate and post-deed transfers may occur when "successors" are named as potential redemptioners. And they say nothing about freezing all foreclosures or other transfers until the property is redeemed from, or reconveyed by, the county treasurer. [More Like This Headnote](#)


[Tax Law](#) > [State & Local Taxes](#) > [Real Property Tax](#) > [Collection](#) > [Tax Deeds & Tax Sales](#) 

[Tax Law](#) > [State & Local Taxes](#) > [Real Property Tax](#) > [Collection](#) > [Tax Liens](#) 


**HN11** The object of Nev. Rev. Stat. ch. 361, like statutory tax collection schemes elsewhere, is not the acquisition of the property, but rather the collection of taxes. It is the settled policy of such laws to give a delinquent taxpayer every reasonable opportunity compatible with the rights of the state to redeem his or her property and to return it to the tax rolls for further governmental support. [More Like This Headnote](#)


[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Foreclosures](#) > [Judicial Foreclosures](#) 

[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Foreclosures](#) > [Private Power-of-Sale Foreclosure](#) 


[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Redemption](#) > [Mortgagor's Right](#) 


**HN12** Nevada law provides for both judicial and nonjudicial foreclosure sales. Nev. Rev. Stat. §§ 40.430, 107.080. A principal difference between them is that a judicial foreclosure sale must be conducted in the same manner as the sale of real property upon execution, Nev. Rev. Stat. § 40.430(4), meaning the property shall be subject to redemption under Nev. Rev. Stat. ch. 21. Nev. Rev. Stat. § 21.190. Under Nev. Rev. Stat. § 21.210, a debtor has an absolute one-year right to redeem the property from the purchaser at an execution- or judicial-foreclosure sale. A nonjudicial foreclosure sale, by contrast, does not give the debtor the right to redeem the property from the purchaser. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Foreclosures](#) > [Private Power-of-Sale Foreclosure](#) 


[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Redemption](#) > [Mortgagor's Right](#) 

**HN13** See Nev. Rev. Stat. § 107.080(5).

[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Foreclosures](#) > [Judicial Foreclosures](#) 


[Real Property Law](#) > [Financing](#) > [Mortgages & Other Security Instruments](#) > [Redemption](#) > [Statutory Redemption](#) 


**HN14** See Nev. Rev. Stat. § 21.210.


[Governments](#) > [Legislation](#) > [Interpretation](#) 


**HN15** 


The doctrine of *noscitur a sociis* teaches that words are known by—acquire meaning from—the company they keep. More Like This Headnote |  
*Shepardize*: Restrict By Headnote

Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures >  
 Private Power-of-Sale Foreclosure 

Real Property Law > Financing > Mortgages & Other Security Instruments > Redemption >  
 Statutory Redemption 


**HN16**  In a non-judicial foreclosure, Nev. Rev. Stat. § 107.080(1) confers upon a trustee, when real property is used to secure the performance of an obligation, a power of sale when that obligation is breached. Nev. Rev. Stat. § 107.080(5) deprives the debtor of rights of redemption against the purchaser at a nonjudicial foreclosure. The remainder of Nev. Rev. Stat. § 107.080(5) and (6) make this clear. Thus, Nev. Rev. Stat. §§ 107.080(5)(a) - (c) and 107.080(6) enumerate the limited instances in which a nonjudicial foreclosure sale may be made void, i.e., lack of substantial compliance with Nev. Rev. Stat. ch. 107 under Nev. Rev. Stat. § 107.080(5)(a) or lack of proper notice to the grantor or other person entitled to notice of default and election to sell under Nev. Rev. Stat. § 107.080(6). With these exceptions, a nonjudicial foreclosure sale terminates the debtor's legal title. Nev. Rev. Stat. § 107.080(5)'s "right of redemption" language ensures that purchasers at nonjudicial foreclosure sales receive the title of the grantor, unencumbered by a judicial-foreclosure debtor's "right of redemption." More Like This Headnote | *Shepardize*: Restrict By Headnote


Real Property Law > Financing > Mortgages & Other Security Instruments > Foreclosures >  
 Private Power-of-Sale Foreclosure 


Real Property Law > Nonmortgage Liens > Tax Liens 




Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Deeds & Tax Sales 

Tax Law > State & Local Taxes > Real Property Tax > Collection > Tax Liens 

**HN17**  Nothing in Nev. Rev. Stat. § 107.080 suggests that the beneficiary of a deed of trust who takes title by credit bid at a nonjudicial foreclosure sale does not do so subject to whatever property tax liens may exist, which it thereafter may pay off, whether by redemption, reconveyance, or otherwise. Nev. Rev. Stat. § 361.450. More Like This Headnote

**COUNSEL:** Robison Belaustegui Sharp & Low and Mark G. Simons , Reno, for Appellants.

Jeffrey K. Rahbeck , Zephyr Cove, for Respondents.

**JUDGES:** BEFORE PICKERING , C.J., HARDESTY  and CHERRY , JJ.

**OPINION BY:** PICKERING 

## OPINION

[\*1230] By the Court, PICKERING , C.J.:

This appeal from a deficiency judgment after foreclosure raises two questions: (1) whether a valid nonjudicial foreclosure sale may occur under NRS Chapter 107 after a delinquent-tax certificate has issued to the county treasurer under NRS Chapter 361; and (2) whether, consistent with NRS

107.080(5), a trust-deed beneficiary who acquires such property on credit bid at the foreclosure sale can later redeem, or obtain reconveyance of, the property from the county treasurer. We agree with the district court that a nonjudicial foreclosure sale may occur after a delinquent-tax certificate has issued and before the final disposition of the property, and that the property's acquirer can then pay the delinquent taxes and other amounts due to redeem or obtain reconveyance of the property from the court treasurer. **[\*\*2]** Thus, we answer both questions in the affirmative. Since the foreclosure sale was proper, the deficiency judgment was as well. We therefore affirm.

## I.

The parties presented their dispute to the district court on stipulated facts. Appellant Building **Energetix** Corporation (BE) executed a \$490,702 promissory note, secured by a deed of trust on property in Lyon County and guaranteed by appellant Gary Hill, to respondents or their assignors (collectively, EHE). BE did not pay the annual property taxes due, and in June 2007, a delinquent-tax certificate issued under NRS 361.570. The certificate authorized the Lyon County treasurer to hold the property in trust for the State and County for the two-year statutory redemption period.

BE did not make the payments due on the EHE note, either. On June 10, 2008, a year after the Lyon County delinquent-tax certificate issued, EHE, through its trustee, recorded a notice of default and election to sell. A nonjudicial foreclosure sale followed on October 10, 2008, at which time EHE purchased the property by credit bid of \$325,000, receiving a trustee's deed in return. On April 8, 2009, EHE brought this action under NRS 40.455 against BE and Hill (hereafter, **[\*\*3]** collectively, BE) for the deficiency.

For some unknown reason, EHE did not record its trustee's deed until October 2009, a year after the foreclosure sale. In the meantime, the two-year period to redeem the property from the 2007 delinquent-tax certificate ran out. <sup>HN1</sup> NRS Chapter 361 provides for a treasurer's deed to issue after the two-year redemption period expires. See NRS 361.585(1); NRS 361.390. A treasurer's deed issued in this matter on June 8, 2009—after EHE had foreclosed on the property and sued BE for a deficiency judgment but before EHE recorded its trustee's deed. The county continued to hold the property in trust under NRS 361.585(2) until EHE paid the back taxes, interest, and penalties due, which occurred in March 2010. In return, on April 19, 2010, the county issued a reconveyance deed to EHE as provided in NRS 361.585(3) and (4).

BE asserted the one-action rule, NRS 40.430, and its associated anti-deficiency statutes, see NRS 40.455-40.459, as a defense to EHE's suit for the deficiency remaining due on the note after the foreclosure sale. BE argued that EHE could not validly foreclose while the county treasurer held the property in trust on the delinquent-tax certificate **[\*\*4]** and that, without a valid foreclosure, NRS 40.455 precluded EHE from recovering a deficiency judgment. The district court disagreed. It held that the 2007 delinquent-tax certificate did not diminish EHE's trustee's authority to sell the property at foreclosure in 2008. It **[\*1231]** awarded EHE a \$140,403 deficiency judgment against BE, who now appeals.

## II.

BE urges reversal on the grounds that the 2007 delinquent-tax certificate prevented EHE from validly foreclosing on the property in 2008 and that, without a valid foreclosure sale, EHE cannot recover a deficiency judgment under NRS 40.455. BE maintains that once a delinquent-tax certificate issues under NRS 361.570, the subject property must be redeemed before a valid foreclosure sale can occur. Going further, BE argues that EHE is precluded from claiming rights under both the 2008 trustee's deed and the county's 2010 reconveyance deed. As support, BE points to language in Nevada's nonjudicial foreclosure statute, NRS 107.080, to the effect that a nonjudicial foreclosure sale "vests in the purchaser the title of the grantor . . . without equity or right of redemption." NRS 107.080(5). In BE's view, EHE could not have redeemed the property by **[\*\*5]** reconveyance deed in 2010 if it validly acquired the property by credit bid at the 2008 foreclosure sale, because under NRS 107.080(5), title acquired via nonjudicial foreclosure sale is "without . . . right of redemption." Because EHE did redeem the property by reconveyance deed

in 2010, BE argues that EHE must not have validly acquired the property by credit bid in 2008. Finally, BE argues that since EHE acquired the property by reconveyance rather than trustee's deed, EHE cannot recover a deficiency judgment under NRS 40.455. <sup>1</sup>

## FOOTNOTES

<sup>1</sup> BE also urged in the district court and at oral argument that EHE's delay in recording its October 2008 trustee's deed prevented completion of the foreclosure sale, such that Lyon County's later-issued but first-recorded June 2009 tax deed nullified the trustee's deed. The district court rejected this contention based on *In re Grant*, 303 B.R. 205 (Bankr. D. Nev. 2003), which holds, consistent with early Nevada cases, that a trustee's sale is complete when the gavel falls. *Id.* at 210 (citing *Dazet v. Landry*, 21 Nev. 291, 297, 30 P. 1064, 1067 (1892), overruled on other grounds by *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963); *In the Matter of Smith*, 4 Nev. 254 (1868)) **[\*\*6]** ("Notably missing from the Nevada foreclosure procedures is the requirement that a trustee's deed must be recorded in order for the sale to be complete or the transfer to be effective."). BE did not address this issue in its opening brief, so neither do we. See *State of Nevada v. Glusman*, 98 Nev. 412, 428, 651 P.2d 639, 649 (1982). Nor do we address the effect of the 2009 amendments to NRS 107.080, which require recordation of the trustee's deed following a nonjudicial foreclosure sale within 30 days of the sale or impose specified civil penalties, as both parties conceded at oral argument that the 2009 amendments to NRS 107.080 do not apply to a foreclosure sale set in motion before their effective date. See 2009 Nev. Stat., ch. 247, § 1, at 1005.

While <sup>HN2</sup> a district court's deficiency determination ordinarily receives deferential review, *Tahoe Highlander v. Westside Fed. Sav.*, 95 Nev. 8, 11, 588 P.2d 1022, 1024 (1979), here the parties do not dispute the district court's findings but only whether EHE was statutorily entitled to a deficiency judgment at all. <sup>HN3</sup> Statutory interpretation involves law, not fact, so *de novo* review applies. *Walters v. Dist. Ct.*, 127 Nev. , , 263 P.3d 231, 234 (2011).

A.

The **[\*\*7]** county's 2007 delinquent-tax certificate did not prevent EHE from purchasing the property at the 2008 foreclosure sale. BE's argument to the contrary proceeds from the premise that, once a delinquent-tax certificate issues under NRS 361.570, the county becomes the owner of the property, meaning the tax certificate must be extinguished before title can transfer, whether by foreclosure sale or otherwise. But this is not what NRS 361.570 says or what NRS Chapter 361 contemplates.

In NRS Chapter 361, the Legislature has established a statutory scheme for the collection of property taxes that, while amended from time to time, has endured since 1957. See *Casazza v. A-Allstate Abstract Co.*, 102 Nev. 340, 344, 721 P.2d 386, 389 (1986) (describing the statutory framework NRS Chapter 361 establishes for collecting property taxes). <sup>HN4</sup> The issuance of a delinquent-tax certificate is only a first step in the tax collection process. If property taxes become delinquent, NRS 361.570(1) provides that a tax certificate shall issue, "authoriz[ing] the **[\*\*8]** county treasurer, as trustee for the State and county, to hold [the] property described in **[\*1232]** the certificate for the period of 2 years . . . unless sooner redeemed." Assuming the 2 years pass with no redemption, the next step is issuance of a tax deed of the property, again to the county treasurer "in trust for the use and benefit of the State and county . . ." NRS 361.585 (1). But even then, the Legislature gives "owners and others holding interests in property conveyed to the county treasurer following the two-year redemption period an additional opportunity to protect their interests." *Casazza*, 102 Nev. at 344, 721 P.2d at 389 (citing NRS 361.585(3) and (4)).

<sup>HN5</sup> Until the county gives notice of sale or otherwise finally disposes of the property, "any person specified in subsection 4 [of NRS 361.585] is entitled to have the property reconveyed

upon payment to the county treasurer" of the delinquent taxes, plus penalties, interest, and costs. NRS 361.585(3). Subsection 4 of NRS 361.585 provides for reconveyance to

<sup>HN6</sup> ¶ One or more of the [following] persons . . . , as their interests may appear of record:

- (a) The owner.
- (b) The beneficiary under a note and deed of trust.
- (c) The mortgagee under **[\*\*9]** a mortgage.
- (d) The creditor under a judgment.

. . . .

(f) The person holding a contract to purchase the property before its conveyance to the county treasurer.

. . . .

(h) The successor in interest of any person specified in this subsection.

<sup>HN7</sup> ¶ Reconveyance under NRS 361.585, as distinct from conveyance under 361.595, "is in the nature of a redemption, and divests the county of its title to the property." *Casazza*, 102 Nev. at 347, 721 P.2d at 391. It does not give the redeeming party "any interest greater than the interest he previously held." *Id.* at 347, 721 P.2d at 390.

Under these statutes, although the Lyon County treasurer held the property in trust pursuant to the 2007 delinquent-tax certificate and thereafter the 2009 tax deed, it did not thereby become the "owner" of the property, such that BE's ownership could not be extinguished by nonjudicial foreclosure sale in 2008. On the contrary, <sup>HN8</sup> ¶ NRS 361.570 and NRS 361.585 both repeatedly refer to "the owner" as the title holder of record, not the county, and contemplate successorship despite the existence of the tax certificate or deed. Thus, NRS 361.570(2)(c) requires the tax certificate to state "the name of the owner or taxpayer of each **[\*\*10]** property, if known." NRS 361.570(4) states, "Before the owner or his or her successor redeems the property, he or she must also pay the county treasurer holding the certificate any additional taxes, penalties and costs . . . ." And NRS 361.585(4)(a) and (h) list the "owner" and "successor in interest of any person specified in this subsection" as among the persons entitled to reconveyance.

<sup>HN9</sup> ¶ "The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 183, 124 S. Ct. 1587, 158 L. Ed. 2d 338 (2004) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992)). <sup>HN10</sup> ¶ NRS 361.570 and NRS 361.585 both recognize that the "owner" remains the title holder of record until the right to redeem or obtain reconveyance has expired. Cf. *Shelley v. Lore*, 836 P.2d 786, 788 (Utah 1992) (applying analogous Utah law, the court observed that "following the preliminary tax sale, the property owner, although he is delinquent in his real estate taxes, maintains the underlying ownership interest in the property"). These statutes acknowledge that post-certificate and post-deed **[\*\*11]** transfers might occur when "successors" are named as potential redemptioners. And they say nothing about freezing all foreclosures or other transfers until the property is redeemed from, or reconveyed by, the county treasurer.

BE argues that "allowing a valid nonjudicial foreclosure process to proceed during the pendency of a Tax Certificate would create absurd results" and defeat "the purpose of the Tax Certificate [:] to impede marketability of title until taxes are paid." <sup>HN11</sup> ¶ But Chapter 361's object, like statutory tax **[\*\*1233]** collection schemes elsewhere, "is not the acquisition of the property, but rather

the collection of taxes." *Little v. United States*, 704 F.2d 1100, 1105-06 n.5 (9th Cir. 1983) (applying an analogous California tax collection statute). "[I]t is the settled policy of [such laws] to give a delinquent taxpayer every reasonable opportunity compatible with the rights of the State to redeem his property and to return it to the tax rolls for further governmental support." *Id.*

Neither Chapter 361's text nor its apparent purpose supports BE's argument that the 2007 delinquent-tax certificate prevented a valid foreclosure sale from occurring in 2008. At least one court has held, **[\*\*12]** under similar circumstances, that a valid foreclosure sale can occur notwithstanding the state's acquisition of the property, subject to a still-open right of redemption. *Potter v. Entler*, 71 Cal. App. 2d 710, 163 P.2d 490, 491-92 (Cal. Ct. App. 1945) (interpreting an analogous tax collection statute). Contrary to BE's assertion, this result is not absurd; in fact, it appears to be the norm. See 47 Am. Jur. 2d Judicial Sales § 177 (2006); Marianne M. Jennings, *From the Courts*, 37 Real Est. L. J. 175 (2008). Therefore, we conclude that the 2008 foreclosure sale was valid. <sup>2</sup>

## FOOTNOTES

<sup>2</sup> This conclusion assumes that the foreclosure sale was complete in 2008, when the gavel fell. See *supra* note 1. The result does not change even if the foreclosure sale did not conclude until October 2009, when the trustee's deed was recorded. Although the tax deed was issued in June 2009, BE still had an interest in the property, if only in obtaining its reconveyance, such that EHE could validly foreclose. Compare *Casazza*, 102 Nev. at 347, 721 P.2d at 391 (holding that reconveyance pursuant to NRS 361.585 restores the redemptioner's interest, whatever it may be, in the property), with *Potter*, 163 P.2d at 491-92 (holding that an unexpired **[\*\*13]** right of redemption is a property interest that may be foreclosed).

B.

BE next argues that there is a fatal inconsistency between EHE acquiring BE's title through the 2008 nonjudicial foreclosure sale and thereafter, in 2010, obtaining a reconveyance deed from the county. In essence, BE maintains a party cannot both purchase property at a nonjudicial foreclosure sale and later redeem it from the county by paying the back taxes due. Again, the applicable statutes contemplate this exact scenario.

**HN12** Nevada law provides for both judicial and nonjudicial foreclosure sales. NRS 40.430; NRS 107.080. A principal difference between them is that a judicial foreclosure sale "must be conducted in the same manner as the sale of real property upon execution," NRS 40.430(4), meaning the "property shall be subject to redemption" under NRS Chapter 21. See NRS 21.190. Under NRS 21.210, <sup>3</sup> the debtor has an absolute one-year right to redeem the property from the purchaser at the execution- or judicial-foreclosure sale. A nonjudicial foreclosure sale, by contrast, does not give the debtor the right to redeem the property from the purchaser. Thus, NRS 107.080(5) states, **HN13** "Every sale made under the provisions **[\*\*14]** of this section and other sections of this chapter [107 governing nonjudicial foreclosure sales] vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption." (Emphasis added.)

## FOOTNOTES

<sup>3</sup> NRS 21.210 reads:

**HN14** The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser the amount of his or her purchase price with 1 percent per month thereon in addition, to the time of redemption, together with:

1. The amount of any assessment, taxes or payments toward liens which were created prior to the purchase, which the purchaser may have paid thereon after purchase, and interest on such amount; and
2. If the purchaser is also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

BE seizes on NRS 107.080(5)'s words "without . . . right of redemption." It argues that they curtail not only redemption by a debtor from a purchaser at a nonjudicial foreclosure sale but also redemption by the foreclosure-sale purchaser from the county treasurer under NRS 361.570 and NRS 361.585. **[\*\*15]** BE misreads NRS 107.080(5). The phrase "without . . . right of redemption" immediately follows and modifies the words **[\*1234]** "title of the grantor and any successors in interest." It addresses potential redemption rights of the debtor—the grantor of the deed of trust being foreclosed—not rights acquired by the purchaser at the nonjudicial foreclosure sale as against a county treasurer under NRS Chapter 361.

<sup>HN15</sup>✦ The doctrine of noscitur a sociis teaches that "words are known by—acquire meaning from—the company they keep." *Ford v. State*, 127 Nev. , n.8, 262 P.3d 1123, 1132 n.8 (2011) (citing *Orr Ditch Co. v. Dist. Ct.*, 64 Nev. 138, 146, 178 P.2d 558, 562 (1947)). <sup>HN16</sup>✦ NRS 107.080(1) confers upon the trustee, when real property is used to secure the performance of an obligation, a power of sale when that obligation is breached. NRS 107.080(5) deprives the debtor (BE) of rights of redemption against the purchaser at a nonjudicial foreclosure. The remainder of NRS 107.080(5) and (6) make this clear. Thus, NRS 107.080(5)(a)-(c) and NRS 107.080(6) enumerate the limited instances in which a nonjudicial foreclosure sale may be made void, i.e., lack of substantial compliance with NRS Chapter 107 under **[\*\*16]** NRS 107.080(5)(a) or lack of proper notice to the grantor or other person entitled to notice of default and election to sell under NRS 107.080(6). With these exceptions, a nonjudicial foreclosure sale terminates the debtor's legal title. See *Charmicor, Inc. v. Bradshaw Finance Co.*, 92 Nev. 310, 313, 550 P.2d 413, 415 (1976). NRS 107.080(5)'s "right of redemption" language ensures that purchasers at nonjudicial foreclosure sales receive the "title of the grantor," unencumbered by a judicial-foreclosure debtor's "right of redemption." <sup>HN17</sup>✦ Nothing in the statute suggests, however, that the beneficiary of a deed of trust who takes title by credit bid at a nonjudicial foreclosure sale does not do so subject to whatever property tax liens may exist, which it thereafter may pay off, whether by redemption, reconveyance, or otherwise. See NRS 361.450.

In sum, the 2010 reconveyance deed to EHE was valid and did not undermine the legitimacy of the 2008 trustee's deed. Since EHE was the legitimate grantee of both deeds, BE's final argument that a party who acquires title by means of reconveyance deed cannot maintain a suit for a deficiency under NRS 40.455 fails.

We affirm.

/s/ Pickering ▼, C.J.

Pickering ▼

We **[\*\*17]** concur:

/s/ Hardesty ▼, J.

Hardesty ▼

/s/ Cherry ▼, J.

Cherry ▼









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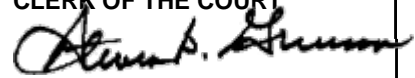
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1 FFCL

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

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

12 **Plaintiff,**

13 **Vs.**

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

26 **Defendants.**

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

**Counter-Claimant,**

**Vs.**

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

**Counter-Defendant.**

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

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

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

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

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

3 **Third-Party Plaintiff,**

4 **Vs.**

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

9 **Third-Party Defendants.<sup>1</sup>**

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

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

24 ...  
25

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

**FINDINGS OF FACT**

1  
2           1.       CELTIC BANK CORPORATION filed its Verified Complaint for Judicial  
3 Foreclosure of Deed of Trust against VEGAS UNITED INVESTMENT SERIES 105, INC.,  
4 GIBSON ROAD, LLC, GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION and  
5 REPUBLIC SILVER STATE DISPOSAL, INC. on November 25, 2015.<sup>2</sup> On January 4, 2016,  
6 VEGAS UNITED INVESTMENT SERIES 105, INC. filed its Answer and Counterclaim, asserting  
7 two causes of action: (1) Quiet Title/Declaratory Relief, and (2) Slander of Title against CELTIC  
8 BANK CORPORATION. The facts adduced through trial, most of which were stipulated by the  
9 parties, are as follows:  
10

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

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

---

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

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

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

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

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

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

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

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

<sup>7</sup>Also see Stipulated Trial Exhibit 5, Deed of Trust.

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

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

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

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

28 <sup>8</sup>Also see Stipulated Trial Exhibit 7, Assignment of Deed of Trust.

1 Conditions and Restrictions” (again referred to as the “1989 Master CC&Rs) by GIBSON  
2 BUSINESS PARK, PHASE ONE, recorded by the declarant, AMPAC DEVELOPMENT  
3 COMPANY, in 1989 as Instrument Number 198909110000173.<sup>9</sup>

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

13  
14  
15 10. On October 14, 2011, RED ROCK FINANCIAL SERVICES recorded a Notice of  
16 Default. Notably, the Notice of Default referred to the recorded Lien for Delinquent Assessments  
17

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

24 <sup>10</sup>Section 8.09 of the 1989 Master CC&Rs provides as follows:

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

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

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

<sup>11</sup>See Stipulated Trial Exhibit 3, Bates No. CB000380, Article XIII, “Mortgage Protection Clause.”

1 and included the incorrect legal description of the property to be liened and the erroneous Instrument  
2 Number<sup>12</sup> described in Paragraphs 4 and 5 above. The Notice of Default was sent by certified mail,  
3 return receipt requested, to CELTIC BANK CORPORATION and it was signed as received by the  
4 Bank's employee.

5       11. On or about October 21, 2011, in conjunction with the Property Owners'  
6 Association's impending foreclosure, RED ROCK FINANCIAL SERVICES obtained a Trustee's  
7 Sale Guarantee<sup>13</sup> from FIRST AMERICAN TITLE INSURANCE COMPANY.<sup>14</sup> This Trustee's  
8 Sale Guarantee identified, as one of its exceptions to title, that which related to the 1989 Master  
9 CC&Rs; this exception, No. 7, provided as follows:  
10

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

22 A similar exception, No. 8, was noted with respect to the 2004 CC&Rs. Other exceptions to title  
23 identified within the Trustee's Sale Guarantee were issues related to unpaid property taxes and the  
24 Deed of Trust recorded December 30, 2005 against the property and assigned to CELTIC BANK  
25 CORPORATION on or about September 24, 2009.<sup>15</sup>

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

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

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

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

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



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

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

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

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

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

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

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

6                   **1<sup>st</sup> Mortgage: \$748,000.00**

7                   **2<sup>nd</sup> Mortgage: NONE**

8                   **Lender Foreclosure Activity: NONE**

9                   (Emphasis in original)

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

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

26  
27  
28       <sup>18</sup>See Stipulated Trial Exhibit 15.

<sup>19</sup>See Bates No. Redrock 0076.

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

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

15           17.     In the meantime, on June 3, 2013, the Clark County Treasurer placed a lien on the  
16 subject property for past due taxes which was recorded in Book No. 20131226 as Instrument No.  
17 00891 in the Official Records of the Clark County Recorder's Office. CELTIC BANK  
18 CORPORATION sent various reminders to its borrower, GIBSON ROAD, LLC, concerning the  
19 delinquent property taxes due in 2014.<sup>21</sup>  
20  
21

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

25     ...

26     ...

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

<sup>21</sup>See Stipulated Trial Exhibit 19.

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

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

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

22 ...

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

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

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

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

<sup>26</sup>See Stipulated Trial Exhibit 26.

## CONCLUSIONS OF LAW

1  
2           1.       NRS 30.030 specifically provides the courts shall have the power to declare rights,  
3 status and other legal relations whether or not further relief is or could be claimed. The court's  
4 declaration may be affirmative or negative in form and effect; such declaration shall have the force  
5 and effect of a final judgment or decree. NRS 40.010 provides "[a]n action may be brought by any  
6 person against another who claims an estate or interest in real property adverse to the person  
7 bringing the action, for the purpose of determining such adverse claim." As noted above, CELTIC  
8 BANK CORPORATION seeks, by way of relief, to enforce its rights under the December 30, 2005  
9 Deed of Trust and judicially foreclose upon the property. VEGAS UNITED INVESTMENT  
10 SERIES 105 seeks declaratory relief and to quiet title, as well as damages for slander of title against  
11 CELTIC BANK CORPORATION. Both parties claim their interest has first priority, and notably,  
12 VEGAS UNITED INVESTMENT SERIES 105 claims the Bank's rights under the Deed of Trust  
13 were extinguished by way of the Association's foreclosure sale. Before it determines whether  
14 CELTIC BANK CORPORATION can enforce its rights under the Deed of Trust, it first determines  
15 whether such rights, if any, were extinguished by the Association's foreclosure sale, and perhaps  
16 more importantly, if NRS Chapter 116 applies in this case.  
17

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

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

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

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

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

25           ...

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

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

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

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

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

27       

---

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

<sup>29</sup> See Stipulated Trial Exhibit 3, 204 CC&Rs, Article XIII.

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

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

---

<sup>30</sup>See Stipulated Trial Exhibit 1, 1989 Master CC&Rs, Section 11.03.




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

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

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

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

DATED this 25<sup>th</sup> day of August 2017.

  
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

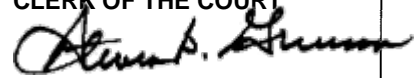
**CERTIFICATE OF SERVICE**

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

ALLYSON R. NOTO, ESQ.  
KELLY L. SCHMITT, ESQ.  
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\_\_\_\_\_  
Laura Banks, Judicial Executive Assistant



1 **NEOJ**  
2 SYLVESTER & POLEDNAK, LTD.  
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13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 v.

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

26 Defendants.

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

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

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

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

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

4 **SYLVESTER & POLEDNAK, LTD.**

5  
6 By 

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

7  
8  
9  
10  
11 **CERTIFICATE OF SERVICE**

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

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

25  
26  
27  
28 

An employee of SYLVESTER & POLEDNAK, LTD.

*Steven D. Grierson*

1 FFCL

2  
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

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

12 **Plaintiff,**

13 **Vs.**

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

26 **Defendants.**

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

**Counter-Claimant,**

**Vs.**

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

**Counter-Defendant.**

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

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

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

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

3 **Third-Party Plaintiff,**

4 **Vs.**

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

9 **Third-Party Defendants.<sup>1</sup>**

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

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

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

## FINDINGS OF FACT

1  
2 1. CELTIC BANK CORPORATION filed its Verified Complaint for Judicial  
3 Foreclosure of Deed of Trust against VEGAS UNITED INVESTMENT SERIES 105, INC.,  
4 GIBSON ROAD, LLC, GIBSON BUSINESS CENTER PROPERTY OWNER ASSOCIATION and  
5 REPUBLIC SILVER STATE DISPOSAL, INC. on November 25, 2015.<sup>2</sup> On January 4, 2016,  
6 VEGAS UNITED INVESTMENT SERIES 105, INC. filed its Answer and Counterclaim, asserting  
7 two causes of action: (1) Quiet Title/Declaratory Relief, and (2) Slander of Title against CELTIC  
8 BANK CORPORATION. The facts adduced through trial, most of which were stipulated by the  
9 parties, are as follows:  
10

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

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

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

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

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

14  
15  
16 4. To secure payment of the promissory note, GIBSON ROAD, LLC executed and  
17 delivered a first deed of trust to SILVER STATE BANK on or about December 9, 2005, which was  
18 recorded with the Clark County Recorder's Office on December 30, 2005, and encumbered the  
19 subject property within the business park.<sup>7</sup>

20  
21 5. On or about September 5, 2008, SILVER STATE BANK was closed by the Nevada  
22 Financial Institutions Division, and the Federal Deposit Insurance Corporation (FDIC) was named  
23 receiver for the bank. Approximately one year later, on September 24, 2009, the FDIC, as SILVER  
24 ...

25  
26 <sup>4</sup>See Stipulated Trial Exhibit 1. The "joining parties" are identified as MARSHMELLOW LANE PARTNERS,  
27 GIBSON BUSINESS PARK ASSOCIATION 1986-I, OCEAN SPRAY CRANBERRIES, INC., and PACIFIC  
ENGINEERING & PRODUCTION COMPANY OF NEVADA.

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

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

<sup>7</sup>Also see Stipulated Trial Exhibit 5, Deed of Trust.



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

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

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

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

28 <sup>8</sup>Also see Stipulated Trial Exhibit 7, Assignment of Deed of Trust.

1 Conditions and Restrictions" (again referred to as the "1989 Master CC&Rs) by GIBSON  
2 BUSINESS PARK, PHASE ONE, recorded by the declarant, AMPAC DEVELOPMENT  
3 COMPANY, in 1989 as Instrument Number 198909110000173.<sup>9</sup>

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

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

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

24 <sup>10</sup>Section 8.09 of the 1989 Master CC&Rs provides as follows:

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

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

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

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

1 and included the incorrect legal description of the property to be liened and the erroneous Instrument  
2 Number<sup>12</sup> described in Paragraphs 4 and 5 above. The Notice of Default was sent by certified mail,  
3 return receipt requested, to CELTIC BANK CORPORATION and it was signed as received by the  
4 Bank's employee.

5 11. On or about October 21, 2011, in conjunction with the Property Owners'  
6 Association's impending foreclosure, RED ROCK FINANCIAL SERVICES obtained a Trustee's  
7 Sale Guarantee<sup>13</sup> from FIRST AMERICAN TITLE INSURANCE COMPANY.<sup>14</sup> This Trustee's  
8 Sale Guarantee identified, as one of its exceptions to title, that which related to the 1989 Master  
9 CC&Rs; this exception, No. 7, provided as follows:  
10

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

22 A similar exception, No. 8, was noted with respect to the 2004 CC&Rs. Other exceptions to title  
23 identified within the Trustee's Sale Guarantee were issues related to unpaid property taxes and the  
24 Deed of Trust recorded December 30, 2005 against the property and assigned to CELTIC BANK  
25 CORPORATION on or about September 24, 2009.<sup>15</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26  
27       <sup>18</sup>See Stipulated Trial Exhibit 15.

28       <sup>19</sup>See Bates No. Redrock 0076.

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

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

14           17.     In the meantime, on June 3, 2013, the Clark County Treasurer placed a lien on the  
15    subject property for past due taxes which was recorded in Book No. 20131226 as Instrument No.  
16    00891 in the Official Records of the Clark County Recorder's Office. CELTIC BANK  
17    CORPORATION sent various reminders to its borrower, GIBSON ROAD, LLC, concerning the  
18    delinquent property taxes due in 2014.<sup>21</sup>

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

22    ...

23    ...

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

28           <sup>21</sup>See Stipulated Trial Exhibit 19.

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

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

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

22 ...  
23

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

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

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

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

<sup>26</sup>See Stipulated Trial Exhibit 26.

## CONCLUSIONS OF LAW

1  
2           1.     NRS 30.030 specifically provides the courts shall have the power to declare rights,  
3 status and other legal relations whether or not further relief is or could be claimed. The court's  
4 declaration may be affirmative or negative in form and effect; such declaration shall have the force  
5 and effect of a final judgment or decree. NRS 40.010 provides "[a]n action may be brought by any  
6 person against another who claims an estate or interest in real property adverse to the person  
7 bringing the action, for the purpose of determining such adverse claim." As noted above, CELTIC  
8 BANK CORPORATION seeks, by way of relief, to enforce its rights under the December 30, 2005  
9 Deed of Trust and judicially foreclose upon the property. VEGAS UNITED INVESTMENT  
10 SERIES 105 seeks declaratory relief and to quiet title, as well as damages for slander of title against  
11 CELTIC BANK CORPORATION. Both parties claim their interest has first priority, and notably,  
12 VEGAS UNITED INVESTMENT SERIES 105 claims the Bank's rights under the Deed of Trust  
13 were extinguished by way of the Association's foreclosure sale. Before it determines whether  
14 CELTIC BANK CORPORATION can enforce its rights under the Deed of Trust, it first determines  
15 whether such rights, if any, were extinguished by the Association's foreclosure sale, and perhaps  
16 more importantly, if NRS Chapter 116 applies in this case.  
17

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



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

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

- 4                   (a) This entire chapter applies to the condominium;  
5                   (b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS  
6                   116.3116 to 116.31167, inclusive, apply to the condominium; or  
7                   (c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to  
8                   the condominium.

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

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

25                  ...  
26  
27                  

---

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

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

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

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

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

27                 

---

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

<sup>29</sup> See Stipulated Trial Exhibit 3, 204 CC&Rs, Article XIII.

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

14  
15 7. Notwithstanding the aforementioned, this Court notes it was CELTIC BANK  
16 CORPORATION that satisfied the property tax lien, which resulted in a re-conveyance of the title to  
17 its borrower, GIBSON ROAD, LLC. No evidence was presented to demonstrate VEGAS UNITED  
18 INVESTMENT SERIES 105, INC. paid any property taxes. Further, GIBSON ROAD, LLC is  
19 delinquent in paying the monthly installments toward the mortgage. The Bank is entitled to  
20 judicially foreclose given its first-security interest recorded against the property. As it finds  
21 CELTIC BANK CORPORATION'S Deed of Trust is superior to any Association liens, this Court  
22 also concludes VEGAS UNITED INVESTMENT SERIES 105, INC. has not sustained its burden of  
23 proving the elements of its Slander of Title claim by a preponderance of the evidence. Further,  
24 given its conclusion regarding the priority of interests, this Court does not reach the remaining issues  
25 concerning the fairness or commercial reasonableness of the Association's foreclosure sale.  
26

27  
28 <sup>30</sup>See Stipulated Trial Exhibit 1, 1989 Master CC&Rs, Section 11.03.

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

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

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

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

DATED this 25<sup>th</sup> day of August 2017.


SUSAN H. JOHNSON, DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

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

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Laura Banks, Judicial Executive Assistant