

1 **RESPONSE:** Objection. This Request seeks information that is neither relevant nor reasonably  
2 calculated to lead to the discovery of admissible evidence. Further, it seeks confidential and  
3 proprietary business information. Courts routinely hold that internal corporate documents are  
4 confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania*  
5 *Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v.*  
6 *Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing  
7 information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz.  
8 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v.*  
9 *Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994)  
10 (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

11  
12 Dated this 3<sup>rd</sup> day of June, 2016.

13  
14 AKERMAN LLP

15 /s/ Rebekkah Bodoff, Esq.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 3<sup>rd</sup> day of June 2016 I caused to be served a true and correct copy of foregoing **DEFENDANT BANK OF AMERICA, N.A.’S RESPONSES TO PLAINTIFF’S FIRST SET REQUESTS FOR PRODUCTION OF DOCUMENTS** in the following manner:

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

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For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

**(UNITED STATES MAIL)** Pursuant to NRCP 5(b), by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

*/s/ Julia M. Diaz*  
An employee of AKERMAN LLP



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,  
Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH AMERICAN  
TITLE COMPANY; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,  
Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and  
MOUNTAINS EDGE MASTER ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION and  
NEVADA ASSOCIATION SERVICES, INC.

Cross-Defendants.

**AKERMAN LLP**

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1 This matter came before the court on February 12, 2018 for bench trial. Michael F. Bohn,  
2 Esq. appeared for Plaintiff/Counter-Defendant 7510 Perla Del Mar Avenue Trust (**Plaintiff**) and  
3 Darren T. Brenner, Esq. and Karen A. Whelan, Esq. appeared for Defendant/Counterclaimant Bank  
4 of America, N.A. (**BANA**). The court having reviewed the paper and pleadings on file, heard the  
5 testimony of the witnesses, considered evidence, and hearing the argument counsel, makes the  
6 following findings of fact, conclusions of law, and judgment.

### 7 **FINDINGS OF FACT**

#### 8 ***The Deed of Trust***

9 1. This matter involves a dispute over title to a property known commonly as 7510 Perla  
10 Del Mar Avenue, Las Vegas, Nevada (the **Property**). **Stipulated Fact No. 1.**

11 2. Dominic Nolan, the former owner of the Property, purchased the property located at  
12 97510 Perla Del Mar Ave., Las Vegas, Nevada in 2010. **Stipulated Fact No. 1; Trial Exhibit 3.**

13 3. The Property is located within the Mandolin Phase 3 at Mountain's Edge (**HOA**)  
14 planned unit development and is subject to the HOA's CC&Rs, recorded on September 14, 2006  
15 and June 26, 2007, Instrument Nos. 20060914-0001790 and 20070626-0003072. (**CC&Rs**).  
16 **Stipulated Fact No. 2; Trial Exhibits 34 and 35.**

17 4. The property is also located within the Mountain's Edge Master Association planned  
18 unit development and is encumbered by the CC&Rs of the Master Association. **Stipulated Fact**  
19 **No. 3.**

20 5. On December 9, 2010, the former owner entered into a senior deed of trust with KBA  
21 Mortgage, LLC (the **Deed of Trust**) for the Property. The original value of the Deed of Trust  
22 was \$164,032.00. **Trial Exhibit 3.**

23 6. The Deed of Trust was recorded on December 10, 2010 as Instrument No. 20101210-  
24 00002325 **Stipulated Fact No. 5; Trial Exhibit 3.**

25 7. The Deed of Trust includes a Planned Unit Development Rider (**PUD Rider**). The  
26 PUD Rider, Section F, provides: "If the Borrower does not pay PUD dues and assessments when  
27 due, then Lender may pay them." **Trial Exhibit 3.**



1 ***The Mortgage Savings Clause and Provisions of the CC&Rs Applicable to Deeds of Trust***

2           8. Section 9 of the Deed of Trust, Protection of Lender's Interest in the Property and  
3 Rights Under this Security Instrument, provides that the Lender may pay "any sums secured by a  
4 lien which has priority over" the Deed of Trust. **Trial Exhibit 3.**

5           9. Section 2.5.3 of the CC&Rs states:

6           Except to the extent permitted under the Act (NRS 116.3116[2]), a lien under this  
7 Section is prior to all other liens and encumbrances on a Unit except: (1) liens and  
8 encumbrances recorded before the recordation of this Declaration; (2) a first Security  
9 Interest on the Unit recorded before the date on which the assessment sought to be  
enforced became delinquent; and (3) liens for real estate taxes and other  
governmental assessments or charges against the Unit.

10 **Trial Exhibit 34 at Bate number BANA/Nolan-01-000157**

11           10. Section 6.2.3 of the CC&Rs also states:

12           Notice of Actions: The Association shall give prompt written notice to each Eligible  
13 Mortgagee and Eligible Insurer of:...

14           (b) Any delinquency in the payment of Common Expense Assessments owed  
15 by a Unit Owner which remains uncured for a period of sixty (60) days and whose  
Unit is subject to a first Security Interest held, insured or guaranteed by that Eligible  
Mortgagee or Eligible Insurer, as applicable.

16 ***Id. at Bate number BANA/Nolan-01-000203.***

17           11. 6.2.6 of the CC&Rs also states:

18           The Association must maintain current copies of the Declaration, Bylaws, Rules, the  
19 Association's articles of incorporation, books, records, and financial statements of the  
20 Association. The Association shall permit any Eligible mortgagee or Eligible Insurer,  
or other first mortgagee if Unites, to inspect the books and records of the Association  
during normal business hours.

21 ***Id. at Bate number BANA/Nolan-01-000206.***

22           12. Section 6.3.11 of the CC&Rs provides:

23           Any breach or amendment of this Declaration shall not affect or impair the lien or  
24 charge of any Security Interest made in good faith and for value on any Unit (or any  
25 Improvements respectively thereon); provided, however, that any subsequent Unit  
26 Owner of such property shall be bound hereby whether such Unit Owner's title was  
acquired by foreclosure, in a trustee's sale or otherwise.

27 ***Id. at Bate number BANA/Nolan-01-000208.***

13 Section 6.2.8 of the CC&Rs provides:

The provisions of this Section are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law or in equity.

***Id* at Bate number BANA/Nolan-01-000206.**

14. The deed of trust identifies Mortgage Electronic Registration Systems, Inc. (MERS) as the initial deed of trust beneficiary. **Stipulated Fact No. 6; Trial Exhibit 3.**

15. If there had been no Mortgage Savings Clause in the CC&Rs, BANA would not have issued a VA loan on the property. **TT 202:1-23.**

16. MERS assigned the deed of trust to BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP via an assignment of deed of trust dated January 3, 2012 and recorded with the Clark County Recorder on January 6, 2012, as Instrument No. 201201060000225. **Stipulated Fact No. 23; Trial Exhibit 5.**

***The HOA's Foreclosure Sale and BANA's Tender Efforts***

17. On January 4, 2012, Nevada Association Services (NAS), on behalf of the HOA, recorded a Lien for Delinquent Assessments against the Property as Instrument No. 201201040001123 **Stipulated Fact No. 11; Trial Exhibit 4.**

18. A copy of the Lien for Delinquent Assessments was not provided to BANA. **TT at 66:13-23.** Further, the Lien for Delinquent Assessments did not identify a super-priority portion of the lien or identify information from which it could be extrapolated. ***Id*; see also TT 69:5-23.**

19. On February 27, 2012, NAS, on behalf of the HOA, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien, as Instrument No. 201202270002448. **Stipulated Fact No. 12; Trial Exhibit 6.** Again, the Notice of Default did not identify the super-priority portion of the lien or provide information from which it could be extrapolated. **TT at 70:8-71:4.**

20. On March 7, 2012, after recording the Notice of Default and Election to Sell, NAS, on behalf of the HOA, mailed the notice of default to the former owner, BANA, MERS, and other interested parties via certified mail. **Stipulated Fact 13; Trial Exhibit 37 – Bates number BANA/Nolan-01-000287 - 289.**

1           21. Prior to the HOA foreclosure sale, on March 16, 2012, the law firm of Miles, Bauer,  
2 Bergstrom & Winters, LLP, acting as counsel for MERS as nominee for Bank of America, N.A., as  
3 successor by merger to BAC Home Loans Servicing, LP, sent a letter to NAS regarding payment of  
4 the super-priority lien, the terms of which included a request for identification of the super-priority  
5 portion measure at a maximum of nine months of unpaid assessments, and offer to pay that amount  
6 upon proof of the same. **Stipulated Fact No. 17; Trial Exhibit 20.** The letter was authored by  
7 attorney Rock Jung. **TT 135:2-11; Trial Exhibit 32.** The letter was similar to thousands of requests  
8 sent by Miles Bauer during this time period to NAS. **TT 125:14-25, 164:13-21.**

9           22. The March 16, 2012 letter sent by Miles Bauer was received by NAS. **TT 117:1-5**  
10 **and 118:1-22. Stipulated Fact No. 18.**

11           23. NAS did not respond based on its claim that doing so would violate the FDCPA. **TT**  
12 **137:18-139:10; Stipulated Fact No. 18.**

13           24. The parties stipulated the letter was received by NAS. At trial, plaintiff attempted to  
14 withdraw the stipulation because the letter was not in NAS's file. However, testimony by Chris  
15 Yergensen, NAS's former in-house counsel, established that it was not uncommon for letters sent by  
16 Miles Bauer to never make it to the file. **TT 164:22-165:24.** Mr. Yergensen explained: "typically  
17 with the Miles Bauer letters, and as I have testified before, because of the routine nature, I just think  
18 that, to some degree, some of the employees at NAS got a little bit lazy. I mean it was the same  
19 form letter every time. So you see occasionally that the letter didn't make it particularly to the  
20 collection file because it just feel on deaf ears".

21           25. Prior to the time this letter was sent, it was NAS's practice to respond to Miles Bauer  
22 by providing a ledger that described and provided an itemization of the components of the lien. **TT**  
23 **125:8-19, 174:3-9.** NAS was not compensated for this service. **TT 176:3-178-1.** Mr. Yergensen  
24 explained that NAS ceased this practice at some point in 2012 because of the FDCPA. NAS started  
25 providing ledgers again in our around July of 2013 based on a change in state law. **TT 174:3-**  
26 **175:3.** When NAS started providing ledgers again in 2013, it began charging \$150 for this service  
27 based on a statute it believed authorized it to do so. **TT 175:11-16.**

28 ...

1           26.     Miles Bauer's request for a ledger in this matter fell within the period of time NAS  
2 was not providing ledgers or any response to Miles Bauer's requests. Mr. Yergensen acknowledged  
3 that NAS was aware it was taking a risk in making the business decision to refuse to respond to  
4 Miles Bauer during this period. **TT 166:10-167:5, 175:4-16.**

5           As explained by Mr. Jung and, when Miles Bauer did not receive a response to their request  
6 for payoff, they would search their data base to determine if another property within the association  
7 had previously been collected on, and if there was a ledger in that file they could use to attempt to  
8 determine the super-priority payoff amount. **TT 126:13-20.** Miles Bauer did not have such a ledger  
9 in this instance.

10           27.     This court is satisfied that Miles Bauer would have issued a payment of at least the  
11 super-priority component of the lien if NAS had responded with this information or if Miles Bauer  
12 otherwise had the information reasonably available from another source.<sup>1</sup> Even if Miles Bauer had  
13 been able to determine the precise amount of the super-priority, NAS's policy was to reject these  
14 payments unless they were for the full amount of the lien. Miles Bauer's practice was to send a  
15 check by runner to deliver payment. NAS's practice was to have its receptionist reject the payment  
16 at the door unless it was for the full amount of the lien. The receptionist would not consult NAS's  
17 management, legal department, or collections staff before rejecting. **TT 172:3-173:18.**

18           28.     NAS, on November 15, 2012, NAS, on behalf of the HOA, recorded a Notice of  
19 Foreclosure Sale against the Property, as Instrument No. 201211150002280. The notice set a sale for  
20 December 14, 2012. **Stipulated Fact No. 23; Trial Exhibit 9.**

21     On November 13, 2012, NAS, on behalf of the HOA, mailed the Notice of Foreclosure Sale to the  
22 former owner, BANA, and other interested parties. **Stipulated Fact No. 24; Trial Exhibit 37 Bates**  
23 **number BANA/Nolan-01-000357 - 362**

24  
25 <sup>1</sup> The typical Miles Bauer tender process was demonstrated through Miles Bauer's efforts to pay the Mountains Edge  
26 Master Association on the super-priority portion of its lien. On September 10, 2012, BANA, through its counsel at Miles  
27 Bauer, sent a letter to the Master Association offering to pay the sum of nine months of common assessments pre-dating  
28 the former owner's default, requesting proof of that amount, and requesting information regarding the Master  
Association's proposed sale of the property. **Stipulated Fact 19; Trial Exhibit 22.** On October 4, 2012, Miles Bauer,  
by hand delivery, sent a check for \$932.83, representing 9 months of unpaid assessments, and a voluntary payment of  
collection costs/fees, to the Master Association. **Trial Exhibits 24, 25, and 26.**

1           29.     NAS, on behalf of the HOA, posted the Notice of Foreclosure Sale on the Property  
2 and in three places throughout the county in November 15, 2012. **Stipulated Fact No. 25; Trial**  
3 **Exhibit 52.**

4     The Master Association provided a statement of account showing the total amount the former owner  
5 owed the Master Association through September 20, 2012 in response to Miles Bauer's letter. **Trial**  
6 **Exhibit 23.**

7           30.     NAS, on behalf of the HOA, published the Notice of Foreclosure Sale in Nevada  
8 Legal News on three dates (November 21, 2012, November 30, 2012 and December 7, 2012.  
9 **Stipulated Fact No. 26; Trial Exhibit 53.**

10          31.     On February 1, 2013, Plaintiff appeared at the public auction and acquired the  
11 property at the HOA foreclosure sale with a bid of \$14,600, as evidenced by the foreclosure deed  
12 recorded on February 7, 2013. **Stipulated Facts No. 27 and 28; Trial Exhibit 10.** NAS issued a  
13 deed upon sale, which was recorded on February 7, 2013. **Trial Exhibit 10.**

14          32.     BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide  
15 Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage, LLC, via an  
16 assignment of the deed of trust recorded with the Clark County Recorder on July 10, 2013, as  
17 Instrument No. 201307100000782. **Stipulated Fact No. 23; Trial Exhibit 11.**

18          33.     BANA retained expert appraiser Matthew Lubawy to perform a retroactive Fair  
19 Market Value Appraisal of the property at the time of the February 1, 2013 HOA sale, as defined in  
20 *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement (third) of Property § 8.3.  
21 BANA's expert is qualified to render an opinion regarding the Fair Market Value of the Property on  
22 February 1, 2013. As stated in Mr. Lubawy's expert report, the Fair Market Value at the time of the  
23 HOA sale was \$158,500. **Trial Exhibit 33.**

24          34.     NAS routinely rejected attempts to pay superpriority liens, even after reinstating the  
25 practice of providing payoff demands for which they charged \$150.00. **TT 136:9-18; 145:9-146:4.**

26          35.     The owner of the subject property is 7510 Perla Del Mar Avenue Trust. Eddie  
27 Haddad, who is a sophisticated real estate investor who holds a Nevada Real Estate Broker's license  
28 and established the trust, has over 20 years of experience in real estate. He owns and operates Great



1 Bridge Properties, which is a real estate brokerage. He also owns a real estate management company  
2 called Resources Management Group, LLC. Resources Management Group is the company Mr.  
3 Haddad uses to manage many of his real estate acquisitions, including the subject property. He is the  
4 *de facto* manager of the 7510 Perla Del Mar Avenue Trust. **TT 8:25-10:3**

5 36. Eddie Haddad attended and bid at hundreds of HOA foreclosure sales every year. **TT**  
6 **12:14-19**. Through that process, he has acquired hundreds of properties at foreclosure sales over the  
7 years. **TT 12:20-22**.

### 8 CONCLUSIONS OF LAW

9 1. "A quiet title action . . . is the proper method by which to adjudicate disputed  
10 ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044, 1046  
11 (2008). "An action may be brought by any person against another who claims an estate or interest in  
12 real property, adverse to him, for the purpose of determining such adverse claim." NRS 40.010.

13 2. Here, Plaintiff seeks to quiet title in its name and extinguish the Deed of Trust as a  
14 result of the HOA foreclosure sale. The court finds the sale did not extinguish the Deed of Trust  
15 because: (1) the superpriority portion of the lien was tendered prior to the sale; and (2) the equities  
16 balance in favor of BANA.

#### 17 ***I. BANA's Offer Redeemed the Super-Priority As a Matter of Law.***

18 3. NRS116.3116 provides in part:

19 The lien is also prior to all security interests described in paragraph (b) to the extent of any  
20 charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent  
21 of the assessments for common expenses based on the periodic budget adopted by the  
22 ***association pursuant to NRS 116.3115 which would have become due in the absence of***  
***acceleration during the 9 months immediately preceding institution of an action to enforce***  
***the lien***

23 *(emphasis added)*

24 4. The only portion of the HOA's lien that is prior to the first deed of trust's interest is  
25 that amount for up to nine months of assessments only. *Horizons at Seven Hills Homeowners Assoc.*  
26 *v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016).

27 5. In *SFR Investments*, the Nevada Supreme Court held that a first deed of trust holder's  
28 pre-foreclosure tender prevents the first deed of trust from being extinguished. 334 P.3d at 414

1 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to  
2 avert loss of its security[.]").

3 6. The HOA's foreclosure begins at the recording of the notice of delinquent assessment  
4 lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226,  
5 231, 133 Nev. Adv. Op. 3 \_\_ (2017). *See also Property Plus Investments, LLC v. Mortgage*  
6 *Electronic Registration Systems Inc., et al.*, 133 Nev. Ad. Op. 62\_\_ (September 2017).

7 7. The parties stipulated that prior to the HOA foreclosure sale, Miles Bauer, on behalf  
8 of the beneficiary of the first deed of trust, requested the lien balance from NAS. NAS stipulated that  
9 it received this letter, but it did not respond to Miles Bauer's letter based upon its claim that doing so  
10 would violate the FDCPA.

11 8. BANA's offer to pay coupled with NAS's refusal to accept, acknowledge, or even  
12 respond, was sufficient to redeem the seniority for the first deed of trust. As a matter of law, tender  
13 is complete when "the money is offered to a creditor who is entitled to receive it." *Cladianos v.*  
14 *Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added); *see also Fresk v. Kramer*, 99  
15 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am. Jur. 2d Tender § 22 (2014). Money  
16 need not actually change hands. "[W]hen a party, able and willing to do so, offers to pay another a  
17 sum of money and is told that it will not be accepted, the offer is a tender without the money being  
18 produced." *Guthrie v. Curnutt*, 417 F.2d 764, 765-766 (10th Cir. 1969); *accord Ebert v. Western*  
19 *States Refining Co.*, 75 Nev. 217, 221-222, 337 P.2d 1075, 1077 (1959) (Tender of rent sufficient  
20 where offered by tenant and refused by landlord).

21 Bank of America, through its counsel Miles Bauer, offered to pay the super-priority portion  
22 of the lien. There is no dispute that Miles Bauer was ready, willing, and able to provide payment for  
23 a super-priority tender. Based on the testimony of Rock Jung and Jessica Woodbridge, Miles Bauer  
24 was hired by BANA to do just that. The testimony evidences that Miles Bauer was hired to pay the  
25 super-priority portion of the lien or more, and that it would have done so, as it did hundreds of times,  
26 if information was provided from NAS as requested. In addition to providing thousands of similar  
27 tender payments, Miles Bauer provided an (over)payment of tender to the Master Association.  
28 Having demonstrated they were ready, willing and able to pay when the Master Association



1 provided Miles Bauer the information they needed to do so, it is evident that had NAS provided what  
2 was requested, Miles Bauer would have issued a check to Mandolin as well. This court concludes  
3 that Miles Bauer was ready, willing and able to pay the superpriority portion of the lien as well as  
4 additional fees and costs. The testimony from Chris Yergensen and Susan Moses at trial  
5 corroborated this conclusion. NAS knew that the only proof of an accounting needed to obtain a  
6 super-priority check was an itemized letter, and it knew that Miles Bauer would send such a check if  
7 it had that information. There was no evidence or argument at trial to suggest a contrary  
8 conclusion.<sup>2</sup>

9       9. As a matter of law, the FDCPA only prohibits third-party communications made “in  
10 connection with the collection of a debt.” 15 U.S.C. § 1692c(b). A communication is made in  
11 connection with the collection of a debt only if the “animating purpose of the communication [is] to  
12 induce payment by the debtor.” *McIvor v. Credit Control Services, Inc.*, 773 F.3d 909, 914 (8th Cir.  
13 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266 (3d Cir. 2013); *Grden v. Leikin Ingber &*  
14 *Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011); *Gburek v. Litton Loan Servicing*, 614 F.3d 380, 382  
15 (7th Cir.2010). Foreclosing on a lien is not a “debt collection” as defined by the FDCPA, and is thus  
16 outside the statute’s purview. *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App’x. 476, 480 (9th  
17 Cir. 2001); *Warren v. Countrywide Home Loans, Inc.*, 342 Fed. App’x 458, 460 (11th Cir. 2009)  
18 (explaining that “the plain language of the FDCPA supports” the conclusion that “foreclosing on a  
19 security interest is not debt collection activity”); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700  
20 (6th Cir. 2003); *Nadalin v. Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir. 1999).  
21 NAS’s refusal to respond on the basis of the FDCPA was unreasonable for multiple reasons.. It was  
22 just an excuse to be able to go forward with the foreclosure sale. The court does not accept NAS's  
23 position that the HOA was prohibited from disclosing information about the super-priority  
24

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25 <sup>2</sup> In fact, BANA’s offer was in excess of the actual super-priority lien in this case. “[T]he superpriority lien ...is limited  
26 to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Horizon at*  
27 *Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at \*6  
28 (emphasis added). The HOA’s foreclosure begins at the recording of the notice of delinquent assessment lien. *Saticoy*  
*Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (2017).NAS agreed there were  
only five months’ worth of assessments prior to the NOL (and the homeowner satisfied all but \$39.10 of the super-  
priority).

1 component of the lien, if any, under the FDCPA. First, the entirety of the lien was already a matter  
2 of public record. Second, NAS, itself, had a practice of disclosing, at no cost, what it believed to be  
3 the super-priority component up to at least 2012. Third, even if the FDCPA would otherwise prevent  
4 disclosure of information that is already a matter of public record, the CC&Rs expressly set forth  
5 BANA's right to obtain this information. The CC&Rs are a covenant that ran with the land, and  
6 operate as Nolan's consent. Nevada's Supreme Court defines CC&Rs in both contractual and real  
7 property terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P. 3d 1155, 1160-1161 (Nev.  
8 2007) (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a  
9 benefit of rights to the property owner, *superseded on other grounds* 125 Nev. 397, 215 P.3d 27  
10 (2009). NAS was, therefore, obligated to provide the requested information to Miles Bauer.

11 10. NAS' refusal to accept the offer to pay the super-priority or otherwise provide an  
12 account ledger to Miles Bauer cannot form a basis to defeat the tender. "[A]ny affirmative tender of  
13 performance is excused when performance has in effect been prevented by the other party... It is a  
14 principle of fundamental justice that if a promisor is himself the cause of the failure of performance,  
15 either of an obligation due him or of a condition upon which his own liability depends, he cannot  
16 take advantage of the failure." 15 Williston, A Treatise on the Law of Contracts, § 47:4 (4th ed.  
17 2017).

18 11. Even if super-priority notice had been provided, the super-priority and anything less  
19 than payment in full would have been rejected, as stated in the testimony of Moses and Yergensen.  
20 "A tender is not necessary where the declarations of the offeree are such as to indicate that the actual  
21 offer of money will be rejected; the law does not require a man to do a vain and fruitless thing; a  
22 strict and formal tender is not necessary where it appears that if it had been made it would have been  
23 refused." *Enfield v. Huffman Motor Co.*, 117 Cal. App. 2d 800, 807 (1953).

24 12. Consequently, the bank's tender offer through Miles Bauer was all that the bank  
25 needed to do to protect its interest in the property. Alternatively, the Court concludes that payment  
26 of the super-priority would have been futile because that payment would have been rejected.  
27 Therefore, as a matter of law, BANA's first deed of trust was not extinguished by the subject  
28 foreclosure sale.

1           13. Even if Miles Bauer had learned the amount of the superpriority component—either  
2 from NAS or through an archived ledger from Mandolin — actual payment of the superpriority  
3 amount would have been futile. The evidence established that NAS had an ordinary course of  
4 business of rejecting payments from Miles Bauer if the payments were for the superpriority  
5 component. NAS's method of reviewing attempted payments was not conducted by an individual  
6 qualified to make determinations regarding the amounts or the purported conditions attached.  
7 Plaintiff offered no evidence and failed to prove that NAS would have departed from its ordinary  
8 course of business in this case and therefore failed to overcome the presumption that the ordinary  
9 course of business was followed.

10           14. Under Nevada law, certain presumptions are made pursuant to NRS 47.250, which  
11 provides in relevant part that there are disputable presumptions "[t]hat a person intends the ordinary  
12 consequences of that person's voluntary act," and "that the ordinary course of business has been  
13 followed." NRS 47.250(2) and (18)(c). "A presumption not only fixes the burden of going forward  
14 with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830,  
15 834, 897 P.2d 1093, 1095 (1995). "These presumptions impose on the party, against whom it [sic] is  
16 directed, the burden of proving that the nonexistence of the presumed fact is more probable than its  
17 existence." *Id.*, footnote 3.

18           15. Based upon the foregoing, and good cause appearing, the Court hereby finds and  
19 concludes that because of the bank's tender of the super-priority portion of the HOA's lien, the bank  
20 preserved its interest in the subject property, and the HOA foreclosed on only the sub-priority  
21 portion of its lien.

22           16. The Court further finds that Plaintiff's status as a bona fide purchaser is moot by virtue  
23 of the superpriority component having been extinguished by the Miles Bauer rejected tender.

24 ***II. Equitable Balancing***

25           17. In addition to defenses available at law, the court possesses the equitable power to  
26 determine whether an HOA sale extinguished a deed of trust. *Nationstar Mortgage, LLC, v. Saticoy*  
27 *Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91 (Nov. 22, 2017); *Shadow Wood*  
28 *Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

1 Recently in *Shadow Canyon*, the Court explained that while price alone is not sufficient to  
2 invalidated a sale, when the sale price is palpably and greatly inadequate, coupled with unfairness,  
3 fraud, oppression or irregularity, the sale may be set aside. Only slight evidence of unfairness is  
4 needed to set aside the foreclosure sale. *See Shadow Canyon*, 405 P.3d at 649

5 18. The parties stipulated that on February 1, 2013, Plaintiff purchased the subject  
6 property at the HOA foreclosure sale with a bid of \$14,600.00. BANA's expert appraiser  
7 determined the fair market value (FMV) of the property at the time of the February 1, 2013 HOA  
8 sale, to be \$158,500.00. The purchase price was less than 9% of the FMV. The point of the  
9 *Restatement (Third) of Real Property: Mortgages* §8.3 (1997) approach analyzed by *Shadow Wood*  
10 *Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016)  
11 is to compare the fair market value of the property versus what it actually sold for at the foreclosure  
12 sale, and if the foreclosure sale price is less than 20% of the fair market value, then that fact can  
13 render the price to be "palpably and greatly inadequate" which, in conjunction with other  
14 circumstances that reflect fraud, unfairness, or oppression, can support setting aside the sale. *See*  
15 *Shadow Canyon*, 405 P.3d at 649

16 19. The price contemplated by this test is not the amount that a reasonable purchaser at a  
17 foreclosure sale would have paid. Under *Shadow Wood*, the Fair Market Value standard is defined  
18 as a sale which is not the fair "forced sale" value of the real estate, but the price which would result  
19 from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who  
20 is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take  
21 a particular piece of real estate. *Restatement (Third) of Prop.: Mortgages* § 8.3 cmt. b (1997). *See*  
22 *also Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
23 P.3d 1105, (2016).

24 20. Therefore, under binding Nevada Supreme Court precedence in *Shadow Wood*, Fair  
25 Market Value does not ask the question of whether the price of \$14,600 was "fair" in comparison to  
26 other HOA foreclosure sales. The Fair Market Value standard contemplates what the property  
27 would have sold for outside of the forced sale setting. *Shadow Wood Homeowners Ass'n v. New*  
28 *York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

1           21. The sale price of this property of \$14,600.00 was exceedingly low in comparison to  
2 the property's Fair Market Value. Accordingly, only a showing of slight unfairness, fraud,  
3 oppression or irregularity is required to find the deed of trust survived sale. *Nationstar Mortgage,*  
4 *LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91 (Nov. 22, 2017)  
5 (citing *Golden v. Tomiyasu*; 79 Nev. 503, 515, 387 P.2d 989, 995 (1963)).

6           22. Four factors demonstrate unfairness in this case. 1. BANA issued a tender payment  
7 through Miles Bauer but it was unjustifiably rejected by NAS. 2. Despite requests by BANA  
8 through Mile Bauer, NAS refused to provide the super-priority lien amount, disingenuously citing  
9 the FDCPA as reason to withhold information. 3. The CC&Rs contain a Mortgage Savings Clause  
10 that applies here, and NAS should have provided Miles Bauer with the information they requested.  
11 4. The HOA failed to send a notice of delinquent assessment lien to BANA.

12           23. Under *Shadow Cannon*, this Court is required to consider the CC&Rs' Mortgage  
13 Savings Clause. *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133  
14 Nev. Adv. Op. 91, 405 P.3d 641, 648, ft. nt. 11 (2017).

15           24. BANA's testimony at trial was that it was specifically aware of this Mortgage  
16 Savings Clause in the CC&Rs, and that no VA loan would be issued without such a clause.

17           25. In considering whether Plaintiff was a bona fide purchaser for value (**BFP**), the Court  
18 is not convinced that this analysis is appropriate when dealing with a forced or distressed sale such  
19 as an HOA foreclosure sale.

20           26. Generally, a BFP analysis is appropriate when dealing with UCC issues, and the sale  
21 of goods on the open market. The Nevada Supreme Court has indicated, however, that consideration  
22 of a purchaser's BFP status may be appropriate for cases such as this. The Court has recently  
23 indicated that a subsequent purchaser is bona fide under common-law principles if it takes the  
24 property for a valuable consideration and without notice of the prior equity, and without notice of  
25 facts which upon diligent inquiry would be indicated and from which notice would be imputed to  
26 him, if he failed to make such inquiry. *Shadow Wood* at 1115, citing *Bailey v. Butner*, 64 Nev. 1, 19,  
27 176 P.2d 226, 234 (1947); *Moore v. DeBernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923).

28 ...



1           27. It is undisputed that Mr. Haddad, who testified for the Plaintiff trust, has been a real  
2 estate investor for more than 20 years. Mr. Haddad, and Plaintiff, admitted that prior to purchasing  
3 the property, they knew that the Deed of Trust had been recorded against the property. The Planned  
4 Unit Development Rider to this Deed of Trust placed them on record notice that “If Borrower does  
5 not pay assessments when due, the lender may pay them.” Mr. Haddad conceded that he made no  
6 inquiry as to whether there was a payment on the super-priority portion of the lien, or attempted  
7 payment on the super-priority portion of the lien, of any party, including NAS, the HOA, Bank of  
8 America, or any other individual or entity. When Mr. Haddad decided to purchase the property  
9 despite there being a recorded deed of trust against it, without inquiring whether there had been an  
10 attempt to pay the superpriority portion of the lien, he took the risk that the deed may be encumbered  
11 by a first deed of trust.

12           28. The recorded notice of sale, as well as the published notice in the Nevada Legal news,  
13 both indicated that the sale was made without warranty.

14           29. In sum, the equitable balancing weighs in favor of BANA. The low price of sale  
15 needs only to be coupled with “slight” unfairness to find the balance in favor of BANA. Here, the  
16 evidence shows 1. BANA attempted to pay the super-priority portion of the lien 2. BANA was  
17 denied the information it was entitled to have in order to calculate the superpriority amount of the  
18 lien. 3. The CC&Rs required notice to BANA that was not provided and that may be enforced by  
19 BANA in equity, and 4. Plaintiff was not a bona fide purchaser. The Court notes that even if Plaintiff  
20 were a bona fide purchaser, Mr. Haddad and the Trust failed to show how being a bone fide  
21 purchaser would have revived the superpriority component of the lien extinguished by the  
22 unjustified rejection of BANA’s tender. *See Nev. Sup. Ct. Doc, 71246 (Dec. 22, 2017)(unpublished*  
23 *disposition).*

24           30. The purchaser at an HOA foreclosure sale can only obtain what the seller has to give.  
25 There is no warranty or guaranty, and consequently, whatever the seller had is the most that Plaintiff  
26 could acquire. Since the superpriority amount was tendered, and this Court finds that such tender  
27 protected BANA’s security interest in the property, Plaintiff obtained only the title or interest in the  
28 property that was available for sale.

1           31.       Based upon the facts and circumstances as set forth herein, and in the pleadings, the  
2 Court concludes that the only interest the HOA had to convey was the subpriority portion of their  
3 lien. The Plaintiff's took interest in the property, is subject to BANA's deed of trust.

4                               **JUDGMENT**

5           The Court having made its Findings of Fact and Conclusions of Law,

6           **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the sub-  
7 priority portion of its lien; and

8           **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the super-priority  
9 portion of the HOA's lien was discharged and extinguished prior to the HOA foreclosures sale as a  
10 result of the tender by the bank; and

11           **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Plaintiff 7510 Perla Del  
12 Mar Ave. Trust purchased an interest in the Property, located at 7510 Perla Del Mar Avenue, Las  
13 Vegas, Nevada subject to BANA's deed of trust, which remains a first position lien against the  
14 Property; and

15           **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed of Trust  
16 recorded on December 10, 2010 remains a first position lien against the Property and is superior to  
17 the interest conveyed in the Foreclosure Deed; and

18           **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Plaintiff's Complaint, are mooted by the findings  
20 above and thereby dismissed with prejudice; and

21   ...

22   ...

23   ...

24   ...

25   ...

26   ...

27   ...

28   ...




1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that BANA shall have its  
2 cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice directed  
3 thereto.

4 DATED 14 March, 2018.

5  
6   
7 DISTRICT COURT JUDGE  
8 

8 Respectfully submitted by:

9 AKERMAN LLP

10   
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5 Attorney for plaintiff

6 DISTRICT COURT  
7  
8 CLARK COUNTY, NEVADA

9 7510 PERLA DEL MAR AVE TRUST,  
10 Plaintiff,

CASE NO.: A686277  
DEPT NO.: XXX

11 vs.

12 BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY, A NEVADA  
13 CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
14 NOLAN,  
15 Defendants.

16 **PLAINTIFF'S RESPONSES TO DEFENDANT,**  
17 **BANK OF AMERICA, N.A.'S FIRST REQUESTS FOR PRODUCTION**

18 Plaintiff, 7510 Perla Del Mar Ave Trust, by and through it's attorney, Michael F. Bohn, Esq.  
19 hereby responds to the defendant's requests for production of documents as follows:

20 **REQUEST FOR PRODUCTION NO. 1:**

21 Produce all Documents You reviewed or referenced in order to respond to Defendant's  
22 Interrogatories, Requests for Admission, or these Requests for Production of Documents.

23 **RESPONSE TO REQUEST NO. 1:**

24 The foreclosure deed and the file from the foreclosure trustee have already been produced.

25 **REQUEST FOR PRODUCTION NO. 2:**

26 Produce all Documents that relate to, reflect, refer to or memorialize Your contention that through  
27 the HOA Foreclosure Sale, You acquired title to the Property free and clear of all liens and encumbrances.

28 . . .

1 **RESPONSE TO REQUEST NO. 2:**

2 See response to request no. 1.

3 **REQUEST FOR PRODUCTION NO. 3:**

4 Produce all Documents that relate to, reflect, refer to or memorialize Your purchase of the  
5 Property, including the amounts You paid.

6 **RESPONSE TO REQUEST NO. 3:**

7 See response to request no. 1.

8 **REQUEST FOR PRODUCTION NO. 4:**

9 Produce any appraisals You had performed of the Property before and/or after You purchased the  
10 Property at the HOA Foreclosure Sale.

11 **RESPONSE TO REQUEST NO. 4:**

12 None.

13 **REQUEST FOR PRODUCTION NO. 5:**

14 Produce all Documents that describe Your business purposes, if any. Produce all Documents that  
15 Identify, *inter alia*, what Your business does to generate revenue, income, and profit; how Your business  
16 does it; and whether You perform any services other than purchasing real estate.

17 **RESPONSE TO REQUEST NO. 5:**

18 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an  
19 unwarranted intrusion into private and confidential financial matters, and not proportional to the needs  
20 of the case. Without waiving this objection, the plaintiff responds, none.

21 **REQUEST FOR PRODUCTION NO. 6:**

22 Produce all Documents that Identify Your sources of capital from 2010 to the present. If You  
23 borrow money to operate Your business, produce all Documents that Identify the lenders/persons that  
24 You borrow from and the terms of the loan/investment.

25 **RESPONSE TO REQUEST NO. 6:**

26 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an  
27 unwarranted intrusion into private and confidential financial matters, and not proportional to the needs  
28 of the case.

1 **REQUEST FOR PRODUCTION NO. 7:**

2 Produce all Documents regarding any funds or resources You have expended in regard to the  
3 Property.

4 **RESPONSE TO REQUEST NO. 7:**

5 See response to request no. 6.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 Produce all Documents regarding any rent or other income received by You related to the  
8 Property, including any and all lease or rental agreements regarding the Property that You have entered  
9 into with any current or former tenant or inhabitant of the Property.

10 **RESPONSE TO REQUEST NO. 8:**

11 See response to request no. 6.

12 **REQUEST FOR PRODUCTION NO. 9:**

13 Produce all Documents regarding any contention that Defendant had actual or constructive  
14 knowledge of any assessments or related costs allegedly owed to the HOA related to the Property prior  
15 to the HOA Foreclosure Sale.

16 **RESPONSE TO REQUEST NO. 9:**

17 See response to request no. 1.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 Produce all Documents regarding any contention that Defendant had actual or constructive  
20 knowledge of the HOA Foreclosure Sale.

21 **RESPONSE TO REQUEST NO. 10:**

22 The foreclosure deed has been produced.

23 **REQUEST FOR PRODUCTION NO. 11:**

24 Produce all Documents that evidence communications between You and the HOA concerning the  
25 Property.

26 **RESPONSE TO REQUEST NO. 11:**

27 None.

28 . . .

1 **REQUEST FOR PRODUCTION NO. 12:**

2 Produce all Documents that evidence communications between You and Nevada Association  
3 Services concerning the Property.

4 **RESPONSE TO REQUEST NO. 12:**

5 None.

6 **REQUEST FOR PRODUCTION NO. 13:**

7 Produce all Documents that evidence communications between You and Silver State Trustee  
8 Services concerning the Property.

9 **RESPONSE TO REQUEST NO. 13:**

10 None.

11 **REQUEST FOR PRODUCTION NO. 14:**

12 Produce all Documents reviewed by You, obtained by research or otherwise, including any title  
13 documents regarding the Property or the value thereof, or otherwise considered by You related to the  
14 Property prior to the HOA Foreclosure Sale, including any copies of internet research regarding the fair  
15 market value of the Property.

16 **RESPONSE TO REQUEST NO. 14:**

17 Objection. Irrelevant. The purchaser is deemed as a matter of law to have notice of the recorded  
18 documents. Without waiving this objection, all research is done paperless and deleted after the sale.

19 **REQUEST FOR PRODUCTION NO. 15:**

20 Produce all Documents that evidence communications between You and the HOA concerning the  
21 HOA Foreclosure Sale.

22 **RESPONSE TO REQUEST NO. 15:**

23 There were no communications with the HOA prior to the purchase of the property. Any  
24 communications after the sale would have been to set up a new account for a new owner or other HOA  
25 related matters.

26 **REQUEST FOR PRODUCTION NO. 16:**

27 Produce all Documents regarding the following:

28 (a) How You learned of the HOA Foreclosure Sale;

- 1 (b) Whether the HOA, or anyone at Nevada Association Services, or Silver State Trustee  
2 Services told You of the opening bid price prior to the HOA Foreclosure Sale;
- 3 (c) The opening bid price at the HOA Foreclosure Sale;
- 4 (d) Identification of the bidders at the HOA Foreclosure Sale;
- 5 (e) Identification of the amounts bid at the HOA Foreclosure Sale;
- 6 (f) Identification of the amounts that You bid on the Property at the HOA Foreclosure Sale;
- 7 (g) Your method of calculating Your bid price at the HOA Foreclosure Sale; and
- 8 (h) How You paid for the Property after the HOA Foreclosure Sale.

9 **RESPONSE TO REQUEST NO. 16:**

- 10 a. An online search of Nevada Legal News was conducted and no documents were retained  
11 after the sale.
- 12 b. None.
- 13 c. None.
- 14 d. None.
- 15 e. None.
- 16 f. None.
- 17 g. None.
- 18 h. I paid by cashier's check and did not retain a copy of the check.

19 **REQUEST FOR PRODUCTION NO. 17:**

20 Produce all Documents that Identify what You believed to be the fair market value of the Property  
21 at the time of the HOA Foreclosure Sale, including the reasons for Your belief.

22 **RESPONSE TO REQUEST NO. 17:**

23 None.

24 **REQUEST FOR PRODUCTION NO. 18:**

25 Produce all Documents evidencing communications between You and any title insurance company  
26 regarding the Property that occurred either prior to the HOA Foreclosure Sale or after the HOA  
27 Foreclosure Sale.

28 . . .



1 **RESPONSE TO REQUEST NO. 18:**

2 None.

3 **REQUEST FOR PRODUCTION NO. 19:**

4 Produce all listing agreements between You and any real estate broker or real estate agent  
5 regarding selling the Property after the HOA Foreclosure Sale.

6 **RESPONSE TO REQUEST NO. 19:**

7 None.

8 **REQUEST FOR PRODUCTION NO. 20:**

9 Produce all Documents evidencing communications between You and a real estate broker or real  
10 estate agent regarding the Property in the four years preceding the date these Requests for  
11 Production were served.

12 **RESPONSE TO REQUEST NO. 20:**

13 None.

14 **REQUEST FOR PRODUCTION NO. 21:**

15 Produce all lease agreements concerning the Property between You and any past or current  
16 tenants.

17 **RESPONSE TO REQUEST NO. 21:**

18 See response to request no. 6.

19 **REQUEST FOR PRODUCTION NO. 22:**

20 Produce all Documents evidencing real estate taxes, including but not limited to, real estate  
21 transfer taxes, You have paid for the Property.

22 **RESPONSE TO REQUEST NO. 22:**

23 The real estate tax information can be found online and is not in the possession of the plaintiff.  
24 The real estate transfer tax information is available in the foreclosure deed which has already been  
25 produced.

26 **REQUEST FOR PRODUCTION NO. 23:**

27 Produce all Documents that relate to, reflect, refer to or memorialize Your contention that, as a  
28 result of the HOA Foreclosure Sale, the Defendant has no estate, right, title, or interest in the Property.



1 **RESPONSE TO REQUEST NO. 23:**

2 See response to request no. 1.

3 **REQUEST FOR PRODUCTION NO. 24:**

4 Produce all Documents that relate to, reflect, refer to or memorialize Your contention that the  
5 HOA Foreclosure Sale was properly noticed.

6 **RESPONSE TO REQUEST NO. 24:**

7 See response to request no. 1.

8 **REQUEST FOR PRODUCTION NO. 25:**

9 Produce all Documents that relate to, reflect, refer to or memorialize any contention by You that  
10 the HOA Foreclosure Sale was properly conducted.

11 **RESPONSE TO REQUEST NO. 25:**

12 See response to request no. 1.

13 **REQUEST FOR PRODUCTION NO. 26:**

14 Produce all Documents that relate to, reflect, refer to or memorialize each and every notice that  
15 was provided to the Defendant or any other person or entity in connection with the HOA Foreclosure  
16 Sale.

17 **RESPONSE TO REQUEST NO. 26:**

18 See response to request no. 1.

19 **REQUEST FOR PRODUCTION NO. 27:**

20 Produce all Documents that relate to, reflect, refer to or memorialize any offer of tender made by  
21 Defendant in connection with the HOA Foreclosure Sale.

22 **RESPONSE TO REQUEST NO. 27:**

23 This information is in the defendant's possession, not the plaintiff.

24 **REQUEST FOR PRODUCTION NO. 28:**

25 Produce all Documents that relate to, reflect, refer to or memorialize any request for notice of the  
26 HOA Foreclosure Sale, including the notice of default or notice of sale in connection therewith, including  
27 but not limited to pursuant to Nevada Revised Statute 107.090, 116.3116 and/or 116.311635.

28 . . .

1 **RESPONSE TO REQUEST NO. 28:**

2       Objection. Any such request would be a publically recorded document available to the defendant.

3 **REQUEST FOR PRODUCTION NO. 28:(sic)**

4       Produce all Documents that You received at the HOA Foreclosure sale, including, but not limited  
5 to, any bid sheets or disclaimers provided to You by Nevada Association Services, Silver State Trustee  
6 Services or the Auctioneer.

7 **RESPONSE TO REQUEST NO. 28:**

8       None.

9       Dated this   27th   day of June, 2016.

10                                   LAW OFFICES OF  
11                                   MICHAEL F. BOHN, ESQ., LTD.

12                                   By: /s/ /Michael F. Bohn, Esq./  
13                                   MICHAEL F. BOHN, ESQ.  
14                                   376 E. Warm Springs Rd., Ste. 140  
15                                   Las Vegas, NV 89119  
16                                   Attorney for plaintiff  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 27th day of June, 2016, an electronic copy of the **PLAINTIFF’S RESPONSES TO DEFENDANT, BANK OF AMERICA, N.A.’S FIRST REQUESTS FOR PRODUCTION** was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

Darren T. Brenner, Esq.  
Rebekkah B. Bodoff, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144

/s/ /Maggie Lopez  
An Employee of the LAW OFFICES OF  
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*Attorneys for Bank of America, N.A.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,  
  
Plaintiff,  
  
v.  
  
BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN  
  
Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**DEFENDANT BANK OF AMERICA,  
N.A.'S RESPONSES TO PLAINTIFF'S  
FIRST SET OF REQUESTS FOR  
ADMISSION**

Pursuant to Nevada Rule of Civil Procedure 36, Defendant Bank of America, N.A. (**Bank of America** or **BANA**), by and through its attorneys AKERMAN LLP, responds to 7510 Perla Del Mar Ave Trust's Requests for Admission as follows:

**GENERAL OBJECTIONS APPLICABLE TO ALL REQUESTS**

1. Scope. BANA objects to the Requests to the extent that they exceed the permissible scope of discovery under the Nevada Rules of Civil Procedure or any local rule. In addition, BANA objects to the Requests to the extent that they purport to impose requirements beyond those imposed by the Nevada Rules of Civil Procedure or any local rule.

2. Attorney-Client Privilege and Work Product Doctrine. BANA objects to the Requests to the extent that they request information or documents subject to any privilege,

{38414727;1}

immunity, or obligation of confidentiality, including, without limitation, the attorney-client privilege, the work product doctrine, or any other applicable legal privilege against disclosure.

3. Best Knowledge, Information and Belief; No Waiver. BANA's responses are made to the best of BANA's present knowledge, information and belief. These responses are at all times subject to such additional or different information, knowledge, or facts that discovery or further investigation may disclose. BANA reserves the right to supplement these responses in accordance with Nevada Rule of Civil Procedure 26(e). The response to each Request shall not be interpreted to concede the truth of any factual assertion or implication contained in the Request. BANA is providing these responses without waiver of, or prejudice to, its rights to later raise objections to relevance, materiality, privilege, or admissibility of any document produced in conjunction with this response. To the extent any Request or portion thereof is not specifically admitted, it is denied.

4. Subsequent Discovery of Documents or Information. BANA reserves the right to make any use of, or to introduce at any hearing and/or at trial, documents or other information responsive to these Requests but discovered by BANA subsequent to the date of these responses.

5. Specific Objections. In addition to these General Objections, BANA may set forth other and further objections with its specific responses. By its specific objection, BANA does not limit or restrict these General Objections.

6. Incorporation. BANA incorporates all of the foregoing General Objections into each response to these Requests, as set forth below.

### **RESPONSES TO REQUESTS FOR ADMISSION**

**REQUEST NO. 1:** Admit that you were aware of the Association's lien on the Property before the Association foreclosure sale.

**RESPONSE:** Objection. This Request is vague and ambiguous as to the term "aware." It is also vague and ambiguous because the Request is not temporally limited. Further, the Request calls for a legal conclusion and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent constructive notice is not dependent on factual awareness. Without waiving any objection, BANA states that it is without sufficient information to

1 either admit or deny the contentions in this Request. Discovery is ongoing, and BANA reserves the  
2 right to supplement this response.

3 **REQUEST NO. 2:** Admit that you did not attend the Association foreclosure sale.

4 **RESPONSE:** Objection. This Request calls for a legal conclusion and seeks information  
5 that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
6 BANA specifically denies that its security interest was extinguished by the HOA's foreclosure sale.  
7 BANA further denies that the HOA's foreclosure sale was properly noticed or conducted and denies  
8 that it was valid. Without waiving any objection, admit.

9 **REQUEST NO. 3:** Admit that you are the current holder of the beneficial interest in the First  
10 Deed of Trust.

11 **RESPONSE:** Denied. BANA states that it assigned its interest in the Deed of Trust to  
12 Nationstar Mortgage, LLC on June 20, 2013 and that it recorded such assignment in the land records  
13 for Clark County on July 10, 2013 as Instrument No. 201307100000782.

14 **REQUEST NO. 4:** Admit that you or your predecessor in interest to the First Deed of Trust  
15 received a notice of default from the Association or its agents.

16 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "predecessor"  
17 and "agents." Further, this Request calls for speculation concerning information in a "predecessor's"  
18 knowledge. This Request is overly broad and burdensome in that it is not temporally limited and is  
19 not limited to the subject property. This Request also improperly calls for a legal conclusion; it is  
20 therefore beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v. Emery*, 109 Nev.  
21 737, 742, 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d  
22 561, 564 (1990)). BANA also specifically denies that the recorded notice of default gave any notice  
23 that the Association was attempting a foreclosure based on a super-priority lien, or the amounts that  
24 were required to satisfy any such super-priority lien. Without waiving any objection, BANA admits  
25 that a copy of a notice of default is in its files related to this property, which appears to have been  
26 sent by the HOA or its agent.

27 **REQUEST NO. 5:** Admit that you or your predecessor in interest to the First Deed of Trust  
28 received a notice of sale from the Association or its agents.



1 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "predecessor"  
2 and "agents." Further, this Request calls for speculation concerning information in a "predecessor's"  
3 knowledge. This Request is overly broad and burdensome in that it is not temporally limited and is  
4 not limited to the subject property. This Request also improperly calls for a legal conclusion; it is  
5 therefore beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v. Emery*, 109 Nev.  
6 737, 742, 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d  
7 561, 564 (1990)). BANA also specifically denies that the recorded notice of trustee's sale gave any  
8 notice to BANA that the Association was attempting a foreclosure based on a super-priority lien, or  
9 the amounts required to satisfy any such super-priority lien. Without waiving any objection, BANA  
10 admits that a copy of a notice of foreclosure sale is in its files related to this property, which appears  
11 to have been sent by the HOA or its agent.

12 **REQUEST NO. 6:** Admit that you did not tender any payment to the Association towards the  
13 Association's lien on the Property.

14 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not  
15 temporally limited. BANA also objects to the Request to the extent it calls for information outside  
16 BANA's knowledge. BANA specifically denies that it had any obligation to pay the borrower's  
17 assessments owing to the HOA—such an obligation remained solely the borrower's responsibility.  
18 Without waiving any objection, BANA states that it tendered nine months' worth of common  
19 assessments as well as reasonable collection costs to the HOA or its agent.

20 **REQUEST NO. 7:** Admit that you did not take any steps to ensure the Association received  
21 assessments owed by the Borrower during the time period that you had an interest in the "First Deed  
22 of Trust."

23 **RESPONSE:** Objection. This Request is vague and ambiguous as to the terms "steps" and  
24 "ensure." This Request is also overly broad and burdensome in that it is not temporally limited and  
25 is not limited to the subject property. BANA specifically denies that it had any obligation to pay the  
26 borrower's assessments owing to the HOA—such an obligation remained solely the borrower's  
27 responsibility. Without waiving any objection, denied. BANA states that it tendered nine months'  
28 worth of common assessments as well as reasonable collection costs to the HOA or its agent.



1 BANA also refers Plaintiff to its Initial Disclosures at BANA/Nolan-01-000079-82, which includes  
2 correspondence sent from BANA's counsel to the borrower.

3 **REQUEST NO. 8:** Admit that you did not attempt to contact the Association or its agents to  
4 determine the super priority portion of the Association's lien on the Property.

5 **RESPONSE:** Objection. This Request overly broad and unduly burdensome because it is  
6 not temporally limited. This Request is also vague in that it does not identify the "super-priority"  
7 portion of the lien. BANA also objects to this Request because it improperly calls for a legal  
8 conclusion; it is therefore beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v.*  
9 *Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671,  
10 675-77, 799 P.2d 561, 564 (1990)). Without waiving any objection, denied. BANA refers Plaintiff  
11 to BANA/Nolan-01-000083-113. BANA states that its retained counsel sent a letter to the HOA or  
12 its agent, dated September 10, 2012, requesting a payoff ledger in order to calculate the super-  
13 priority amount. BANA tendered nine months' worth of common assessments as well as reasonable  
14 collection costs to the HOA or its agent on October 4, 2012.

15 **REQUEST NO. 9:** Admit that you failed to cure the super priority portion of the Association's  
16 lien before the Association foreclosure sale.

17 **RESPONSE:** Objection. This Request improperly calls for a legal conclusion; it is therefore  
18 beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v. Emery*, 109 Nev. 737, 742,  
19 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d 561, 564  
20 (1990)). It is also overly broad and unduly burdensome because it is not temporally limited and is  
21 not limited to the subject property. Further, this Request lacks foundation to the extent it assumes  
22 such an obligation exists under law. This Request is also vague in that it fails to identify the "super-  
23 priority" portion of the lien. BANA specifically denies that the recorded notices or communications  
24 from the HOA or its agent gave any notice that the HOA was attempting a foreclosure based on a  
25 super-priority lien, or the amounts that were required to satisfy any such super-priority lien. In  
26 addition, BANA refers Plaintiff to BANA/Nolan-01-000083-113. BANA states that its retained  
27 counsel sent a letter to the HOA or its agent, dated September 10, 2012, requesting a payoff ledger in  
28

1 order to calculate the super-priority amount. BANA tendered nine months' worth of common  
2 assessments as well as reasonable collection costs to the HOA or its agent on October 4, 2012.

3 **REQUEST NO. 10:** Admit that you were aware that the Property was subject to a declaration of  
4 covenants, conditions and restrictions before you obtained an interest in the Property.

5 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "aware."  
6 This Request calls for a legal conclusion and seeks information that is neither relevant nor  
7 reasonably calculated to lead to the discovery of admissible evidence to the extent constructive  
8 notice is not dependent on factual awareness. Without waiving any objection, Bank of America is  
9 without knowledge as to whether it did or did not know of the CC&Rs when it obtained a beneficial  
10 interest in the property.

11 **REQUEST NO. 11:** Admit that you were aware that the Borrower had not paid the Association  
12 assessments as required by the Association's declaration of CC&Rs before you obtained an interest  
13 in the Property.

14 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "aware" and  
15 calls for information outside BANA's knowledge. Without waiving any objection, BANA states  
16 that it is without sufficient information to either admit or deny the contents of this Request.

17 **REQUEST NO. 12:** Admit that you were aware before you took an interest in the Property that  
18 your security interest could be extinguished if a lien with a higher priority foreclosed.

19 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "aware."  
20 This Request improperly calls for a legal conclusion; it is therefore beyond the scope of Nevada Rule  
21 of Civil Procedure 36. *See Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993) (quoting  
22 *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d 561, 564 (1990)). Further, this Request is  
23 overly broad to the extent it goes beyond the issues presented in this case. Without waiving any  
24 objection, BANA specifically denies that its security interest was extinguished by the HOA's  
25 foreclosure sale. BANA further denies that the HOA's foreclosure sale was properly noticed or  
26 conducted and denies that it was valid.

27 **REQUEST NO. 13:** Admit that the portion of an association's lien representing up to nine months'  
28 worth of common assessments has priority over first security interests in Nevada.

1 **RESPONSE:** Objection. This Request improperly calls for a legal conclusion; it is therefore  
2 beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v. Emery*, 109 Nev. 737, 742,  
3 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d 561, 564  
4 (1990)). It is also overly broad, beyond the issues presented in this case, and not limited to the  
5 property and interest at issue. Without waiving any objection, BANA denies that this request fully or  
6 accurately sets forth the law applicable to this matter.

7 **REQUEST NO. 14:** Admit that a portion of the Association's lien had priority over your First  
8 Deed of Trust.

9 **RESPONSE:** Objection. This Request improperly calls for a legal conclusion; it is  
10 therefore beyond the scope of Nevada Rule of Civil Procedure 36. *See Smith v. Emery*, 109 Nev.  
11 737, 742, 856 P.2d 1386, 1389 (1993) (quoting *Morgan v. Demille*, 106 Nev. 671, 675-77, 799 P.2d  
12 561, 564 (1990)).

13 **REQUEST NO. 15:** Admit that you have servicing guidelines requiring you and your agents to  
14 protect your lien priority by paying association liens.

15 **RESPONSE:** Objection. This Request seeks confidential and proprietary information that is  
16 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This  
17 Request is also vague and ambiguous as to the phrase "association liens." Courts routinely hold that  
18 internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
19 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
20 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
21 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
22 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*  
23 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2  
24 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
25 1977)). Further, this Request is overly broad and burdensome in that it is not temporally or  
26 geographically limited and is vague and ambiguous as to "protect."

27 **REQUEST NO. 16:** Admit that, prior to the Association foreclosure sale, you had a practice or  
28 policy not to pay delinquent association liens in Nevada.

1 **RESPONSE:** Objection. This Request seeks confidential and proprietary information that is  
2 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This  
3 Request is also vague and ambiguous as to the phrase "delinquent association liens." Courts  
4 routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g.,*  
5 *Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997)  
6 (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed.  
7 Cir. 1987) (finding marketing materials and pricing information confidential and proprietary);  
8 *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly  
9 confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93  
10 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428  
11 F. Supp. 200, 203 (S.D.N.Y. 1977)). BANA also objects to this Request because it is not limited to  
12 the subject property or limited to the issues presented in this case. Finally, this Request is vague and  
13 ambiguous as to the phrase "pay delinquent association liens."  
14

15 DATED this 3<sup>rd</sup> day of June, 2016.  
16

17 **AKERMAN LLP**

18 /s/ Rebekkah Bodoff, Esq.

DARREN T. BRENNER, ESQ.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 3<sup>rd</sup> day of June 2016 I caused to be served a true and correct copy of foregoing **DEFENDANT BANK OF AMERICA, N.A.’S RESPONSES TO PLAINTIFF’S FIRST SET OF REQUESTS FOR ADMISSION** in the following manner:

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

Law Offices of Michael F. Bohn, Esq.		
Contact	Email	
Eserve Contact	office@bohnlawfirm.com	
Michael F Bohn Esq	mbohn@bohnlawfirm.com	

For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

**(UNITED STATES MAIL)** Pursuant to NRCP 5(b), by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

*/s/ Julia M. Diaz*  
An employee of AKERMAN LLP

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*Attorneys for Bank of America, N.A.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,  
Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN

Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**DEFENDANT BANK OF AMERICA,  
N.A.'S RESPONSES TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Nevada Rule of Civil Procedure 33, Defendant Bank of America, N.A. (**Defendant** or **BANA**), by and through its attorneys AKERMAN LLP, responds to 7510 Perla Del Mar Ave Trust's (**Plaintiff**) First Set of Interrogatories as follows:

**GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES**

1. Scope. BANA objects to the Interrogatories to the extent that they exceed the permissible scope of discovery under the Nevada Rules of Civil Procedure or any local rule. In addition, BANA objects to the Interrogatories to the extent that they purport to impose requirements beyond those imposed by the Nevada Rules of Civil Procedure or any local rule.

2. Attorney-Client Privilege and Work Product Doctrine. BANA objects to the Interrogatories to the extent that they request information or documents subject to any privilege,

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1 immunity, or obligation of confidentiality, including, without limitation, the attorney-client  
2 privilege, the work product doctrine, or any other applicable legal privilege against disclosure.

3 3. Best Knowledge, Information and Belief; No Waiver. BANA's responses are made  
4 to the best of BANA's present knowledge, information and belief. These responses are at all times  
5 subject to such additional or different information, knowledge, or facts that discovery or further  
6 investigation may disclose. BANA reserves the right to supplement these responses in accordance  
7 with Nevada Rule of Civil Procedure 26(e). The response to each Interrogatory shall not be  
8 interpreted to concede the truth of any factual assertion or implication contained in the Interrogatory.  
9 BANA is providing these responses without waiver of, or prejudice to, its rights to later raise  
10 objections to relevance, materiality, privilege, or admissibility of any document produced in  
11 conjunction with this response.

12 4. Subsequent Discovery of Documents or Information. BANA reserves the right to  
13 make any use of, or to introduce at any hearing and/or at trial, documents or other information  
14 responsive to these Interrogatories but discovered by BANA subsequent to the date of these  
15 responses.

16 5. Specific Objections. In addition to these General Objections, BANA may set forth  
17 other and further objections with its specific responses. By its specific objection, BANA does not  
18 limit or restrict these General Objections.

19 6. Incorporation. BANA incorporates all of the foregoing General Objections into each  
20 response to these Interrogatories, as set forth below.

### 21 RESPONSES TO INTERROGATORIES

22 INTERROGATORY NO. 1: State the name, address, and phone number for each person  
23 who you intend to call as a witness in the trial in this case.

24 RESPONSE: Objection. This Interrogatory is premature, improperly seeks legal reasoning,  
25 improperly seeks information protected by the attorney-client privilege, and violates the work  
26 product doctrine to the extent it seeks information related to mental impressions. Without waiving  
27 any objection, BANA has identified witnesses whom it believes have relevant information, including  
28 names, addresses, and anticipated subject matter, within its initial disclosures, supplemental

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disclosures, and expert disclosures. Discovery is ongoing, and BANA reserves its right to supplement this response.

**INTERROGATORY NO. 2:** For each person identified by you in interrogatory number 1, please give a brief description of the testimony you anticipate that each witness will give at the trial in this case.

**RESPONSE:** Objection. This Interrogatory is premature, improperly seeks legal reasoning, improperly seeks information protected by the attorney-client privilege, and violates the work product doctrine to the extent it seeks information related to mental impressions. Without waiving any objection, BANA has identified witnesses whom it believes have relevant information, including names, addresses, and anticipated subject matter, within its initial disclosures, supplemental disclosures, and expert disclosures. Discovery is ongoing, and BANA reserves its right to supplement this response.

**INTERROGATORY NO. 3:** State the name, address, and phone number, and the area of expertise for each expert you have consulted regarding this case.

**RESPONSE:** Objection. This Interrogatory seeks information that is protected by the attorney-client privilege and work product doctrine. BANA also objects to this Interrogatory because it is premature and discovery is ongoing. Without waiving any objection, BANA has disclosed expert witnesses, including names, addresses, and anticipated subject matter, within its initial expert disclosures and any supplements thereto. Discovery is ongoing, and BANA reserves its right to supplement this response.

**INTERROGATORY NO. 4:** State the name, address, and phone number, and area of expertise for each expert you have retained as a witness to testify in the trial in this case.

**RESPONSE:** Objection. This Interrogatory seeks information that is protected by the attorney-client privilege and work product doctrine. BANA also objects to this Interrogatory because it is premature and discovery is ongoing. Without waiving any objection, BANA has disclosed expert witnesses, including names, addresses, and anticipated subject matter, within its initial expert disclosures and any supplements thereto. Discovery is ongoing, and BANA reserves its right to supplement this response.

1 **INTERROGATORY NO. 5:** For each expert witness identified by you in interrogatory  
2 number 4, please give a brief description of the testimony you anticipate that each expert witness  
3 will give at the trial in this case.

4 **RESPONSE:** Objection. This Interrogatory seeks information that is protected by the  
5 attorney-client privilege and work product doctrine. BANA also objects to this Interrogatory because  
6 it is premature and discovery is ongoing. Without waiving any objection, BANA has disclosed expert  
7 witnesses, including names, addresses, and anticipated subject matter, within its initial expert  
8 disclosures and any supplements thereto. Discovery is ongoing, and BANA reserves its right to  
9 supplement this response.

10 **INTERROGATORY NO. 6:** Identify each document or other exhibit you intend to introduce  
11 in evidence in the trial of this case.

12 **RESPONSE:** Objection. This Interrogatory seeks information that is protected by the  
13 attorney-client privilege and work product doctrine. BANA also objects to this Interrogatory because  
14 it is premature and discovery is ongoing. Without waiving any objection, BANA has not yet  
15 determined which exhibits will be utilized at trial. Pursuant to a case management order, Defendant  
16 shall file with the Court at a time closer to trial when it has made such a determination. Discovery is  
17 ongoing, and BANA reserves its right to supplement this response.

18 **INTERROGATORY NO. 7:** Please state the amount of damages you will be seeking at trial.

19 **RESPONSE:** Objection. This Interrogatory is premature, improperly seeks legal reasoning,  
20 and violates the work product doctrine to the extent it seeks information related to mental  
21 impressions. BANA further objects to this Interrogatory to the extent it seeks information protected  
22 by attorney-client privilege. Without waiving any objection, BANA states that it has not yet made a  
23 determination of any amount of damages it may seek in the future. Discovery is ongoing, and  
24 BANA reserves its right to supplement this response.

25 **INTERROGATORY NO. 8:** Please explain the basis for each item of damages you will be  
26 seeking at trial.

27 **RESPONSE:** Objection. This Interrogatory is premature, improperly seeks legal reasoning,  
28 and violates the work product doctrine to the extent it seeks information related to mental

1 impressions. BANA further objects to this Interrogatory to the extent it seeks information protected  
2 by attorney-client privilege. Without waiving any objection, BANA states that discovery is ongoing  
3 and BANA has not yet made a determination of any amount of damages it may seek in the future.  
4 Discovery is ongoing, and BANA reserves its right to supplement this response.

5 **INTERROGATORY NO. 9:** Please explain what efforts, if any, you have made to mitigate  
6 your damages in this case.

7 **RESPONSE:** Objection. This Interrogatory is premature, improperly seeks legal reasoning,  
8 and violates the work product doctrine to the extent it seeks information related to mental  
9 impressions. BANA further objects to this Interrogatory to the extent it seeks information protected  
10 by attorney-client privilege. Without waiving any objection, BANA states that discovery is ongoing  
11 and BANA has not yet made a determination of any amount of damages it may seek in the future.  
12 BANA directs Plaintiff to documents submitted in this case, including but not limited to  
13 BANA/Nolan-01-000083-113, which contains correspondence from BANA's retained counsel to the  
14 HOA or its agent. Discovery is ongoing, and BANA reserves its right to supplement this response.

15 **INTERROGATORY NO. 10:** To the extent you answered any of the Requests for  
16 Admissions served upon you contemporaneously herewith, anything other than an unqualified  
17 "Admit," then for each and every such answer, set forth the specific basis or grounds for your  
18 answer, whether you are aware of any information, facts, writings or evidence whatsoever relating to  
19 this litigation that either supports or contradicts your answer, and the identity of all persons who  
20 have any knowledge or information which either supports or contradicts each of your answers which  
21 are not an unqualified admission.

22 **RESPONSE:** Objection. This Interrogatory is compound and overly broad in scope.  
23 Without waiving any objection, BANA states that, where appropriate, it explained the reasons for its  
24 qualified responses in the requests for admission and the information supporting the qualified  
25 admission.

26 **INTERROGATORY NO. 11:** Identify the facts, information and evidence of which you are  
27 aware that supports each affirmative defense claimed in your answer.  
28



1 **RESPONSE:** Objection. This Interrogatory is compound in that it requests a response for  
2 more than one affirmative defense. This Interrogatory is overly broad and unduly burdensome in  
3 that it is not temporally limited. In addition, this Interrogatory is premature as discovery is ongoing.  
4 BANA objects to this Interrogatory because it seeks a legal conclusion as to what evidence may  
5 support an affirmative defense. BANA further objects to this Interrogatory to the extent it seeks  
6 information that is protected by the attorney client privilege or work product doctrine. Finally, this  
7 Interrogatory is overly broad and unduly burdensome insofar as it seeks a categorization of all facts.  
8 Without waiving any objection, and pursuant to Rule 33(d) of the Nevada Rules of Civil Procedure,  
9 BANA refers Plaintiff to produced documents in this case, from which information responsive to  
10 this Interrogatory can be derived or ascertained, including but not limited to BANA/Nolan-01-  
11 000083-113. In further response to this Interrogatory, BANA states that its answer to the complaint,  
12 together with its responses to Plaintiff's Requests for Admission, Requests for Production of  
13 Documents, and these Interrogatories specify a factual basis for BANA's affirmative defenses.  
14 BANA's affirmative defenses may be amended or withdrawn as discovery progresses. In addition,  
15 discovery is ongoing, and BANA reserves its right to supplement this response.

16 **INTERROGATORY NO. 12:** Identify the facts, information and evidence of which you are  
17 aware that supports or contradicts your assertion that you were not properly noticed of the  
18 Association foreclosure sale.

19 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
20 temporally limited. This Interrogatory is also overly broad and unduly burdensome insofar as it  
21 seeks a categorization of all facts. In addition, this Interrogatory seeks a legal conclusion to the  
22 extent that a determination of constructive notice is legal in nature. This Interrogatory violates the  
23 work product doctrine because it seeks information about mental impressions. Without waiving any  
24 objection, BANA denies that any of the notices recorded by the HOA or its agents gave any notice  
25 that the HOA was attempting a foreclosure based on a super-priority lien, or the amounts that were  
26 required to satisfy any such super-priority lien. BANA refers Plaintiff to produced documents in this  
27 case, including BANA/Nolan-01-000083-113, which includes correspondence between BANA's  
28

1 retained counsel and the HOA's agent. Discovery is ongoing, and BANA reserves its right to  
2 supplement this response.

3 **INTERROGATORY NO. 13:** Identify all communications between you and the Association  
4 and/or the Association's agents regarding the Property.

5 **RESPONSE:** Objection. This Interrogatory is overly broad and burdensome insofar as it  
6 requests "all" communications, even those unrelated to the issues raised in this lawsuit. This  
7 Interrogatory also seeks a legal conclusion because whether a person is or is not an agent of another  
8 is a legal determination. Without waiving any objection, BANA refers Plaintiff to produced  
9 documents in this case, including BANA/Nolan-01-000083-113, which include communications  
10 from BANA's retained counsel to the HOA's agent. Discovery is ongoing, and BANA reserves its  
11 right to supplement this response.

12 **INTERROGATORY NO. 14:** Identify any pooling and servicing agreement and/or servicing  
13 guidelines applicable to your security interest in the Property, including any pooling and servicing  
14 agreements for prior servicers.

15 **RESPONSE:** Objection. This Interrogatory is overly broad and unduly burdensome in that  
16 it is not temporally limited, limited to the subject property, or limited to the issues presented in this  
17 case. This Interrogatory seeks confidential and proprietary information that is neither relevant nor  
18 reasonably calculated to lead to the discovery of admissible evidence. Courts routinely hold that  
19 internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
20 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
21 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
22 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
23 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*  
24 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2  
25 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
26 1977)).

27 **INTERROGATORY NO. 15:** Identify all communications between you and the current and  
28 any prior servicer of your loan regarding any association lien on the Property.



1 **RESPONSE:** Objection. This Interrogatory is overly broad and burdensome insofar as it is  
2 not temporally limited and requests "all" communications, even those unrelated to the issues raised  
3 in this lawsuit. BANA also objects to this Interrogatory to the extent it seeks information protected  
4 by the attorney-client privilege or work product doctrine. BANA further objects to this Interrogatory  
5 because it seeks information that is neither relevant nor reasonably calculated to lead to the  
6 discovery of admissible evidence. BANA objects to this Interrogatory because it seeks personal and  
7 confidential information for one of BANA's borrowers. BANA is prohibited from disclosing this  
8 type of information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16  
9 C.F.R. § 313.3(n)(1).

10 **INTERROGATORY NO. 16:** Please provide a list of each and every monetary payment sent  
11 to the Association or its agents relating to an Association lien on the Property. For each payment,  
12 please include the date of payment, amount of payment, the name and address of the person/entity to  
13 whom the payment was sent, the method and manner the payment was sent, the name of the person  
14 who sent the payment, and whether the payment was accepted or rejected.

15 **RESPONSE:** Objection. This Interrogatory is overly broad and burdensome in that it is not  
16 temporally limited. Without waiving any objection, and pursuant to Rule 33(d) of the Nevada Rules  
17 of Civil Procedure, BANA refers Plaintiff to produced documents in this case, from which  
18 information responsive to this Interrogatory can be derived or ascertained, including but not limited  
19 to BANA/Nolan-01-000083-113.

20 **INTERROGATORY NO. 17:** Identify any steps you took to ensure the Association received  
21 the assessments owed in relation to the Property.

22 **RESPONSE:** Objection. This Interrogatory vague and ambiguous as to the term "steps."  
23 Further, this Interrogatory is overly broad and burdensome in that it is not temporally limited or  
24 limited to the issues presented in this case. BANA also objects to this Interrogatory because it lacks  
25 foundation to the extent it assumes that BANA was required to make sure that assessments were  
26 paid. Finally, BANA objects to the extent this Interrogatory seeks personal and confidential  
27 information for one of its borrowers in violation of 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).  
28 Without waiving any objection, BANA refers Plaintiff to BANA/Nolan-01-000079-82, which

1 includes correspondence from BANA's retained counsel to the Borrower, and BANA/Nolan-01-  
2 000083-113, which includes correspondence from BANA's retained counsel to the HOA or its  
3 agent.

4 **INTERROGATORY NO. 18:** Describe any action you or your predecessors in interest took  
5 relating to the Association lien, if any, after receiving foreclosure notices, including, but not limited  
6 to, notice of delinquent assessment lien, notice of default, and notice of sale.

7 **RESPONSE:** Objection. This Interrogatory is overly broad and burdensome in that it is not  
8 temporally limited or limited to the issues presented in this case. This Interrogatory violates the  
9 work product doctrine because it seeks information about mental impressions. Further, this  
10 Interrogatory is vague and ambiguous as to the term "predecessor" and improperly seeks information  
11 outside BANA's knowledge. Finally, BANA objects to this Interrogatory to the extent it seeks  
12 personal and confidential information for one of BANA's borrowers in violation of 15 U.S.C. §  
13 6801; 16 C.F.R. § 313.3(n)(1). Without waiving any objection, BANA was not provided with  
14 proper notice that the HOA was attempting an alleged super-priority foreclosure sale or apprised of  
15 how BANA could protect its secured interest. BANA also did not receive notice of the alleged  
16 super-priority amount. BANA refers Plaintiff to produced documents in this case, including  
17 BANA/Nolan-01-000083-113, which include communications from BANA's retained counsel to the  
18 HOA's agent. Discovery is ongoing, and BANA reserves its right to supplement this response.

19 **INTERROGATORY NO. 19:** Identify all facts, information, and evidence of which you are  
20 aware that contradicts Plaintiff's assertion that it was a bona fide purchaser for value at the  
21 Association foreclosure sale.

22 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
23 temporally limited. Further, this Interrogatory is overly broad and unduly burdensome insofar as it  
24 seeks a categorization of all facts. This Interrogatory violates the work product doctrine because it  
25 seeks information about mental impressions. Moreover, this Interrogatory is premature as discovery  
26 is ongoing. Without waiving any objection, BANA was not provided with proper notice that the  
27 HOA was attempting an alleged "super-priority" foreclosure sale or apprised of how BANA could  
28 protect its secured interest. BANA also did not receive notice of the alleged super-priority amount.

1 BANA further denies that the HOA's foreclosure sale was properly noticed or commercially  
2 reasonable and denies that it was valid. Discovery is ongoing, and BANA reserves its right to  
3 supplement this response.

4 **INTERROGATORY NO. 20:** Describe any interest that any federal government entity may  
5 have in the loan.

6 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous as to the terms  
7 "interest" and "federal government entity." This Interrogatory is overly broad and burdensome in  
8 that it is not temporally limited or limited to the issues presented in this case. BANA also objects to  
9 this Interrogatory to the extent it seeks confidential and proprietary information that is neither  
10 relevant nor reasonably calculated to lead to the discovery of admissible evidence. This  
11 Interrogatory also seeks information contained in internal business records. Courts routinely hold  
12 that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New*  
13 *York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases);  
14 *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding  
15 marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*,  
16 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary);  
17 *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at  
18 \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
19 1977)). Without waiving any objection, BANA states that the loan was originated through the  
20 Veterans Benefits Administration.

21 **INTERROGATORY NO. 21:** Identify the current and all prior servicers for the loan allegedly  
22 secured to the Property by the First Deed of Trust.

23 **RESPONSE:** Objection. BANA objects to this Interrogatory because it seeks information  
24 that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
25 BANA also objects to this Interrogatory to the extent it seeks information that is outside BANA's  
26 knowledge. BANA objects to this Interrogatory because it seeks personal and confidential  
27 information for one of BANA's borrowers. BANA is prohibited from disclosing this type of  
28

1 information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. §  
2 313.3(n)(1).

3 **INTERROGATORY NO. 22:** State the name and mailing address for any servicing agent  
4 who has serviced any loans on your behalf from the time you acquired the deed of trust in question  
5 in this case until the present date.

6 **RESPONSE:** Objection. BANA objects to this Interrogatory because it seeks information  
7 that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
8 BANA also objects to this Interrogatory to the extent it seeks information that is outside BANA's  
9 knowledge. BANA objects to this Interrogatory because it seeks personal and confidential  
10 information for one of BANA's borrowers. BANA is prohibited from disclosing this type of  
11 information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. §  
12 313.3(n)(1).

13 **INTERROGATORY NO. 23:** State each address, including post office boxes where you  
14 receive any mail from the time you acquired your interest in the deed of trust until the present.

15 **RESPONSE:** Objection. This Interrogatory is overly broad and unduly burdensome in that  
16 it is not limited to the subject property and not limited to the issues in this case. BANA further  
17 objects to this Interrogatory because it seeks information that is neither relevant nor reasonably  
18 calculated to lead to the discovery of admissible evidence. Without waiving any objection, BANA  
19 refers Plaintiff to documents produced in this case, including BANA/Nolan-01-000083-113, which  
20 include correspondence between BANA and the HOA or its agents, as well as BANA/Nolan-01-  
21 000010-000033 and BANA/Nolan-01-000036-000037, which includes the applicable deed of trust  
22 and assignment notice provisions.

23 **INTERROGATORY NO. 24:** Identify all facts, information, and evidence of which you are  
24 aware which evidences any fraud, oppression or unfairness in regards to the association foreclosure  
25 sale.

26 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
27 temporally limited. Further, this Interrogatory is overly broad and unduly burdensome insofar as it  
28 seeks a categorization of all facts. This Interrogatory violates the work product doctrine because it



1 seeks information about mental impressions. Moreover, this Interrogatory is premature as discovery  
2 is ongoing. Without waiving any objection, BANA was not provided with proper notice that the  
3 HOA was attempting an alleged “super-priority” foreclosure sale or apprised of how BANA could  
4 protect its secured interest. BANA also did not receive notice of the alleged super-priority amount.  
5 Furthermore, the gross inadequacy of the consideration Plaintiff paid for what it contends is free and  
6 clear title to the property put Plaintiff on constructive notice of BANA’s adverse interest. Although  
7 the property had a fair market value of \$158,500.00 at the time of the HOA’s sale, Plaintiff paid only  
8 \$14,600.00. Under the facts of this case, Plaintiff took the property subject to and aware of BANA’s  
9 lien. Discovery is ongoing, and BANA reserves its right to supplement this response.

10 **INTERROGATORY NO. 25:** Identify all facts, information, and evidence of which you are  
11 aware which evidences that the association foreclosure sale was not properly conducted

12 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
13 temporally limited. Further, this Interrogatory is overly broad and unduly burdensome insofar as it  
14 seeks a categorization of all facts. This Interrogatory violates the work product doctrine because it  
15 seeks information about mental impressions. Moreover, this Interrogatory is premature as discovery  
16 is ongoing. Without waiving any objection, BANA was not provided with proper notice that the  
17 HOA was attempting an alleged “super-priority” foreclosure sale or apprised of how BANA could  
18 protect its secured interest. BANA also did not receive notice of the alleged super-priority amount.  
19 Furthermore, the gross inadequacy of the consideration Plaintiff paid for what it contends is free and  
20 clear title to the property put Plaintiff on constructive notice of BANA’s adverse interest. Although  
21 the property had a fair market value of \$158,500.00 at the time of the HOA’s sale, Plaintiff paid only  
22 \$14,600.00. Under the facts of this case, Plaintiff took the property subject to and aware of BANA’s  
23 lien. Discovery is ongoing, and BANA reserves its right to supplement this response.

24 **INTERROGATORY NO. 26:** Identify all facts, information, and evidence of which you are aware  
25 which evidences that the association foreclosure sale was not properly noticed.

26 **RESPONSE:** Objection. This Interrogatory is vague and ambiguous because it is not  
27 temporally limited. This Interrogatory is also overly broad and unduly burdensome insofar as it  
28 seeks a categorization of all facts. In addition, this Interrogatory seeks a legal conclusion to the

1 extent that a determination of constructive notice is legal in nature. This Interrogatory violates the  
2 work product doctrine because it seeks information about mental impressions. Without waiving any  
3 objection, BANA denies that any of the notices recorded by the HOA or its agents gave any notice  
4 that the HOA was attempting a foreclosure based on a super-priority lien, or the amounts that were  
5 required to satisfy any such super-priority lien. BANA refers Plaintiff to produced documents in this  
6 case, including BANA/Nolan-01-000083-113, which includes correspondence between BANA's  
7 retained counsel and the HOA's agent. Discovery is ongoing, and BANA reserves its right to  
8 supplement this response.

9 **INTERROGATORY NO. 27:** Please state all amounts that you have paid for taxes or insurance on  
10 the subject property since the date of the Association foreclosure sale.

11 **RESPONSE:** Objection. This Interrogatory is overly broad and burdensome insofar as it is  
12 not temporally limited and requests "all" amounts, even those unrelated to the issues raised in this  
13 lawsuit. BANA further objects to this Interrogatory because it seeks information that is neither  
14 relevant nor reasonably calculated to lead to the discovery of admissible evidence. BANA objects to  
15 this Interrogatory because it seeks personal and confidential information for one of BANA's  
16 borrowers. BANA is prohibited from disclosing this type of information without a court order or the  
17 borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).

18 Dated this 3<sup>rd</sup> day of June, 2016.

19  
20 **AKERMAN LLP**

21 /s/ Rebekkah Bodoff, Esq.

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH BODOFF, ESQ.

Nevada Bar No. 12703

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Bank of America, N.A.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 3<sup>rd</sup> day of June 2016 I caused to be served a true and correct copy of foregoing **DEFENDANT BANK OF AMERICA, N.A.’S RESPONSES TO PLAINTIFF’S FIRST SET OF INTERROGATORIES** in the following manner:

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

Law Offices of Michael F. Bohn, Esq.		
Contact		Email
Eserve Contact		<a href="mailto:office@bohnlawfirm.com">office@bohnlawfirm.com</a>
Michael F Bohn Esq		<a href="mailto:mbohn@bohnlawfirm.com">mbohn@bohnlawfirm.com</a>

For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

**(UNITED STATES MAIL)** Pursuant to NRCP 5(b), by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

/s/ Julia M. Diaz  
An employee of AKERMAN LLP

## VERIFICATION

STATE of Texas  
COUNTY of Collin

JAMIE COOPER being first duly sworn upon oath, deposes and says:  
I have read the foregoing Responses to Interrogatories and know the contents thereof; that the same is true of my own knowledge except for those matters therein stated on information and belief, and as for those matters I believe it to be true.

Bank of America, N.A.

By: Jamie Cooper  
Jamie Cooper

AVP; Mortgage Servicing Team Manager

for Bank of America

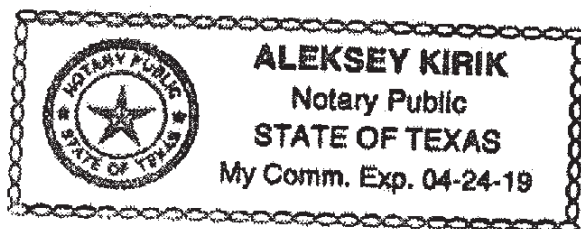
Date: 6.3.16

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is

State of Texas  
County of Collin

Before me, Aleksey Kirik, the undersigned officer, on this, the 3rd day of June 2016, personally appeared Jamie Cooper, ☒ known to me or, ☐ through production of personal knowledge as identification, who identified herself to be the AVP; Mortgage Servicing Team Manager for Bank of America, N.A., the person and officer whose name is subscribed to the foregoing instrument, and being authorized to do so, acknowledged that she had executed the foregoing instrument as the act of such corporation for the purpose and consideration described and in the capacity stated.



Aleksey Kirik  
Aleksey Kirik  
Notary Public, State of TEXAS  
Commission No.: 13020419-8  
My Commission Expires: 04/24/2019

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*Attorneys for Bank of America, N.A.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY;  
MOUNTAINS EDGE MASTER  
ASSOCIATION; and DOMINIC J. NOLAN

Defendants.

Case No.: A-13-686277-C  
Dept.: XXX

**DEFENDANT BANK OF AMERICA,  
N.A.'S RESPONSES TO PLAINTIFF'S  
FIRST SET REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

Pursuant to Nevada Rule of Civil Procedure 34, Defendant Bank of America, N.A.,  
(**Defendant** or **BANA**) responds to 7510 Perla Del Mar Ave Trust's (**Plaintiff**) Requests for  
Production of Documents as follows:

**GENERAL OBJECTIONS APPLICABLE TO ALL REQUESTS**

1. Scope. BANA objects to the Requests to the extent that they exceed the permissible  
scope of discovery under the Nevada Rules of Civil Procedure or any local rule. In addition, BANA  
objects to the Requests to the extent that they purport to impose requirements beyond those imposed  
by the Nevada Rules of Civil Procedure or any local rule.

2. Attorney-Client Privilege and Work Product Doctrine. BANA objects to the  
Requests to the extent that they request information or documents subject to any privilege,

1 immunity, or obligation of confidentiality, including, without limitation, the attorney-client  
2 privilege, the work product doctrine, or any other applicable legal privilege against disclosure.

3 3. Best Knowledge, Information and Belief; No Waiver. BANA's responses are made  
4 to the best of BANA's present knowledge, information and belief. These responses are at all times  
5 subject to such additional or different information, knowledge, or facts that discovery or further  
6 investigation may disclose. BANA reserves the right to supplement these responses in accordance  
7 with Nevada Rule of Civil Procedure 26(e). The response to each Request shall not be interpreted to  
8 concede the truth of any factual assertion or implication contained in the Request. BANA is  
9 providing these responses without waiver of, or prejudice to, its rights to later raise objections to  
10 relevance, materiality, privilege, or admissibility of any document produced in conjunction with this  
11 response.

12 4. Subsequent Discovery of Documents or Information. BANA reserves the right to  
13 make any use of, or to introduce at any hearing and/or at trial, documents or other information  
14 responsive to these Requests but discovered by BANA subsequent to the date of these responses.

15 5. Specific Objections. In addition to these General Objections, BANA may set forth  
16 other and further objections with its specific responses. By its specific objection, BANA does not  
17 limit or restrict these General Objections.

18 6. Incorporation. BANA incorporates all of the foregoing General Objections into each  
19 response to these Requests, as set forth below.

## 20 RESPONSES TO REQUESTS FOR PRODUCTION

21 **REQUEST NO. 1:** Please make available for inspection the collateral file containing the original,  
22 wet-ink signature promissory note, deed of trust, all endorsements, allonges and any assignments.

23 **RESPONSE:** Objection. The Request seeks personal and confidential information for one of  
24 BANA's borrowers. BANA is prohibited from disclosing this type of information without a court  
25 order or the borrower's consent. *See, e.g.,* 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1). Further, this  
26 Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery  
27 of admissible evidence, and seeks the disclosure of documents equally available to Plaintiff through  
28 the Clark County Recorder's office and/or documents which have been disclosed in this litigation.



1 This Request is vague and ambiguous as to the term "wet-ink signature." The Request is also overly  
2 broad and burdensome in that it is not temporally limited or limited to the issues presented in this  
3 case. The Request seeks to impose an undue burden and unreasonable costs upon BANA to locate  
4 and forward original loan documents to Las Vegas, while ensuring their safety given the  
5 ramifications of what occurs if the documents are lost. Discovery is ongoing and BANA reserves  
6 the right to supplement its response.

7 **REQUEST NO. 2:** Please provide every document in your possession or control identified in the  
8 Interrogatories served contemporaneously herewith.

9 **RESPONSE:** BANA directs Plaintiff to BANA's initial and supplemental disclosures, which  
10 include non-privileged, non-confidential documents referenced in its responses to the Interrogatories.  
11 BANA states that internal written policies and procedures referenced in any response to  
12 Interrogatories will be provided if a protective order is in place.

13 **REQUEST NO. 3:** Please provide a copy of any pooling and servicing agreement and/or  
14 servicing guidelines applicable to your security interest in the Property.

15 **RESPONSE:** Objection. This Request is overly broad and unduly burdensome in that it is not  
16 temporally limited, limited to the subject property, or limited to the issues presented in this case.  
17 This Request seeks confidential and proprietary information that is neither relevant nor reasonably  
18 calculated to lead to the discovery of admissible evidence. Courts routinely hold that internal  
19 corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
20 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
21 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
22 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
23 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*  
24 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2  
25 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
26 1977)).

1 **REQUEST NO. 4:** Please provide a copy of all documents in your possession or control that you  
2 received from previous beneficiaries of the First Deed of Trust and the servicer of the Borrower's  
3 loan on the Property relating to the Association or its lien.

4 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
5 limited or limited to the issues presented in this case. BANA further objects to this Request because  
6 it seeks confidential and proprietary information that is neither relevant nor reasonably calculated to  
7 lead to the discovery of admissible evidence. Courts routinely hold that internal corporate  
8 documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao*  
9 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America*  
10 *Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials  
11 and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195  
12 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*  
13 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
14 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, BANA  
15 objects to this Request because it seeks personal and confidential information for one of BANA's  
16 borrowers. BANA is prohibited from disclosing this type of information without a court order or the  
17 borrower's consent. *See, e.g.,* 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).

18 **REQUEST NO. 5:** Please provide a copy of all documents in the First Deed of Trust's origination  
19 file referencing the Association.

20 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not  
21 temporally limited or limited to the issues presented in this case. BANA further objects to this  
22 Request because it seeks confidential and proprietary information that is neither relevant nor  
23 reasonably calculated to lead to the discovery of admissible evidence. Courts routinely hold that  
24 internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
25 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
26 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
27 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
28 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*



1 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2  
2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
3 1977)). Finally, BANA objects to this Request because it seeks personal and confidential  
4 information for one of BANA's borrowers. BANA is prohibited from disclosing this type of  
5 information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. §  
6 313.3(n)(1).

7 **REQUEST NO. 6:** Please provide a copy of all of your non-privileged, correspondence including  
8 emails, referencing the Association's lien on the Property.

9 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "referencing." This  
10 Request also fails Rule 34's particularity requirement in that it requests all files "referencing" the  
11 Association's lien. This Request is overly broad and burdensome in that it is not temporally limited  
12 or limited to the issues presented in this case. BANA also objects to this Request because it seeks  
13 information contained in internal business records. Courts routinely hold that internal corporate  
14 documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao*  
15 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America*  
16 *Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials  
17 and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195  
18 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*  
19 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
20 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, the  
21 Request seeks personal and confidential information for BANA's borrowers. BANA is prohibited  
22 from disclosing this type of information without a court order or the borrower's consent. *See, e.g.,*  
23 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1). Without waiving any objection, BANA has produced  
24 copies of non-privileged, non-confidential correspondence in its initial disclosures and supplements  
25 thereto, including but not limited to BANA/Nolan-01-000083-113. Discovery is ongoing, and  
26 BANA reserves its right to supplement its response.

27 **REQUEST NO. 7:** If you are not the loan servicer, please provide a copy of all documents  
28 evidencing communications between you and the servicer of the loan secured by the First Deed of

1 Trust referencing the Association's lien on the Property.

2 **RESPONSE:** Objection. This Request is overly broad and unduly burdensome in that it is not  
3 temporally limited or limited to the issues presented in this case. This Request seeks confidential  
4 and proprietary information that is neither relevant nor reasonably calculated to lead to the discovery  
5 of admissible evidence. Courts routinely hold that internal corporate documents are confidential and  
6 therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D.  
7 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d  
8 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential  
9 and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal  
10 manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications,*  
11 *Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v.*  
12 *Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

13 **REQUEST NO. 8:** Please provide a copy of all documents in your possession and control  
14 evidencing any payment by you or your predecessors in interest to the Association.

15 **RESPONSE:** Objection. This Request is overly broad and burdensome because it is not temporally  
16 limited and requests documents of *every* tender of payment ever made to the Association. This  
17 Request is also burdensome in that it requests BANA consult with "predecessors" to obtain this  
18 information. This Request is vague and ambiguous as to the terms "predecessors in interest" and  
19 "evidencing." BANA further objects to this Request to the extent it seeks information that is neither  
20 relevant nor reasonably calculated to lead to the discovery of admissible evidence. This Request  
21 also calls for speculation regarding tender made by persons or entities other than BANA. Without  
22 waiving any objections, see BANA's initial and supplemental disclosures, including BANA/Nolan-  
23 01-000083-113. BANA states that its retained counsel sent a letter to the HOA or its agent, dated  
24 September 10, 2012, requesting a payoff ledger in order to calculate the super-priority amount.  
25 BANA tendered nine months' worth of common assessments as well as reasonable collection costs  
26 to the HOA or its agent on October 4, 2012.

1 **REQUEST NO. 9:** Please provide a copy of all documents in your possession or control  
2 evidencing communications between you and the Association and/or its agents referencing the  
3 Property.

4 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
5 limited or limited to the issues presented in this case. The Request is also vague as to the term  
6 "agents," and calls for speculation as to whom the Association's agents may be. This Request is  
7 vague and ambiguous as to the term "referencing." This Request also fails Rule 34's particularity  
8 requirement in that it requests all files "referencing" the Property. Without waiving any objection,  
9 please see BANA's disclosures, including BANA/Nolan-01-000083-113.

10 **REQUEST NO. 10:** Please provide a copy of all documents in your possession and control  
11 referencing the Association's lien.

12 **RESPONSE:** Objection. This Request is vague and ambiguous as to the term "referencing." This  
13 Request also fails Rule 34's particularity requirement in that it requests all files "referencing" the  
14 Association's lien. This Request is overly broad and burdensome in that it is not temporally limited  
15 or limited to the issues presented in this case. BANA also objects to this Request because it seeks  
16 information contained in internal business records. Courts routinely hold that internal corporate  
17 documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao*  
18 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America*  
19 *Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials  
20 and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195  
21 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*  
22 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
23 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, the  
24 Request seeks personal and confidential information for BANA's borrowers. BANA is prohibited  
25 from disclosing this type of information without a court order or the borrower's consent. *See, e.g.,*  
26 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1). Without waiving any objection, BANA has produced  
27 copies of non-privileged, non-confidential documents and correspondence in its initial disclosures  
28 and supplements thereto. Discovery is ongoing, and BANA reserves its right to supplement its



1 response.

2 **REQUEST NO. 11:** Please provide a copy of your policies and procedures for handling  
3 homeowners association liens, if any, applicable to the Property between the time the Association  
4 recorded its notice of default and the Association foreclosure sale.

5 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not limited to  
6 the subject property or limited to the issues presented in this case. This Request is vague and  
7 ambiguous as to the term “handling.” BANA also objects to this Request to the extent it seeks  
8 confidential trade secret, proprietary, and commercially sensitive information. Courts routinely hold  
9 that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New*  
10 *York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases);  
11 *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding  
12 marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*,  
13 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary);  
14 *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at  
15 \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
16 1977)).

17 **REQUEST NO. 12:** Please provide a copy of your underwriting guidelines, policies and  
18 procedures, if any, for originating loans within common interest communities/homeowner’s  
19 associations in Nevada at the time the loan secured by the First Deed of Trust was originated.

20 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not limited to  
21 the subject property or limited to the issues presented in this case. BANA also objects to this  
22 Request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to  
23 the discovery of admissible evidence. This Request also seeks confidential trade secret, proprietary,  
24 and commercially sensitive information. Courts routinely hold that internal corporate documents are  
25 confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania*  
26 *Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v.*  
27 *Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing  
28 information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz.

1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

**REQUEST NO. 13:** Please provide documentation to support the amount you allege you paid for your interest in the First Deed of Trust.

**RESPONSE:** Objection. This Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, it seeks confidential and proprietary business information. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

**REQUEST NO. 14:** Please provide documentation to support any amounts you allege you paid to maintain the Property since the Association foreclosure sale.

**RESPONSE:** Objection. This Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, it seeks confidential and proprietary business information. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).



1 **REQUEST NO. 15:** Produce all documents between you and any party which may insure the loan  
2 in question.

3 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
4 limited or limited to the issues presented in this case. BANA further objects to this Request because  
5 it seeks confidential and proprietary information that is neither relevant nor reasonably calculated to  
6 lead to the discovery of admissible evidence. Courts routinely hold that internal corporate  
7 documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao*  
8 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America*  
9 *Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials  
10 and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195  
11 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*  
12 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
13 *1994) (citing Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, BANA  
14 objects to this Request because it seeks personal and confidential information for one of BANA's  
15 borrowers. BANA is prohibited from disclosing this type of information without a court order or the  
16 borrower's consent. *See, e.g., 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).*

17 **REQUEST NO. 16:** Produce all documents which govern the servicing of delinquent loans.

18 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
19 limited, limited to the subject property, or limited to the issues presented in this case. BANA also  
20 objects to this Request to the extent it seeks information that is neither relevant nor reasonably  
21 calculated to lead to the discovery of admissible evidence. This Request also seeks confidential  
22 trade secret, proprietary, and commercially sensitive information. Courts routinely hold that internal  
23 corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
24 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
25 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
26 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
27 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*  
28 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2

(S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

**REQUEST NO. 17:** Produce all documents which govern the servicing of loans with delinquent assessments.

**RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally limited, limited to the subject property, or limited to the issues presented in this case. BANA also objects to this Request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This Request also seeks confidential trade secret, proprietary, and commercially sensitive information. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

**REQUEST NO. 18:** Produce any unrecorded documents which evidence any ownership in the promissory note and/or First Deed of Trust.

**RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally limited or limited to the issues presented in this case. BANA further objects to this Request because it seeks confidential and proprietary information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*

1 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
2 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, BANA  
3 objects to this Request because it seeks personal and confidential information for one of BANA's  
4 borrowers. BANA is prohibited from disclosing this type of information without a court order or the  
5 borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).

6 **REQUEST NO. 19:** Produce a copy of the Borrower's account including, but not limited to, the  
7 current amount due, payments made, delinquencies and fees and costs charged to the account.

8 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
9 limited or limited to the issues presented in this case. BANA further objects to this Request because  
10 it seeks confidential and proprietary information that is neither relevant nor reasonably calculated to  
11 lead to the discovery of admissible evidence. Courts routinely hold that internal corporate  
12 documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao*  
13 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America*  
14 *Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials  
15 and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195  
16 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing,*  
17 *Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2 (S.D.N.Y. May 5,  
18 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Finally, BANA  
19 objects to this Request because it seeks personal and confidential information for one of BANA's  
20 borrowers. BANA is prohibited from disclosing this type of information without a court order or the  
21 borrower's consent. *See, e.g.*, 15 U.S.C. § 6801; 16 C.F.R. § 313.3(n)(1).

22 **REQUEST NO. 20:** Produce any documents reflecting your policies and procedures for handling a  
23 loan when you receive any foreclosure notice from an association. For purposes of Request No. 20,  
24 foreclosure notices include, but are not limited to, notices of delinquent assessment lien, notices of  
25 default and notices of sale.

26 **RESPONSE:** Objection. This Request is overly broad and burdensome in that it is not temporally  
27 limited, limited to the subject property, or limited to the issues presented in this case. BANA also  
28 objects to this Request to the extent it seeks information that is neither relevant nor reasonably



1 calculated to lead to the discovery of admissible evidence. This Request also seeks confidential  
2 trade secret, proprietary, and commercially sensitive information. Courts routinely hold that internal  
3 corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v.*  
4 *Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also*  
5 *America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing  
6 materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D.  
7 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan*  
8 *Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at \*2  
9 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y.  
10 1977)).

11 **REQUEST NO. 21:** Produce a copy of any preliminary report, title abstract, or trustee sale  
12 guarantee you have received regarding the subject property from the date you acquired an interest in  
13 the property until the present day.

14 **RESPONSE:** Objection. This Request seeks confidential and proprietary information that is  
15 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further,  
16 this Request is overly broad and burdensome in that it is not limited to the issues presented in this  
17 case. This Request also seeks information contained in internal business records. Courts routinely  
18 hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of*  
19 *New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting  
20 cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987)  
21 (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v.*  
22 *Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and  
23 proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994  
24 WL 177795, at \*2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200,  
25 203 (S.D.N.Y. 1977)).

26 **REQUEST NO. 22:** Produce all documents that evidence any amounts that you have paid for taxes  
27 or insurance on the subject property since the date of the Association foreclosure sale.  
28

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## *Trust Agreement*

### OF THE

### PARADISE HARBOR PLACE TRUST

This Agreement of trust made June 8th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

### ARTICLE I

#### DECLARATION OF TRUST

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

### ARTICLE II

#### APPOINTMENT OF TRUSTEE

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

### ARTICLE III

#### GENERAL DUTIES OF TRUSTEE

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "PARADISE HARBOR PLACE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

**ARTICLE VII**

**DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

**ARTICLE VIII**

**GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

**ARTICLE IX**

**LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

**ARTICLE X**

**DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

**ARTICLE XI**

**TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.



- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

#### **ARTICLE XII**

##### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

### **ARTICLE XIII**

#### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### **ARTICLE XIV**

#### **QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:



- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),

but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect

insofar as legally possible.

15.6 **Headings.** The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

15.7 **More Than One Original.** This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation.** Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**PARADISE HARBOR PLACE TRUST**

*IT 6-8-12*  
By RESOURCES GROUP, LLC, Trustee  
Iyad Haddad, Manager

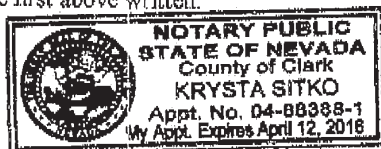
STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On July 23, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared IYAD HADDAD, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



*[Signature]*  
NOTARY PUBLIC *Krysta Sitko*

## APPENDIX A

## LEGAL DESCRIPTION(S)

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5005 PARADISE HARBOR PL NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	TIERRA DE LAS PALMAS VILLAGE 2- UNIT 2 PLAT BOOK 84 PAGE 89 LOT 92 BLOCK 3  SEC 32 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3728 LODINA CT ENTERPRISE
<u>ASSESSOR DESCRIPTION</u>	TRIANA UNIT 2 AT SOUTHERN HIGHLANDS PLAT BOOK 111 PAGE 24 LOT 142  SEC 32 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	2601 VENDANGE PL HENDERSON
<u>ASSESSOR DESCRIPTION</u>	PROVENCE SUB 4 PLAT BOOK 122 PAGE 28 LOT 38 BLOCK 1  SEC 19 TWP 23 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	1704 PACIFIC BREEZE DR LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	PARCEL W IN THE CROSSING AT SUMMERLIN PLAT BOOK 67 PAGE 11 LOT 127 BLOCK E  SEC 24 TWP 20 RNG 59
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5308 LA QUINTA HILLS ST NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	CORTEZ HGTS PLAT BOOK 113 PAGE 81 LOT 130  SEC 35 TWP 19 RNG 61

<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	6420 INDIAN PEAK CT NORTH LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	ELDORADO R1 60 #11-TM #18 PLAT BOOK 113 PAGE 6 LOT 24 BLOCK 8  SEC 21 TWP 19 RNG 61
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	8904 GOLDSTONE AVE LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	IRON MOUNTAIN EST-UNIT 2 PLAT BOOK 92 PAGE 17 LOT 190 BLOCK 5  SEC 05 TWP 19 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	2725 ECHO SPRINGS ST SUNRISE MANOR
<b><u>ASSESSOR DESCRIPTION</u></b>	YORKSHIRE HGTS-PHASE 2B PLAT BOOK 92 PAGE 98 LOT 49 BLOCK 1  SEC 15 TWP 20 RNG 62
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	2088 CLUB CREST WAY HENDERSON
<b><u>ASSESSOR DESCRIPTION</u></b>	WARM SPRINGS RESERVE PHASE 2 UNIT 10 PLAT BOOK 41 PAGE 80 LOT 24 BLOCK 9  SEC 08 TWP 22 RNG 62
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	6188 STONE HOLLOW AVE SUNRISE MANOR
<b><u>ASSESSOR DESCRIPTION</u></b>	YORKSHIRE HGTS-PHASE 6 PLAT BOOK 96 PAGE 34 LOT 246 BLOCK 1  SEC 15 TWP 20 RNG 62
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	3984 MEADOW FOXTAIL DR WHITNEY
<b><u>ASSESSOR DESCRIPTION</u></b>	DESERT INN MASTER PLAN LOT E PLAT BOOK 118 PAGE 33 LOT 67 BLOCK 2



SEC 15 TWP 21 RNG 62

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**PARADISE HARBOR PLACE TRUST**

PARADISE HARBOR PLACE TRUST

Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the **PARADISE HARBOR PLACE TRUST**, which he holds subject to an agreement and declaration of trust thereof, dated June 8th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the **PARADISE HARBOR PLACE TRUST** are of the par value of \$10.00 dollars each.

No transfer hereof will affect the **PARADISE HARBOR PLACE TRUST** or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof on June 8th, 2012.

  
TRUSTEE

# EXHIBIT F

**THE RIVER GLIDER AVE TRUST**

**Dated Nov 28th, 2011**

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## *Trust Agreement*

### **OF THE RIVER GLIDER AVE TRUST**

This Agreement of trust made Nov 28th, 2011, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

#### **ARTICLE I**

##### **DECLARATION OF TRUST**

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

#### **ARTICLE II**

##### **APPOINTMENT OF TRUSTEE**

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

#### **ARTICLE III**

##### **GENERAL DUTIES OF TRUSTEE**

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.



#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "RIVER GLIDER AVE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

**ARTICLE X**

**DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

**ARTICLE XI**

**TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are



permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

### **ARTICLE XIII**

#### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### **ARTICLE XIV**

#### **QUALIFIED SUBCHAPTER S TRUSTS**

14.1 **S-Corporation Stock** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust;

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),



but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect

insofar as legally possible.

**15.6 Headings.** The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

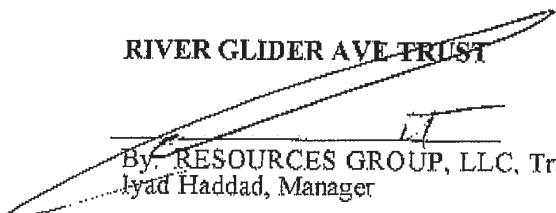
**15.7 More Than One Original.** This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

**15.8 Interpretation.** Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**RIVER GLIDER AVE TRUST**

By  **RESOURCES GROUP, LLC, Trustee**  
Iyad Haddad, Manager

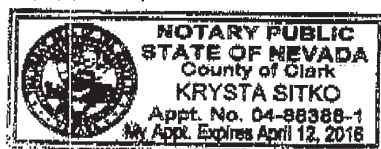
STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On June 27, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared **IYAD HADDAD**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



  
NOTARY PUBLIC **KRYSTA SITKO**

## APPENDIX A

## LEGAL DESCRIPTION(S)

<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	6513 DUCK HILL SPRINGS DR WHITNEY
<b>ASSESSOR DESCRIPTION</b>	RIVERWALK UNIT 3 PLAT BOOK 115 PAGE 91 LOT 88  SEC 15 TWP 21 RNG 52
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	10428 AMBER NIGHT ST ENTERPRISE
<b>ASSESSOR DESCRIPTION</b>	LAMPLIGHT GARDENS AT SILVERADO RANCH UNIT-4 PLAT BOOK 128 PAGE 87 LOT 214 BLOCK 1  SEC 26 TWP 22 RNG 61
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	6119 COZY CREEK ST NORTH LAS VEGAS
<b>ASSESSOR DESCRIPTION</b>	AZURE EST UNIT 3 PLAT BOOK 91 PAGE 64 LOT 90 BLOCK 1  SEC 27 TWP 19 RNG 61
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	2670 EARLY VISTA ST SUNRISE MANOR
<b>ASSESSOR DESCRIPTION</b>	SAHARA SUNRISE PLAT BOOK 91 PAGE 12 LOT 70 BLOCK 1  SEC 10 TWP 21 RNG 62
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	10225 HEADRICK DR LAS VEGAS
<b>ASSESSOR DESCRIPTION</b>	MADISON COLONY AT PROVIDENCE UNIT 1 PLAT BOOK 138 PAGE 23 LOT 30 BLOCK 1  SEC 13 TWP 19 RNG 59
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	7919 HORN TAIL CT LAS VEGAS

<b><u>ASSESSOR DESCRIPTION</u></b>	ORCHARD VALLEY ELKHORN SPRINGS-CLUSTER HMS-UT 7 <u>PLAT BOOK 86 PAGE 96</u> LOT 19 BLOCK 9  SEC 16 TWP 19 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	8112 LAKE HILLS DR LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	HARBOR COVE <u>PLAT BOOK 42 PAGE 23</u> LOT 9 BLOCK 4  SEC 16 TWP 20 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	336 RIVER GLIDER AVE NORTH LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	PARKS UNIT 2 <u>PLAT BOOK 94 PAGE 27</u> LOT 139 BLOCK 3  SEC 22 TWP 19 RNG 61
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	7304 ROAMER PL LAS VEGAS
<b><u>ASSESSOR DESCRIPTION</u></b>	ELKHORN SPRINGS PARCEL 3A <u>PLAT BOOK 64 PAGE 34</u> LOT 68 BLOCK 4  SEC 16 TWP 19 RNG 60
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	5982 SPINNAKER POINT AVE SUNRISE MANOR
<b><u>ASSESSOR DESCRIPTION</u></b>	SPINNAKER HOMES AT SUNRISE MOUNTAIN UNIT 1 <u>PLAT BOOK 86 PAGE 32</u> LOT 1 BLOCK 1  SEC 34 TWP 20 RNG 62
<b><u>LOCATION ADDRESS</u></b> <b><u>CITY/UNINCORPORATED TOWN</u></b>	10993 LADYBURN CT ENTERPRISE
<b><u>ASSESSOR DESCRIPTION</u></b>	ROYAL HIGHLANDS AT SOUTHERN HIGHLANDS-UNIT 1 <u>PLAT BOOK 104 PAGE 64</u> LOT 152  SEC 31 TWP 22 RNG 61

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**RIVER GLIDER AVE TRUST**

RIVER GLIDER AVE TRUST

Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the RIVER GLIDER AVE TRUST, which he holds subject to an agreement and declaration of trust thereof, dated Nov 28th, 2011, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the RIVER GLIDER AVE TRUST are of the par value of \$10.00 dollars each.

No transfer hereof will affect the RIVER GLIDER AVE TRUST or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof, this the 28th day of Nov. 2011.

  
TRUSTEE



1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
376 East Warm Springs Road, Ste. 140  
4 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX  
5 Attorney for plaintiff

6 DISTRICT COURT  
7  
8 CLARK COUNTY, NEVADA

9 7510 PERLA DEL MAR AVE TRUST,  
10 Plaintiff,

CASE NO.: A686277  
DEPT NO.: XXX

11 vs.

12 BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY, A NEVADA  
13 CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
14 NOLAN,  
15 Defendants.

16 **PLAINTIFF'S RESPONSES TO DEFENDANT,**  
17 **BANK OF AMERICA, N.A.'S FIRST REQUESTS FOR ADMISSIONS**

18 Plaintiff, 7510 Perla Del Mar Ave Trust, by and through its attorney, Michael F. Bohn, Esq.  
19 hereby responds to the defendant's request for admissions as follows:

20 **REQUEST FOR ADMISSION NO. 1:**

21 Admit that You attended the HOA Foreclosure Sale for the Property on or around February 1,  
22 2013.

23 **RESPONSE TO REQUEST NO. 1:**

24 Admit.

25 **REQUEST FOR ADMISSION NO. 2:**

26 Admit that You bid on the Property at the HOA Foreclosure Sale.

27 **RESPONSE TO REQUEST NO. 2:**

28 Admit.

1 **REQUEST FOR ADMISSION NO. 3:**

2 Admit that You were the highest bidder on the Property at the HOA Foreclosure Sale.

3 **RESPONSE TO REQUEST NO. 3:**

4 Admit.

5 **REQUEST FOR ADMISSION NO. 4:**

6 Admit that prior to the HOA Foreclosure Sale, You researched which properties would be  
7 available for sale at the HOA Foreclosure Sale.

8 **RESPONSE TO REQUEST NO. 4:**

9 Admit.

10 **REQUEST FOR ADMISSION NO. 5:**

11 Admit that You had knowledge that the Property would be placed up for auction prior to the date  
12 of the HOA Foreclosure Sale.

13 **RESPONSE TO REQUEST NO. 5:**

14 Admit.

15 **REQUEST FOR ADMISSION NO. 6:**

16 Admit that prior to the HOA Foreclosure Sale, You researched the fair market value of the  
17 Property.

18 **RESPONSE TO REQUEST NO. 6:**

19 Admit.

20 **REQUEST FOR ADMISSION NO. 7:**

21 Admit that at the time that You purchased Your interest in the Property, You had reviewed the  
22 publicly recorded Documents on file with the Clark County Recorder's office that related to the Property.

23 **RESPONSE TO REQUEST NO. 7:**

24 Admit.

25 **REQUEST FOR ADMISSION NO. 8:**

26 Admit that prior to purchasing Your interest in the Property, You had knowledge that the Deed  
27 of Trust had been recorded against the Property.

28 . . .

1 **RESPONSE TO REQUEST NO. 8:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that prior to You purchasing Your interest in the Property, BANA was assigned a beneficial  
5 interest in the Deed of Trust.

6 **RESPONSE TO REQUEST NO. 9:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 10:**

9 Admit that You paid only \$14,600.00 for Your interest in the Property.

10 **RESPONSE TO REQUEST NO. 10:**

11 Admit.

12 **REQUEST FOR ADMISSION NO. 11:**

13 Admit that You believed the market value of the Property was at least \$100,000.00 when You  
14 obtained Your interest in the Property.

15 **RESPONSE TO REQUEST NO. 11:**

16 Deny.

17 **REQUEST FOR ADMISSION NO. 12:**

18 Admit that the amount that You paid for the Property was based, in part, on the fact that You  
19 obtained title without warranty, express or implied, regarding title, possession or encumbrances.

20 **RESPONSE TO REQUEST NO. 12:**

21 Deny.

22 **REQUEST FOR ADMISSION NO. 13:**

23 Admit that You have obtained income from the rental or lease of the Property.

24 **RESPONSE TO REQUEST NO. 13:**

25 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, is an unwarranted  
26 intrusion into private financial and confidential matters, and is not proportional to the needs of the case.

27 **REQUEST FOR ADMISSION NO. 14:**

28 Admit that the Property is currently rented or leased to a third party.

1 **RESPONSE TO REQUEST NO. 14:**

2 See responses to request no. 13.

3 **REQUEST FOR ADMISSION NO. 15:**

4 Admit that You have purchased other properties at foreclosure auctions held by homeowners'  
5 associations.

6 **RESPONSE TO REQUEST NO. 15:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 16:**

9 Admit that at the time You purchased Your interest in the Property, You had knowledge that Your  
10 title to the Property was without warranty, express or implied, regarding title, possession or  
11 encumbrances.

12 **RESPONSE TO REQUEST NO. 16:**

13 Deny.

14 Dated this 27th day of June, 2016.

15 LAW OFFICES OF  
16 MICHAEL F. BOHN, ESQ., LTD.

17 By: /s/ /Michael F. Bohn, Esq./  
18 MICHAEL F. BOHN, ESQ.  
19 376 E. Warm Springs Rd., Ste. 140  
20 Las Vegas, NV 89119  
21 Attorney for plaintiff  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 27th day of June, 2016, an electronic copy of the PLAINTIFF’S RESPONSES TO DEFENDANT, BANK OF AMERICA, N.A.’S FIRST REQUESTS FOR ADMISSIONS was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

Darren T. Brenner, Esq.  
Rebekkah B. Bodoff, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144

/s/ /Maggie Lopez  
An Employee of the LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.



MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
[mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,  
Plaintiff,

vs.

BANK OF AMERICA, N.A.; NORTH  
AMERICAN TITLE COMPANY, A NEVADA  
CORPORATION; MOUNTAINS EDGE  
MASTER ASSOCIATION; and DOMINIC J.  
NOLAN,

Defendants.

CASE NO.: A686277  
DEPT NO.: XXX

And all related matters.

**PLAINTIFF'S ANSWERS TO DEFENDANT,  
BANK OF AMERICA, N.A.'S FIRST INTERROGATORIES**

Plaintiff, 7510 Perla Del Mar Ave Trust, by and through its attorney, Michael F. Bohn, Esq.  
hereby answers defendant's interrogatories as follows:

**INTERROGATORY NO. 1:**

Identify any person providing substantive information to respond to Defendant's Requests for  
Production, First Requests for Admission, and these Interrogatories, including name, address, phone  
number, and identification of the requests with which the person assisted.

**ANSWER TO INTERROGATORY NO. 1:**

Eddie Haddad c/o Michael F. Bohn, Esq., 376 E. Warm Springs Rd. # 140, Las Vegas, NV 89119.

**INTERROGATORY NO. 2:**

Provide a summary of Your business purposes, if any. Your response should Identify, *inter alia*,

1 what Your business does to generate revenue, income, and profit; how Your business does it; and whether  
2 You perform any services other than purchasing real estate.

3 **ANSWER TO INTERROGATORY NO. 2:**

4       Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an  
5 unwarranted intrusion into private and confidential financial matters, and not proportional to the needs  
6 of the case. Without waiving this objection, the plaintiff trust was formed to hold title to real property.

7 **INTERROGATORY NO. 3:**

8       Identify Your managers, officers, directors, owners, members, trustees, beneficiaries, and/or  
9 employees, if any, and what their role is with You. As part of your answer, please also state for each their  
10 respective state or states of citizenship.

11 **ANSWER TO INTERROGATORY NO. 3:**

12       Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an  
13 unwarranted intrusion into private and confidential financial matters. Without waiving this objection,  
14 the trustee of the 7510 Perla Del Mar Ave Trust is Resources Group, LLC. The manager of Resources  
15 Group, LLC is Eddie Haddad.

16 **INTERROGATORY NO. 4:**

17       Please state whether any of Your managers, officers, directors, owners, members, trustees,  
18 beneficiaries, and employees are also managers, officers, directors, owners, members, trustees,  
19 beneficiaries, and employees of either of the following entities: (1) Nevada Association Services, (2)  
20 Silver State Trustee Services, and/or (3) Mountains Edge Master Association.

21 **ANSWER TO INTERROGATORY NO. 4:**

22       No.

23 **INTERROGATORY NO. 5:**

24       State in detail all Facts that support Your contention that BANA's security interest in the Property  
25 was extinguished by the HOA Foreclosure Sale.

26 **ANSWER TO INTERROGATORY NO. 5:**

27       Objection. Calls for a legal conclusion. Without waiving this objection. NRS 116.3116 as  
28 interpreted in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334

1 P.3d 408 (2014) provides for extinguishment of the defendants' security interest.

2 **INTERROGATORY NO. 6:**

3 State in detail all Facts that support Your contention that the HOA Foreclosure Sale was properly  
4 noticed.

5 **ANSWER TO INTERROGATORY NO. 6:**

6 The foreclosure deed contains conclusive recitals which provide that the law was complied with.

7 **INTERROGATORY NO. 7:**

8 State in detail all Facts that support Your contention that the HOA Foreclosure Sale was properly  
9 conducted.

10 **ANSWER TO INTERROGATORY NO. 7:**

11 See answer to Interrogatory No. 6.

12 **INTERROGATORY NO. 8:**

13 Identify the sources of Your capital from 2010 to present. If You borrow money to operate Your  
14 business, Identify the lenders/persons that You borrow from, and the terms of the loan/investment.

15 **ANSWER TO INTERROGATORY NO. 8:**

16 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an  
17 unwarranted intrusion into private and confidential financial matters, and not proportional to the needs  
18 of the case.

19 **INTERROGATORY NO. 9:**

20 State in detail all Facts that relate to any offer of tender made by Defendant in connection with  
21 the Property.

22 **ANSWER TO INTERROGATORY NO. 9:**

23 Objection. This information is in the defendant's knowledge, not the plaintiff.

24 **INTERROGATORY NO. 10:**

25 Provide a summary of any funds or resources You have expended in regard to the Property,  
26 including listing the date of each expenditure, the amount, and the reason for the expenditure.

27 **ANSWER TO INTERROGATORY NO. 10:**

28 See answer to Interrogatory No. 8.

1 **INTERROGATORY NO. 11:**

2 Provide a summary of any rent or other income received by You related to the Property, including  
3 the date any income was received, the amount of the income, and the source of the income.

4 **ANSWER TO INTERROGATORY NO. 11:**

5 See answer to Interrogatory No. 8.

6 **INTERROGATORY NO. 12:**

7 State whether the Property IS currently inhabited, and if so, Identify the following information:

- 8 (a) by whom the Property is inhabited,  
9 (b) the terms of any rental agreement or lease by any current inhabitant, including  
10 (i) the date the agreement or lease began,  
11 (ii) when it expires,  
12 (iii) the amount of rent paid, and  
13 (iv) how often the rent is paid.

14 **ANSWER TO INTERROGATORY NO. 12:**

15 See answer to Interrogatory No. 8.

16 **INTERROGATORY NO. 13:**

17 State and/or Identify the following with regard to the value of the Property at the time of the HOA  
18 Foreclosure Sale:

- 19 (a) State in detail Your understanding of the fair market value of the Property;  
20 (b) State in detail whether You made a fair market value calculation in connection with the  
21 HOA Foreclosure Sale;  
22 (c) Identify the principal and material documents You relied on to support Your fair market  
23 value calculation; and  
24 (d) Identify the person(s) with personal knowledge of Your responses to 12 (a )-( c).

25 **ANSWER TO INTERROGATORY NO. 13:**

26 a & c. The value was the price paid. BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49  
27 (1994).

28 b. A value was estimated but no records of the estimate has been retained.

1 d. Eddie Haddad.

2 **INTERROGATORY NO. 14:**

3 If You contend that Defendant had actual or constructive knowledge of any assessments or costs  
4 allegedly owed to the HOA related to the Property prior to the HOA Foreclosure Sale, state all Facts that  
5 support such contention.

6 **ANSWER TO INTERROGATORY NO. 14:**

7 The notices were properly recorded. The recitals in the foreclosure deed state that notices were  
8 sent. Additionally, the allegations made by the defendant is that they made an attempt at a tender of the  
9 super priority portion of the lien, which indicates that they had notice.

10 **INTERROGATORY NO. 15:**

11 Identify all communications, between You and the HOA concerning the Property, whether verbal  
12 or in writing, including the date of the communication, the parties to the communication, and the  
13 substance of the communication.

14 **ANSWER TO INTERROGATORY NO. 15:**

15 There were no communications with the HOA prior to the purchase of the property. Any  
16 communications after the sale would have been to set up a new account for a new owner or other HOA  
17 related matters.

18 **INTERROGATORY NO. 16:**

19 Identify all communications, between You and Nevada Association Services concerning the  
20 Property, whether verbal or in writing, including the date of the communication, the parties to the  
21 communication, and the substance of the communication.

22 **ANSWER TO INTERROGATORY NO. 16:**

23 None.

24 **INTERROGATORY NO. 17:**

25 Identify all communications, between You and Silver State Trustee Services concerning the  
26 Property, whether verbal or in writing, including the date of the communication, the parties to the  
27 communication, and the substance of the communication.

28 ...



1 **ANSWER TO INTERROGATORY NO. 17:**

2 None.

3 **INTERROGATORY NO. 18:**

4 State in detail all Facts that support Your contention that You are a bona fide purchaser of the  
5 Property.

6 **ANSWER TO INTERROGATORY NO. 18:**

7 The plaintiff is unaware of any tender or other actions which may have been taken by the  
8 defendants prior to the foreclosure sale. The defendant failed to record anything to put a potential  
9 purchaser on notice.

10 **INTERROGATORY NO. 19:**

11 Identify any research You performed prior to the HOA Foreclosure Sale to determine the value  
12 of the Property, all steps performed as part of that research, any Documents You created as a result of that  
13 research, and the present location of those Documents.

14 **ANSWER TO INTERROGATORY NO. 19:**

15 Any research is done paperless and nothing has been retained. Generally, a review is made of the  
16 recorded documents as received from an escrow company, and deleted after the sale.

17 **INTERROGATORY NO. 20:**

18 With regard to the HOA Foreclosure Sale, please state the following:

- 19 (a) Describe how You learned of the HOA Foreclosure Sale;
- 20 (b) State whether the HOA or anyone at Nevada Association Services or Silver State Trustee  
21 Services told You of the opening bid price prior to the HOA Foreclosure Sale;
- 22 (c) Identify the opening bid price at the HOA Foreclosure Sale;
- 23 (d) Identify the bidders at the HOA Foreclosure Sale;
- 24 (e) Identify the amounts bid at the HOA Foreclosure Sale;
- 25 (f) Identify the amounts that You bid on the Property at the HOA Foreclosure Sale;
- 26 (g) Describe Your method of calculating Your bid price at the HOA Foreclosure Sale;
- 27 (h) Describe how You paid for the Property after the HOA Foreclosure Sale;
- 28 (i) Identify whether Silver State Trustee Services or the Auctioneer, made any announcement

1 or in any way identified that BANA tendered payment of the super-priority amount prior to the sale, and  
2 that Silver State Trustee Services refused to accept that payment.

3 **ANSWER TO INTERROGATORY NO. 20:**

- 4 a. Nevada Legal News.  
5 b. No, but the opening bid was stated at the time of the auction.  
6 c. Unknown.  
7 d. Unknown.  
8 e. Unknown.  
9 f. The only amount I have record of was the winning bid, which is reflected in the deed.  
10 g. Objection. Privileged trade secret and is otherwise irrelevant, not reasonably calculated  
11 to lead to admissible evidence, and is an unwarranted intrusion into private financial matters.  
12 h. Cashiers checks.  
13 i. No announcement was made.

14 **INTERROGATORY NO. 20:(sic)**

15 Identify each person or entity that requested notice of the HOA Foreclosure Sale, including the  
16 notice of default or notice of sale in connection therewith, including but not limited to pursuant to Nevada  
17 Revised Statute 107.090, 116.3116 and/or 116.311635.

18 **ANSWER TO INTERROGATORY NO. 20:**

19 Objection. This is not a question requesting personal knowledge. Any person requesting notice  
20 would be a matter of public record and the information is available to the defendants as well as the  
21 plaintiff.

22 **INTERROGATORY NO. 21:**

23 State in detail all Facts that relate to any request for notice of the HOA Foreclosure Sale, including  
24 the notice of default or notice of sale in connection therewith, including but not limited to pursuant to  
25 Nevada Revised Statute 107.090, 116.3116 and/or 116.311635.

26 ...

27

28 ...

**1 ANSWER TO INTERROGATORY NO. 21:**

2       Objection. This is not a question requesting personal knowledge. Any person requesting notice  
3 would be a matter of public record and the information is available to the defendants as well as the  
4 plaintiff.

**5 INTERROGATORY NO. 22:**

6 Identify all Documents or Communications provided to You by Nevada Association Services or  
7 Silver State Trustee Services or the Auctioneer at the HOA Foreclosure Sale, including, but not limited  
8 to, any Documents or communications related to quality of title that would be conveyed to the winning  
9 bidder at the HOA Foreclosure Sale.

**10 ANSWER TO INTERROGATORY NO. 22:**

11	None.
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**12 INTERROGATORY NO. 23:**

13 Identify whether You conducted any research or made any attempt to determine whether any entity  
14 had satisfied or attempted to satisfy the super-priority portion of the HOA's lien prior to the HOA  
15 Foreclosure Sale.

**16 | ANSWER TO INTERROGATORY NO. 23:**

17 || There is no way to find this information out.

18 Dated this 30 day of June, 2016.

Eddie Haddad, pmk for plaintiff,  
7510 Perla Del Mar Ave Trust

Prepared by:

23 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

25 By: Michael F. Bohn  
26 MICHAEL F. BOHN, ESQ.  
27 376 E. Warm Springs Rd., Ste. 140  
Las Vegas, NV 89119  
Attorney for Plaintiff

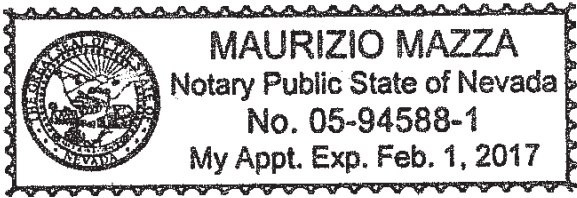
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Eddie Haddad, being first duly sworn, deposes and says:

That he is the plaintiff's person most knowledgeable in the above entitled action; that he has read the foregoing answers to interrogatories and knows the contents thereof; that the same is true of his own knowledge and information, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

SUBSCRIBED and SWORN to before me  
this 30th day of June, 2016.

NOTARY PUBLIC in and for said  
County and State

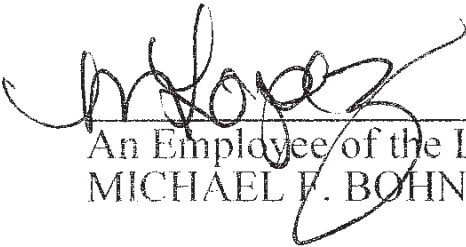


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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 5 day of July, 2016, an electronic copy of the PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Darren T. Brenner, Esq.  
Rebekkah B. Bodoff, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144

  
An Employee of the LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.



B6F (Official Form 6F) (12/07) - Cont.

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
			DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.			<b>Parks HOA for 336 River Glider</b>				<b>Unknown</b>
<b>The Parks HOA</b> <b>2300 W Sahara Ave #1130 Box #33</b> <b>Las Vegas, NV 89102</b>		-					
Account No.							
Account No.							
Account No.							
Account No.							

Sheet no. 4 of 4 sheets attached to Schedule of  
Creditors Holding Unsecured Nonpriority Claims

Subtotal  
(Total of this page)

**0.00**

Total  
(Report on Summary of Schedules)

**0.00**

B6G (Official Form 6G) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 6513 Duck Hill Springs
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 10428 Amber Night
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Maangement Agreement for 6119 Cozy Creek
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement 2670 Early Vista
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement 10225 Headdrick Dr
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 7919 Horn Tail Ct
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 8112 Lake Hills Dr
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 336 River Glider
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 7304 Roamer Place
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5982 Spinnaker Point Ave
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 10993 Ladyburn

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continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

B6H (Official Form 6H) (12/07)

In re **River Glider Trust**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

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continuation sheets attached to Schedule of Codebtors

B6 Declaration (Official Form 6 - Declaration), (12/07)

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.  
Chapter

**11**

**DECLARATION CONCERNING DEBTOR'S SCHEDULES**

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **July 3, 2012**

Signature /s/ Eddie Haddad  
**Eddie Haddad**  
**Registered Agent**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

B7 (Official Form 7) (04/10)

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.

Chapter **11**

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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**1. Income from employment or operation of business**

None



State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

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**2. Income other than from employment or operation of business**

None



State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE



**3. Payments to creditors**

None

**Complete a. or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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**4. Suits and administrative proceedings, executions, garnishments and attachments**

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	-------------------------	---------------------------------	--------------------------

None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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**5. Repossessions, foreclosures and returns**

None

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

**6. Assignments and receiverships**

- None ☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**

- None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**

- None ☒ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

- None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
<b>The Firm, PC 200 E Charleston Blvd Las Vegas, NV 89104</b>	<b>7/2/12</b>	<b>\$6454.00</b>

**10. Other transfers**

- None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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- None ☐ b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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#### 11. Closed financial accounts

- None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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#### 12. Safe deposit boxes

- None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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#### 13. Setoffs

- None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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#### 14. Property held for another person

- None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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#### 15. Prior address of debtor

- None ☐ If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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#### 16. Spouses and Former Spouses

- None ☐ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18. Nature, location and name of business**

- None ☐ a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
River Glider Ave Trust	45-5572604	C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107	Real Estate	6/2012-Current

None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

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**19. Books, records and financial statements**

None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

**Rosie Bonilla**  
**900 Las Vegas Blvd #810**  
**Las Vegas, NV 89101**

DATES SERVICES RENDERED  
**1/2012-Current**

None ☒ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None ☒ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

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**20. Inventories**

None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY  
 (Specify cost, market or other basis)

None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY  
 RECORDS

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**21 . Current Partners, Officers, Directors and Shareholders**

None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST



- None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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#### 22 . Former partners, officers, directors and shareholders

- None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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#### 23 . Withdrawals from a partnership or distributions by a corporation

- None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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#### 24. Tax Consolidation Group.

- None ☐ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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#### 25. Pension Funds.

- None ☐ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
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#### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date July 3, 2012

Signature /s/ Eddie Haddad  
**Eddie Haddad**  
**Registered Agent**

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

**United States Bankruptcy Court  
District of Nevada**

In re River Glider Trust

Debtor(s)

Case No.

Chapter

11

**DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)**

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept .....	\$	<u>6,454.00</u>
Prior to the filing of this statement I have received .....	\$	<u>6,000.00</u>
Balance Due .....	\$	<u>454.00</u>

2. The source of the compensation paid to me was:

☒ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify):

4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- [Other provisions as needed]

**Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.**

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

**Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.**

**CERTIFICATION**

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: July 3, 2012

/s/ Ryan Alexander

**Ryan Alexander 10845**

**The Firm, PC**

**200 E Charleston Blvd**

**Las Vegas, NV 89104**

**(702) 222-3476 Fax: (702) 252-3476**

**ryan@thefirm-lv.com**

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor

Case No. \_\_\_\_\_

Chapter **11**

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
<b>Eddie Haddad C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107</b>			<b>Owner</b>

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the Registered Agent of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date **July 3, 2012**Signature **/s/ Eddie Haddad**

**Eddie Haddad  
Registered Agent**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C §§ 152 and 3571.

0 continuation sheets attached to List of Equity Security Holders

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.

Chapter

**11**

**VERIFICATION OF CREDITOR MATRIX**

I, the Registered Agent of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date: **July 3, 2012**

**/s/ Eddie Haddad**

**Eddie Haddad/Registered Agent**

Signer/Title

River Glider Trust  
C/O Resources Group LLC  
900 Las Vegas Blvd S. #810  
Las Vegas, NV 89107

Ryan Alexander  
The Firm, PC  
200 E Charleston Blvd  
Las Vegas, NV 89104

Absolute Collection Services  
PO Box 12117  
Las Vegas, NV 89112

Accredited Home Lenders  
15030 Avenue of Science #100  
San Diego, CA 92128

Alessi & Koenig LLC  
9500 W Flamingo #205  
Las Vegas, NV 89147

Allied Trustee Services  
701 North Green Valley Pkwy #200  
Henderson, NV 89014

Allied Trustee Services  
990 Reserve Dr #208  
Roseville, CA 95678

Americas Servicing Co  
1 Home Campus X2504-017  
Des Moines, IA 50328

Angius & Terry Collections  
1120 N Town Center Dr #260  
Las Vegas, NV 89144

Argent Mortgage Company  
PO Box 5047  
Rolling Meadows, IL 60008

Aurora Loan Services  
2617 College Park  
Scottsbluff, NE 69361

BAC Home Loans Servicing  
450 American St.  
Simi Valley, CA 93065

Bank of America  
400 National Way  
Simi Valley, CA 93065



Bank of America  
PO Box 2518  
Houston, TX 77252

Callister & Reynolds  
823 Las Vegas Blvd S. #280  
Las Vegas, NV 89101

Cameron Financial Group  
1065 Higuera St #102  
San Luis Obispo, CA 93401

Citimortgage  
PO Box 790005  
ATTN: M.S. 305  
Saint Louis, MO 63179

Clark County Assessor  
500 S. Grand Central Parkway  
PO Box 5511401  
Las Vegas, NV 89155

Clark County Treasurer  
500 S. Grand Central Pkwy  
PO Box 551220  
Las Vegas, NV 89155

CMG Mortgage  
3160 Crow Canyon Rd #240  
San Ramon, CA 94583

CoreLogic  
450 E Boundary St  
Chapin, SC 29036

Countrywide  
450 American St #SV416  
Simi Valley, CA 93065

DETR  
Employment Security Division  
500 E. Third St  
Carson City, NV 89713

Evofi One  
2460 Paseo Verde Parkway 125  
Henderson, NV 89074

Home Loan Center  
18191 Von Karmen Ave #300  
Irvine, CA 92612

Homeowner Association Services  
3513 E Russell Rd  
Las Vegas, NV 89120

Impac Funding Corp  
1401 Dove St #100  
Newport Beach, CA 92660

IRS  
PO Box 1303  
Charlotte, NC 28201

IRS  
PO Box 7346  
Philadelphia, PA 19101

Meridas Capital  
990 W Atherton Dr  
Salt Lake City, UT 84123

Metlife Home Loans  
1555 W Walnut Hill Lane #200  
Irving, TX 75038

Mortgage Loan Specialists  
4695 MacArthur Court 11th Floor  
Newport Beach, CA 92660

Nevada Association Services  
TS #N67297  
6224 W Desert Inn Rd #A  
Las Vegas, NV 89146

Nevada Dept of Taxation  
ATTN: Bankruptcy Division  
555 E. Washington Ave #1300  
Las Vegas, NV 89101

Nevada DMV  
ATTN: Legal Division  
555 Wright Way  
Carson City, NV 89711

North American Mortgage  
PO Box 808031  
Petaluma, CA 94975

Recontrust Company  
2380 Performance Dr TX2-984-0407  
Richardson, TX 75082

Republic Services  
7 E. Sahara Ave  
Las Vegas, NV 89104

Secretary of Treasury  
1500 Pennsylvannia Ave NW  
Washington, DC 20220

Shea & Carlyon  
701 Bridger Ave #850  
Las Vegas, NV 89101

The Parks HOA  
2300 W Sahara Ave #1130 Box #33  
Las Vegas, NV 89102

The Stonewood Group  
3937 Sunset Blvd #1  
West Columbia, SC 29169

United States Chapter 11 Trustee  
Foley Federal Building  
300 S. Las Vegas Blvd  
#4300  
Las Vegas, NV 89101

Universal American Mortgage Company  
1725 W. Green Tree Dr #104  
Tempe, AZ 85284

US Bank  
801 Larkspur Landing  
Larkspur, CA 94939

US Bank  
PO Box 5220  
Cincinnati, OH 45201

US trust Mortgage Service Co  
280 E Palmetto Park Rd  
Boca Raton, FL 33432

Wells Fargo Bank  
12550 SE 93rd Ave #400  
Clackamas, OR 97015

Wells Fargo Hm Mortgag  
3476 Stateview Blvd  
Fort Mill, SC 29715

Wf Fin Bank/Wells Fargo Financial  
Wells Fargo Financial  
4137 121st St  
Urbandale, IA 50323

**United States Bankruptcy Court  
District of Nevada**

In re **River Glider Trust**

Debtor(s)

Case No.

Chapter

**11**

**CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)**

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **River Glider Trust** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

☐ None [*Check if applicable*]

**July 3, 2012**

Date

**/s/ Ryan Alexander**

**Ryan Alexander 10845**

Signature of Attorney or Litigant

Counsel for **River Glider Trust**

**The Firm, PC**

**200 E Charleston Blvd**

**Las Vegas, NV 89104**

**(702) 222-3476 Fax:(702) 252-3476**

**ryan@thefirm-lv.com**

**MOT**

**RYAN ALEXANDER**

Nevada Bar No. 10845

THE FIRM, P.C.

200 East Charleston Boulevard

Las Vegas, NV 89104

Phone: (702) 222-3476

Fax: (702) 252-3476

*Attorney for Debtor*

[ryan@thefirm-lv.com](mailto:ryan@thefirm-lv.com) (E-mail)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In Re:  
RIVER GLIDER AVE TRUST

Debtor.

Case No.: BK-S-12-17862-BTB  
Hon. Bruce T. Beesely  
Chapter 11

**MOTION TO USE CASH  
COLLATERAL *NUNC PRO TUNC***

HEARING DATE: AUGUST 7, 2012  
HEARING TIME: 1:30 PM

COME NOW **RIVER GLIDER AVE TRUST**, (“Debtors”), the debtors and debtors-in-possession in the above-captioned chapter 11 case, hereby move the Court for an Order authorizing the Debtors’ use of cash collateral *nunc pro tunc*. This Motion is based on the Memorandum of Points and Authorities incorporated hereto and the Declaration of the Debtors.

**MEMORANDUM OF POINTS OF AUTHORITIES**

**A. Background Facts**

1. Debtors filed their voluntary petition under Chapter 11 of the United States Bankruptcy Code on July 3, 2012.
2. Debtors own the real properties located at the following residences and described below:
  - i. **6513 Duck Hills Springs Dr Las Vegas, NV 89122** – Investment Property;
  - ii. **10428 Amber Night St Las Vegas, NV 89183** – Investment Property;



- iii. **6119 Cozy Creek St North Las Vegas, NV 89031** – Investment Property;
- iv. **2670 Early Vista St Las Vegas, NV 89142** – Investment Property;
- v. **10225 Headdrick Dr Las Vegas, NV 89166** – Investment Property;
- vi. **7919 Horn Tail Court Las Vegas, NV 89131** – Investment Property;
- vii. **8116 Lake Hills Las Vegas, NV 89103** – Investment Property;
- viii. **336 River Glider Ave North Las Vegas, NV 89084** – Investment Property;
- ix. **7304 Roamer Place Las Vegas, NV 89131** – Investment Property;
- x. **5982 Spinnaker Point Ave Las Vegas, NV 89110** – Investment Property
- xi. **10993 Ladyburn Court Las Vegas, NV 89141** – Investment Property and

The properties listed above are hereinafter referred to as the “Rental Properties.” The Debtor is a Trust that owns all rental properties. The Trustee for this Trust is Resources Group, LLC, and Resources Group LLC manages the collection of rental income, as well as the day-to-day operations for the rental properties for this Trust. The sole owner of Resources Group, LLC and Grantor of the Trust is Mr. Iyad (Eddie) Haddad. Mr. Haddad funds the Trust, which then purchases junior liens through the Trustee’s Sales held at Nevada Legal News, and thus acquires ownership of the properties, subject to the first mortgage lien on the properties. Once the properties are ready for occupancy, Resources Group LLC will locate a tenant and rent the properties. The rental properties are all actively leased as of the date of this motion and generate approximately \$12,825.00 gross rental income per month. Described on Exhibit “A” are Debtors’ estimated income from all sources, along with their expenses, including the proposed mortgage payments on the rental properties.

3. Each of the above-referenced properties was purchased through auction via a secondary, utility, or HOA lien, and is subject to the first mortgage. With liens totaling

\$2,361,235.00, the real properties have a combined fair market value of approximately \$1,015,000.00, leaving \$1,346,235.00 under secured debt. See Bankruptcy Schedules A and D.

**B. Proposed Use of Cash Collateral**

4. The Debtors, as debtors-in-possession, are authorized to use property of the estate in the ordinary course of business. 11 U.S.C. § 363(c). As the mortgage holder, or secured creditor, the income derived from their rental properties constitutes the mortgage companies' "cash collateral."
5. A Motion to Value Collateral, "Strip Off" and Modify Rights of Unsecured Creditors Pursuant to 11 U.S.C. Section 506(a) and Section 1123 for Debtors' investment properties will soon be filed, and will reduce Debtors proposed secured mortgage obligations to \$5143.00 per month.
6. Debtors are seeking an order authorizing them to pay the foregoing necessary operating expenses from the cash collateral pending confirmation of its plan of reorganization. These expenses are necessary to preserve their real properties, to maintain an on-going investment business concern, and to keep their rental business in good operational order.
7. The value of the Debtors' assets can only be maximized through continued operations and on-going rental of the rental properties. Without use of cash collateral, the Debtors' operations cannot continue. In addition, continuing operations will protect and preserve the position of the creditor mortgage companies.

**D. The Debtors' Reorganization Goals**

8. Like many other individual Chapter 11 debtors, Debtors' primary purpose of reorganization is to adjust the valuation of their property and modify the obligations of

1 their existing liens. The Debtors' use of cash collateral is vital to maintaining the value  
2 of the Debtors' assets until the Debtors have had a meaningful opportunity to present a  
3 Plan of Reorganization.

#### 4 LEGAL DISCUSSION

5 A. **The Debtors Should Be Authorized To Use Cash Collateral To Operate, Maintain**  
6 **and Preserve Its Business.**

7 The Debtors, as debtors-in-possession of the estate, have the duty to protect and conserve the  
8 rental properties in its possession for the benefit of creditors. *In re Devers*, 759 F.2d 751 (9th Cir.  
9 1985). The exact nature of the duty owed by a debtor-in-possession of the estate was defined in *In re*  
10 *Morning Star Ranch Resorts*, 64 B. R. 818 (Bkrtcy. D. Colo. 1986):

12 The debtor is a fiduciary and operates the property as a fiduciary for the parties in  
13 interest. He has obligations to operate the property in good fashion, to pay the  
14 expenses of operation and the cost of maintenance, to preserve and protect the  
15 property, and to account for the monies received and the expenses paid.

16 64 B.R. at 822. The Debtors herein have been operating the rental properties, paying the  
17 necessary operating and maintenance expenses and they propose that, with the Court's  
18 permission, they be allowed to continue to do so. The rental income total is approximately  
19 \$12,825.00. Debtor's monthly expenses total \$11,014.00, with proposed mortgage  
20 payments on the rentals of \$5143.00. Thus, absent any unforeseen major repairs, there is  
21 sufficient income being generated to pay the monthly operating expenses, including the  
22 revalued mortgage payments as a result of the anticipated approved motion to value  
23 collateral. Further, where a secured party is adequately protected under § 363, then the  
24 debtor may use the cash collateral for expenses, not only those directly related to the  
25 operation and maintenance of but also administrative expenses.  
26  
27  
28

1 11 U.S.C. §363(c)(1). A debtor-in-possession has all of the rights and powers of a trustee with  
 2 respect to property of the estate, including the right to use property of the estate in compliance with  
 3 Section 363. See, 11 U.S.C. § 1107(a).

4  
 5 “Cash collateral” is defined as “cash, negotiable instruments, documents of  
 6 title, securities, deposit accounts or other cash equivalents in which the estate and an  
 7 entity other than the estate have an interest. . . .” 11 U.S.C. §363(a). Section 363(c)(2)  
 8 establishes a special requirement with respect to “cash collateral,” providing that the  
 9 trustee or debtor-in-possession may use “cash collateral” under subsection (c)(1) if:

10 (A) each entity that has an interest in such cash collateral consents; or

11 (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance  
 12 with the provisions of this section.

13 See, 11 U. S.C. § 363(c)(2)(A) and (B).

14 It is well settled that it is appropriate for a Chapter 11 debtor to use cash collateral for a  
 15 reasonable period of time for the purpose of maintaining and operating its property. 11 U.S.C. §  
 16 363(c)(2)(B); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981); *In re Tucson*  
 17 *Industrial Partners*, 129 B.R. 614 (9th Cir. BAP 1991). In addition, where the debtor is operating a  
 18 business, it is extremely important that the access to cash collateral be allowed in order to facilitate  
 19 the goal of reorganization: “the purpose of Chapter 11 is to rehabilitate debtors and generally access  
 20 to cash collateral is necessary to operate a business.” *In re Dynaco Corporation*, 162 B.R. 389  
 21 (Bankr. D.N.H. 1993), *quoting In re Stein*, 19 B.R. 458, 459. The Debtors run a viable and operating  
 22 entity, and believe that they will successfully reorganize and confirm a plan of reorganization. The  
 23 continued operation of their investment properties are in the overwhelming best interests of the  
 24 Debtors’ estate. If Debtors are unable to use cash collateral to operate their portfolio of investment  
 25 properties, Debtors would obviously have to shut down immediately and liquidate. As described  
 26 above, the Debtors should be permitted to operate and use cash collateral.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order: (1) granting the Motion; (2) authorizing the Debtors to use cash collateral on the conditions set forth hereinabove; and (3) granting such other and further relief as the Court deems just and proper.

Dated this 2<sup>th</sup> day of July, 2012.

Respectfully submitted,  
/s/ Ryan Alexander /s/  
Ryan Alexander, Esq.

The Firm, PC  
200 E. Charleston Blvd. Las Vegas, NV 89104



**EXHIBIT "A"**  
**INCOME STATEMENT**  
**PROFIT AND LOSS**

Income		Expenses			
Rental	\$ 12,825.00	Proposed Mortgages	\$ 5,143.00	Insurance	\$ 750.00
TOTAL	\$ 12,825.00	Repair/Maint.	\$ 682.00	Taxes	\$ 1,409.00
		Utilities	\$ 836.00	Business Supplies	\$ 500.00
		HOA	\$ 701.00	Legal	\$ 50.00
		Management Fees	\$ 723.00	US Trustee Fee	\$ 220.00
		TOTAL:			\$ 11,014.00

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ryan@thefirm-lv.com (E-mail)

*E-FILED*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

RIVER GLIDER AVE TRUST  
  
DEBTORS.

CASE NO.: 12-17862-BTB  
Hon. Bruce T. Beesley

**[PROPOSED] ORDER GRANTING  
FIRST DAY MOTION TO USE CASH  
COLLATERAL**

HEARING DATE: AUGUST 7, 2012  
HEARING TIME: 1:30 PM

The Motion to Use Cash Collateral (the "Motion") having come before this Court and the Motion having been served as shown by the Certificate of Service, Ryan Alexander of The Firm, PC appearing for RIVER GLIDER AVE TRUST, Debtors and Debtors-in-Possession (the "Debtors"), the Court having reviewed the Motion, and finding good cause, and that there is sufficient income to pay Adequate Protection Ordered payments under 11 USC 361, it is

ORDERED that the Debtors are authorized to use the income derived from their rental properties (the "Properties"), including but not limited to rents/mortgage payments, operation expenses, and other miscellaneous expense as stated below:

Income		Expenses			
Rental	\$ 12,825.00	Proposed Mortgages	\$ 5,143.00	Insurance	\$ 750.00
TOTAL	\$ 12,825.00	Repair/Maint.	\$ 682.00	Taxes	\$ 1,409.00
		Utilities	\$ 836.00	Business Supplies	\$ 500.00
		HOA	\$ 701.00	Legal	\$ 50.00
		Management Fees	\$ 723.00	US Trustee Fee	\$ 220.00
		TOTAL:			
					\$ 11,014.00

ORDERED that as provided by Fed. R. Bankr. P. 7062, this Order shall be effective and enforceable immediately upon entry.

**ALTERNATIVE METHOD re: RULE 9021:**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Respectfully submitted,

/s/ Ryan Alexander /s/

Ryan Alexander, Esq.  
NV Bar No. 10845

River Glider Trust  
C/O Resources Group LLC  
900 Las Vegas Blvd S. #810  
Las Vegas, NV 89107

Absolute Collection Services  
PO Box 12117  
Las Vegas, NV 89112

Accredited Home Lenders  
15030 Avenue of Science #100  
San Diego, CA 92128

Alessi & Koenig LLC  
9500 W Flamingo #205  
Las Vegas, NV 89147

Allied Trustee Services  
701 North Green Valley Pkwy #200  
Henderson, NV 89014

Angius & Terry Collections  
1120 N Town Center Dr #260  
Las Vegas, NV 89144

Argent Mortgage Company  
PO Box 5047  
Rolling Meadows, IL 60008

Callister & Reynolds  
823 Las Vegas Blvd S. #280  
Las Vegas, NV 89101

CMG Mortgage  
3160 Crow Canyon Rd #240  
San Ramon, CA 94583

Evofi One  
2460 Paseo Verde Parkway 125  
Henderson, NV 89074

Home Loan Center  
18191 Von Karmen Ave #300  
Irvine, CA 92612

Homeowner Association Services  
3513 E Russell Rd  
Las Vegas, NV 89120

Meridas Capital  
990 W Atherton Dr  
Salt Lake City, UT 84123

Metlife Home Loans  
1555 W Walnut Hill Lane #200  
Irving, TX 75038

Mortgage Loan Specialists  
4695 MacArthur Court 11th Floor  
Newport Beach, CA 92660

Nevada Association Services  
TS #N67297  
6224 W Desert Inn Rd #A  
Las Vegas, NV 89146

Republic Services  
7 E. Sahara Ave  
Las Vegas, NV 89104

Shea & Carlyon  
701 Bridger Ave #850  
Las Vegas, NV 89101

The Parks HOA  
2300 W Sahara Ave #1130 Box #33  
Las Vegas, NV 89102

Universal American Mortgage  
Company  
1725 W. Green Tree Dr #104  
Tempe, AZ 85284

US trust Mortgage Service Co  
280 E Palmetto Park Rd  
Boca Raton, FL 33432

Wells Fargo Bank  
12550 SE 93rd Ave #400  
Clackamas, OR 97015

Clark County Assessor  
500 S. Grand Central Parkway  
PO Box 5511401  
Las Vegas, NV 89155

Clark County Treasurer  
500 S. Grand Central Pkwy  
PO Box 551220  
Las Vegas, NV 89155

DETR  
Employment Security Division  
500 E. Third St  
Carson City, NV 89713

IRS  
PO Box 1303  
Charlotte, NC 28201

IRS  
PO Box 7346  
Philadelphia, PA 19101

Nevada Dept of Taxation  
ATTN: Bankruptcy Division  
555 E. Washington Ave #1300  
Las Vegas, NV 89101

Nevada DMV  
ATTN: Legal Division  
555 Wright Way  
Carson City, NV 89711

Secretary of Treasury  
1500 Pennsylvannia Ave NW  
Washington, DC 20220

BANA/Nolan-01-000510

SA529

United States Chapter 11 Trustee  
Foley Federal Building  
300 S. Las Vegas Blvd  
Las Vegas, NV 89101

Wells Fargo Hm Mortgag  
3476 Stateview Blvd  
Fort Mill, SC 29715

Wf Fin Bank/Wells Fargo Financial  
Wells Fargo Financial  
4137 121st St  
Urbandale, IA 50323

Bank of America  
400 National Way  
Simi Valley, CA 93065

CoreLogic  
450 E Boundary St  
Chapin, SC 29036

Countrywide  
450 American St #SV416  
Simi Valley, CA 93065

Allied Trustee Services  
990 Reserve Dr #208  
Roseville, CA 95678

BAC Home Loans Servicing  
450 American St.  
Simi Valley, CA 93065

Impac Funding Corp  
1401 Dove St #100  
Newport Beach, CA 92660

North American Mortgage  
PO Box 808031  
Petaluma, CA 94975

The Stonewood Group  
3937 Sunset Blvd #1  
West Columbia, SC 29169

Aurora Loan Services  
2617 College Park  
Scottsbluff, NE 69361

Cameron Financial Group  
1065 Higuera St #102  
San Luis Obispo, CA 93401

Citimortgage  
PO Box 790005  
ATTN: M.S. 305  
Saint Louis, MO 63179

Americas Servicing Co  
1 Home Campus X2504-017  
Des Moines, IA 50328

US Bank  
801 Larkspur Landing  
Larkspur, CA 94939

US Bank  
PO Box 5220  
Cincinnati, OH 45201

Bank of America  
PO Box 2518  
Houston, TX 77252

Recontrust Company  
2380 Performance Dr TX2-984-0407  
Richardson, TX 75082

Foley Federal Building  
ATTN: Judge Beesely  
300 S Las Vegas Blvd  
Las Vegas, NV 89101

Authority to use cash collateral  
expires on 10/31/12

*Bruce T. Beesley*



Honorable Bruce T. Beesley  
United States Bankruptcy Judge

Entered on Docket  
September 20, 2012

Ryan Alexander  
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ryan@thefirm-lv.com (E-mail)

*E-FILED*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

RIVER GLIDER AVE TRUST

DEBTORS.

CASE NO.: 12-17862-BTB  
Hon. Bruce T. Beesley

**ORDER GRANTING FIRST DAY  
MOTION TO USE CASH  
COLLATERAL**

HEARING DATE: SEPTEMBER 18,  
2012  
HEARING TIME: 1:30 PM

The Motion to Use Cash Collateral (the "Motion") having come before this Court and the Motion having been served as shown by the Certificate of Service, Ryan Alexander of The Firm, PC appearing for RIVER GLIDER AVE TRUST, Debtors and Debtors-in-Possession (the "Debtors"), the Court having reviewed the Motion, and finding good cause, and that there is sufficient income to pay Adequate Protection Ordered payments under 11 USC 361, it is



ORDERED that the Debtors are authorized to use the income derived from their rental properties (the "Properties"), including but not limited to rents/mortgage payments, operation expenses, and other miscellaneous expense as stated below:

Income		Expenses			
Rental	\$ 12,825.00	Proposed Mortgages	\$ -	Insurance	\$ 750.00
TOTAL	\$ 12,825.00	Repair/Maint.	\$ 682.00	Taxes	\$ 1,409.00
		Utilities	\$ 836.00	Business Supplies	\$ 500.00
		HOA	\$ 701.00	Legal	\$ -
		Management Fees	\$ -	US Trustee Fee	\$ 220.00
				TOTAL:	\$ 5,098.00

ORDERED that as provided by Fed. R. Bankr. P. 7062, this Order shall be effective and enforceable immediately upon entry.

**ALTERNATIVE METHOD re: RULE 9021:**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Respectfully submitted,

/s/ Ryan Alexander /s/  
Ryan Alexander, Esq.  
NV Bar No. 10845

Ryan Alexander, Esq.  
Nevada Bar No. 10845  
The Firm, PC  
200 E. Charleston Blvd  
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Phone: (702) 222-3476  
Fax: (702) 252-3476  
Email: ryan@thefirm-lv.com  
*Attorney for Debtors*

**Electronically Filed**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

RIVER GLIDER AVE TRUST ,  
  
DEBTORS.

Case No.: 12-17862-BTB  
Hon. Bruce T. Beesley  
Chapter 11

**MOTION TO VALUE  
COLLATERAL, "STRIP OFF"  
AND MODIFY RIGHTS OF  
UNSECURED CREDITORS  
PURSUANT TO 11 U.S.C. § 506(a)  
AND § 1123**

**Hearing Date: December 11, 2012  
Time of Hearing: 1:30 PM**

COMES NOW, Debtor and Debtor-in-Possession RIVER GLIDER AVE TRUST, by and through their attorney, Ryan Alexander of The Firm, PC, and petitions this Court, pursuant to section 506(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**") and Bankruptcy Rules 3012 and 9014 of the Federal Rules of Bankruptcy Procedure to value collateral securing certain residential loans and reclassify lenders claims as unsecured and to modify the rights of Universal American Mortgage Company, Bank of America, Corelogic, Countrywide (collectively "Secured Creditors"), Shea & Cohen, Absolute Collection Services, Allied Trustee Services, Callister & Reynolds (collectively "Unsecured Creditors"), and Debtors states as follows:

**FACTUAL BACKGROUND**

1. Debtors filed its instant Chapter 11 bankruptcy proceeding, Case No. 12-17862 on July 4, 2012.
2. On the petition date, Debtors owned real property described below that was subject to the following liens:

<b>Subject Property:</b>	<b>Value:</b>
10428 Amber Night St Las Vegas NV 89183	\$ 73,000.00

<b>Nature of Lien:</b>	<b>Creditor:</b>	<b>Amount:</b>
First Mortgage	US Trust Mortgage Service Co	\$ 217,636.00
Assignee/First Mortgage	Bank of America, Corelogic, Countrywide	\$ -
HOA Lien	Absolute Collection Services	\$ -
HOA Lien	Allied Trustee Services	\$ -
Default Judgment	Shea & Cohen	\$ -
Default Judgment	Callister & Reynolds	\$ -
<b>TOTAL:</b>		\$ 217,636.00
<b>TOTAL UNSECURED:</b>		\$ 144,636.00

3. The appraisal for this property is attached hereto as Exhibit A.
4. On the date the instant bankruptcy case was filed, no equity existed in the Subject Property.
5. Accordingly, Debtors request that this Court find that Unsecured Creditors claims are unsecured and should be reclassified as general unsecured claims to receive pro rata distribution with other general unsecured creditors through the Debtors' Chapter 11 Plan.

**MEMORANDUM OF LAW**

6. Section 506(a)(1) of the Bankruptcy Code provides that a Chapter 11 debtor may bifurcate a secured lender's claim into an allowed secured claim and an allowed unsecured claim based upon the actual value of the property securing such lender's lien. An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to set off under Section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to set off, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim.

Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest. 11 U.S.C. § 506(a)(1).

7. The Supreme Court has recognized that section 506 of the Bankruptcy Code defines the amount of the secured creditor's allowed secured claim and the conditions of his receiving post-petition interest. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988). In United Sav. Ass'n of Texas, the Supreme Court interpreting Section 506(a) of the Bankruptcy Code found that:

In subsection (a) of this provision the creditor's "interest in property" obviously means his security interest without taking account of his right to immediate possession of the collateral on default. If the latter were included, the "value of such creditor's interest" would increase, and the proportions of the claim that are secured and unsecured would alter, as the stay continues-since the value of the entitlement to use the collateral from the date of bankruptcy would rise with the passage of time.

No one suggests this was intended. The phrase "value of such creditor's interest" in § 506(a) means "the value of the collateral." *See id.* (emphasis added) (quoting H.R.Rep. No. 95-595, pp. 181, 356 (1977)).

8. The Ninth Circuit agrees with this interpretation of section 506 of the Bankruptcy Code. In re Maldonado, 46 B.R. 497, 499 (9th Cir. BAP 1984) (interpreting section 506(a), "a claim 'is a secured claim to the extent of the value of [the] creditor's interests' in the estate's interest in the property. The entire claim is not a secured claim. The claim is secured only to the extent of the value of the secured interest.")

9. In addition, this Bankruptcy Court has found that "an 'allowed secured claim' is a determination generally made under 11 U.S.C. § 506." In re BBT, 11 B.R. 224, 229 (Bankr. D. Nev. 1981). The Bankruptcy Court further stated that, with respect to a claim secured by a lien on property of the estate, "to the extent that the value of the property is less than the amount of the total allowed claim, **the claim is unsecured.**" *Id.* (emphasis added).

1 10. Thus, pursuant to the law of this Circuit, the amount of the allowed secured claim cannot exceed the  
2 market value of the property and the remainder of the claim must be treated as an allowed unsecured claim  
3 for purposes of the plan. In re Sagewood Manor Associates Ltd. Partnership, 223 B.R. 756, 773 (Bankr. D.  
4 Nev. 1998) (holding that the court may confirm a chapter 11 plan over the objection of a class of secured  
5 claims if the members of that class are to receive under the plan property of a value equal to the allowed  
6 amount of their secured claims, as determined under 11 U.S.C. § 506(a)).

7 11. Moreover, the Ninth Circuit Court of Appeals has also found that a wholly unsecured lien holder's claim  
8 can be modified and reclassified as a general unsecured claim pursuant to section 506(a) of the Bankruptcy  
9 Code. *See In re Zimmer*, 313 F.3d 1220 (9th Cir.2002). Specifically, the Court held:

11 Section 506(a) divides creditors' claims into 'secured claims' and 'unsecured claims.' Although the  
12 conventional interpretation of 'secured' might include any claim in which the creditor has a security  
13 interest in the debtor's property, § 506(a) makes clear that the status of a claim depends on the  
14 valuation of the property: 'An allowed claim of a creditor secured by a lien on property in which  
15 the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in  
16 the estate's interest in such property ... and is an unsecured claim to the extent that the value of such  
17 creditor's interest... is less than the amount of such allowed claim.' 11 U.S.C. 506(a). To put it more  
18 simply, a claim such as a mortgage is not a 'secured claim' to the extent that it exceeds the value of  
19 the property that secures it. Under the Bankruptcy Code, 'secured claim' is thus a term of art; not  
20 every claim that is secured by a lien on property will be considered a 'secured claim.' Here, it is  
21 plain that PSB Lending's claim for the repayment of its loan is an unsecured claim, because its deed  
22 of trust is junior to the first deed of trust, and the value of the loan secured by the first deed of trust  
23 is greater than the value of the house. In re Zimmer, 313 F.3d at 1222 - 23.

24 12. Accordingly, because the first mortgages on the Properties are under-secured, those lenders claims should  
25 be bifurcated into secured and unsecured claims based on the market value of the Properties as shown in  
26 their respective appraisals as set forth in Exhibit A. The Debtors request, however, that all other items of the  
27 note and mortgage remain the same, including the interest rate and loan amortization.

28 13. Moreover, because several of the second mortgages are wholly unsecured (in that there is no equity above  
the first mortgages in any of the Properties), those unsecured claims should be reclassified as a general  
unsecured claims to be treated pro rata with similar unsecured creditors. The second mortgage lenders  
should also be stripped of their secured rights under state law since no maintainable security interest in the  
subject Properties exists, also as set forth in Exhibit A.

14. Finally, the filing of a motion rather than an adversary proceeding to achieve the relief requested herein is appropriate in this Court. *See In re Bonsignori*, Case No. BKS-08-11830-LBR (D. Nev. June 25, 2008) (approving the stripping off of an unsecured lien by motion); *see also In re Robert*, 313 B.R. 545 (Bankr. N.D.N.Y. 2004); *In re Bennett*, 312 B.R.843 (Bankr. W.D. Ky. 2004); *In re King*, 290 B.R. 641 (Bankr. C.D. Ill. 2003); *In re Millspaugh*, 302 B.R. 90 (Bankr. D. Idaho 2003); *Dickey v. Ben. Fin.* (In re Dickey), 293 B.R. 360 (Bankr. M.D. Pa. 2003); *In re Hill*, 304 B.R. 800 (Bankr. S.D. Ohio 2003); *In re Sadala*, 294 B.R. 180 (Bankr. M.D. Fla. 2003); *In re Fisher*, 289 B.R. 544 (Bankr. W.D.N.Y. 2003); *In re Hoskins*, 262 B.R. 693 (Bankr. E.D. Mich. 2001); *In re Fuller*, 255 B.R. 300 (Bankr. W.D. Mich. 2000); and *In re Williams*, 166 B.R. 615 (Bankr. E.D. Va. 1994).

#### CONCLUSION

15. Bankruptcy law is clear, absent sufficient equity in the Properties, the first mortgage lenders claims are only partially secured and thus must be bifurcated into secured and unsecured claims. The second mortgage lenders are wholly unsecured and should receive only their *pro rata* distribution with other general unsecured creditors through the Debtors Chapter 11 plan.

WHEREFORE, Debtors pray that this Court: (i) value the Property in accordance with the appraisal attached hereto; (ii) bifurcate the first mortgage claims of Secured Creditor into secured and unsecured claims; (iii) "Strip off" and extinguish Unsecured Creditors claims wholly unsecured liens pursuant to 11 U.S.C. Section 506(a); (iv) Reclassify Unsecured Creditors claims as general unsecured claims to be paid pro rata with other general unsecured creditors through the Debtors' Chapter 11 plan; and (v) such other relief the Court deems just and proper.

Dated this 10<sup>th</sup> day of September, 2012.

Respectfully Submitted,  
/s/Ryan Alexander, Esq.  
 Ryan Alexander, Esq.  
 Attorney for Debtors



The Firm, PC  
200 E. Charleston Blvd. Las Vegas, NV 89104

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1 RYAN ALEXANDER  
Nevada Bar No. 10845  
2 THE FIRM, P.C.  
200 East Charleston Boulevard  
3 Las Vegas, NV 89104  
Phone: (702) 222-3476  
4 Fax: (702) 252-3476  
5 Ryan@TheFirm-LV.com  
*Attorney for Debtor*

6 **UNITED STATES BANKRUPTCY COURT**  
7 **DISTRICT OF NEVADA**

8  
9 In Re:  
BOURNE VALLEY COURT TRUST,  
10 OLIVER SAGEBRUSH DR TRUST,  
PARADISE HARBOR PLACE TRUST,  
11 RIVER GLIDER AVE TRUST,  
12 Debtors.

Case No.: 12-16387-BTB; 12-18558-BTB; 12-  
20213-BTB; 12-17862-BTB  
Hon. Bruce T. Beesley  
Chapter 11

13 **OMNIBUS RESPONSE TO ORDERS TO SHOW**  
14 **CAUSE**

Hearing Date: November 13, 2012  
Hearing Time: 3:00 PM

15  
16 COMES NOW **BOURNE VALLEY COURT TRUST, OLIVER SAGEBRUSH DR**  
17 **TRUST, PARADISE HARBOR PLACE TRUST, and RIVER GLIDER AVE TRUST,**  
18 (collectively "Trusts," "Debtors"), the debtors and debtors-in-possession in the above-captioned  
19 chapter 11, and in response to the Order To Show Cause states as follows:

20  
21 The Court has asked for the Trusts to show that they are eligible to be debtors under Title 11 of  
22 the United States Code (the "Bankruptcy Code"). The Trusts will show the Court herein that the  
23 explicit and primary purpose of the trust is to be a business trust, and not to act as an estate planning  
24 or asset protection trust.

25 **RELEVANT AUTHORITY**

26  
27 Section 109(a) of the Bankruptcy Code provides, in relevant part, "[n]otwithstanding any other  
28 provision of this section, only a person that resides or has a domicile, a place of business or property

1 in the United States or a municipality, may be a debtor under this title.” 11 U.S.C. § 109(a)  
 2 (emphasis added). The term “person” is, itself, defined in section 101(41) of the Bankruptcy Code to  
 3 include a “corporation.” Delving further, section 101(9)(A)(v) defines a “corporation” to include a  
 4 “business trust.” Unfortunately, as far as the Bankruptcy Code is concerned, the definitions end  
 5 there. COLLIER ON BANKRUPTCY encapsulates the state of the case law with respect to the  
 6 eligibility of a trust to be a debtor by explaining:

7 In determining whether a particular entity constitutes a "business trust" under the  
 8 Code, and should therefore be treated as a corporation, the court will analyze both the  
 9 type of activity the trust was designed for and the authority given to the trustee to  
 undertake the activities.

10 2-101 *Collier on Bankruptcy* ¶ 101.09 (15th ed. 2011) (internal quotations and citations omitted).

11 Two Courts of Appeal have addressed the “business trust” debtor issue. The Court of Appeals  
 12 for the Sixth Circuit adopted a “primary purpose” test. *Brady-Morris v. Schilling (In re: Kenneth*  
 13 *Allen Knight Trust)*, 303 F.3d 671 (6th Cir. 2002). A trust with the primary purpose of transacting  
 14 business and conducting commercial transactions is a business trust; a trust that only protects the  
 15 trust res for the benefit of its beneficiaries is generally not. *Id.* at 680. The Kenneth Allen Knight  
 16 Trust held two assets, the settlor’s residence and an entity that held four other entities that owned  
 17 real estate investments. In that case, the Court of Appeals affirmed the determination of the District  
 18 Court (and the Bankruptcy Court before it) that the Kenneth Allen Knight Trust was a business trust,  
 19 finding “the primary purpose of the Trust was to transact business or carry on commercial  
 20 activity...” *Id.* at 680. The Sixth Circuit also rejected two requirements for business trusts imposed  
 21 by earlier bankruptcy cases: first, that to be a business trust, the trust must have transferable  
 22 certificates of ownership<sup>1</sup>; second, that the trust’s business or commercial activity must be for profit.  
 23 *Id.*, at 676-680.

24 In the Second Circuit, the Court of Appeals also found the “primary purpose” of the trust  
 25 important in determining its eligibility to be a debtor under the Bankruptcy Code. *Shawmut Bank*  
 26

27 <sup>1</sup> “[T]he *Morrissey*, 296 U.S. 344, 80 L. Ed. 263, 56 S. Ct. 289 criteria were meant for the Internal Revenue Code, and they contradict  
 28 the 1978 liberalization of the Bankruptcy Code’s treatment of business trusts, as discussed above. We join those courts that have  
 concluded that Congress intended to dispense with the transferable-certificate-of-ownership requirement when it changed the statute  
 in 1978. See, e.g., *Treasure Island*, 2 B.R. at 334 (“In eliminating the requirement of written instruments, Congress has presumably  
 made it possible for a broader variety of trusts to obtain relief in the bankruptcy courts.”) *Brady-Morris*, 303 F.3d at 679.

1 *Connecticut, N.A. (In re Secured Equipment Trust of Eastern Air Lines, Inc.)*, 38 F.3d. 86 (2d Cir.  
2 1994). In that case, Eastern Air Lines formed the Secured Equipment Trust of Eastern Air Lines,  
3 Inc. for the exclusive purpose of segmenting part of its fleet of aircraft to stand as collateral for a  
4 credit facility. *Id.* at 87. There the court determined that the Secured Equipment Trust of Eastern Air  
5 Lines, Inc. did not conduct business and “was merely created to serve as a vehicle to facilitate a  
6 secured financing by Eastern.” *Id.* at 90. That Court of Appeals affirmed the judgment of the District  
7 Court and the Order of the Bankruptcy Court dismissing the involuntary bankruptcy case.

8 The Secured Equipment Trust case was recently examined by the Southern District of New  
9 York in *In Re General Growth Properties, Inc.* 409 B.R. 43 (S.D.N.Y. 2009). One of the debtors in  
10 that case, Lancaster Trust, was an Illinois land trust, which was defined by Illinois law to be “a legal  
11 device whose primary function is to hold legal and equitable title to real estate,” which “is not, and  
12 does not attempt to be, an active business or commercial entity.” *Id.*, citing *In re North Short Nat’l*  
13 *Bank of Chicago, Land Trust No. 362*, 17 B.R. 867, 869 (Bankr. N.D. Ill. 1982). Despite this  
14 definition, the Southern District of New York held that the Lancaster Trust was a business trust  
15 because its purpose went merely beyond conserving trust res or holding title to land. General  
16 Growth, 409 B.R. at 71-21. The court cited as examples of its business activity the fact that it was  
17 named lessor in leases with its tenants, the borrower under a loan agreement, party to various service  
18 contracts, and explicitly authorized to conduct business in Pennsylvania. *Id.* at 71. This  
19 determination was over the moving creditor’s argument that the Lancaster Trust had no board,  
20 officers or stockholders, and restrictions of share transferability, but the Court countered that, “these  
21 are characteristics of some closely-held business entities.” *Id.* at 71.

22 The legislative history suggests that Congress intended to make bankruptcy available to all  
23 trusts that have the features of a business entity and to leave that determination to the judgment of  
24 bankruptcy courts. The Bankruptcy Reform Act of 1978 replaced the description, “any business  
25 conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by  
26 certificate or other written instrument” with the simplified “business trust” now codified in section  
27 101(9)(A)(v) of the Bankruptcy Code. The reason for the change was to eliminate arbitrary barriers  
28 to bankruptcy for trusts that function as a business. *Brady-Morris v. Schilling (In re: Kenneth Allen*

1 *Knight Trust*), 303 F.3d 671, 679-80 (6th Cir. 2002). *See also In re Morgantown Trust No. 1*, 155  
 2 B.R. 137, 140 (Bankr. N.D. W.Va. 1993) (“[T]he 1978 Amendment “indicates a further reduction of  
 3 the trust restrictions”).

#### 5 **The BOURNE VALLEY Court Trust**

6 BOURNE VALLEY COURT TRUST was formed through the Trust Agreement of May 4, 2012. A  
 7 copy of the Trust Agreement is attached hereto as “Exhibit A.” Although not perfect in drafting, the  
 8 trust would almost certainly be a valid trust organized in the State of Nevada. *See Opinion Letter of*  
 9 *Robert L. Bolick, Esq.*, attached hereto as Exhibit “B.” The Trust Agreement did not contemplate the  
 10 creation of a trust designed for the sole purpose of passing property to beneficiaries; rather, it  
 11 authorized the BOURNE VALLEY Trustee, Resources Group LLC, in the very first Article to  
 12 create a “business trust,” to “manage, administer, collect, receive, dispose of and distribute the trust  
 13 property for the benefit of such persons as have acquired shares of beneficial interests in the trust.”  
 14 See Trust Agreement, Exhibit A. The trust interests are transferable. See Articles VI, VII. Article XI  
 15 grants powers to the trustee to “organize, own, operate and conduct any business, trade, enterprise or  
 16 industry of any kind, description or character whatsoever.” *Id.* It continues:

17 (d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or  
 18 hindrance from the certificate holders have as full, absolute and plenary rights,  
 19 authority, power, and discretion as if absolute owners to establish, form, organize,  
 20 manage and conduct any business, trade, enterprise or industry of any kind, character or  
 21 description whatsoever; to acquire by purchase, exchange or otherwise, and to hold,  
 own, develop and operate and to sell, pledge, exchange, mortgage and convey or  
 otherwise dispose of property of every kind, character and description, real, personal and  
 mixed.

22 *Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment  
 23 of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents,  
 24 professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410,  
 25 which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR  
 26 AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically  
 27 authorizes the trustee to file for reorganization:

28 (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust  
 created herein, and to participate in or consent to any voting Trust, **reorganization**.

dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

Article XI (o) (*emphasis added*). BOURNE VALLEY, consistent with its intended purpose, operates a business. Fundamentally it is not a passive vessel, liquidating investments for its beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function, BOURNE VALLEY has acquired title to ten properties and actively operates a residential rental enterprise. The trust and its trustee may negotiate lease agreements and real estate transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank account will pay taxes, create financial reports and take investment risks, including entering into agreements with lending institutions. BOURNE VALLEY filed this case to stop one of ten secured creditors from selling certain of its real property holdings that secured repayment.

#### **The OLIVER SAGEBRUSH Dr Trust**

OLIVER SAGEBRUSH DR TRUST was formed through the Trust Agreement of June 20, 2012. A copy of the Trust Agreement is attached hereto as "Exhibit C." Although not perfect in drafting, the trust would almost certainly be a valid trust organized in the State of Nevada. *See Opinion Letter of Robert L. Bolick, Esq.*, attached hereto as Exhibit "D." The Trust Agreement did not contemplate the creation of a trust designed for the sole purpose of passing property to beneficiaries; rather, it authorized the OLIVER SAGEBRUSH Trustee, Resources Group LLC, in the very first Article to create a "business trust," to "manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust." See Trust Agreement, Exhibit C. The trust interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to "organize, own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever." *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.



1 *Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment  
 2 of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents,  
 3 professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410,  
 4 which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR  
 5 AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically  
 6 authorizes the trustee to file for reorganization:

7 (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust  
 8 created herein, and to participate in or consent to any voting Trust, **reorganization**,  
 9 dissolution, liquidation, merger, or other action affecting any such shares of stock or any  
 10 corporation which has issued such shares of stock.

11 Article XI (o) (*emphasis added*). OLIVER SAGEBRUSH, consistent with its intended purpose,  
 12 operates a business. Fundamentally it is not a passive vessel, liquidating investments for its  
 13 beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function,  
 14 OLIVER SAGEBRUSH has acquired title to four properties and actively operates a residential  
 15 rental enterprise. The trust and its trustee may negotiate lease agreements and real estate  
 16 transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank  
 17 account will pay taxes, create financial reports and take investment risks, including entering into  
 18 agreements with lending institutions. OLIVER SAGEBRUSH filed this case to stop one of four  
 19 secured creditors from selling certain of its real property holdings that secured repayment.

### 20 **The PARADISE HARBOR PLACE Trust**

21 PARADISE HARBOR PLACE TRUST was formed through the Trust Agreement of June 8, 2012.  
 22 A copy of the Trust Agreement is attached hereto as “Exhibit E.” Although not perfect in drafting,  
 23 the trust would almost certainly be a valid trust organized in the State of Nevada. The Trust  
 24 Agreement did not contemplate the creation of a trust designed for the sole purpose of passing  
 25 property to beneficiaries; rather, it authorized the PARADISE HARBOR PLACE Trustee,  
 26 Resources Group LLC, in the very first Article to create a “business trust,” to “manage, administer,  
 27 collect, receive, dispose of and distribute the trust property for the benefit of such persons as have  
 28 acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit E. The trust  
 interests are transferable. See Articles VI, VII. Article XI grants powers to the trustee to “organize,

own, operate and conduct any business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It continues:

(d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.

*Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents, professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410, which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically authorizes the trustee to file for reorganization:

(o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

Article XI (o) (*emphasis added*). PARADISE HARBOR PLACE, consistent with its intended purpose, operates a business. Fundamentally it is not a passive vessel, liquidating investments for its beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function, PARADISE HARBOR PLACE has acquired title to eleven properties and actively operates a residential rental enterprise. The trust and its trustee may negotiate lease agreements and real estate transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank account will pay taxes, create financial reports and take investment risks, including entering into agreements with lending institutions. PARADISE HARBOR PLACE filed this case to stop one of eleven secured creditors from selling certain of its real property holdings that secured repayment.

#### **The RIVER GLIDER AVE Trust**

RIVER GLIDER AVE TRUST was formed through the Trust Agreement of November 28, 2011. A

1 copy of the Trust Agreement is attached hereto as “Exhibit F.” Although not perfect in drafting, the  
 2 trust would almost certainly be a valid trust organized in the State of Nevada. The Trust Agreement  
 3 did not contemplate the creation of a trust designed for the sole purpose of passing property to  
 4 beneficiaries; rather, it authorized the RIVER GLIDER AVE Trustee, Resources Group LLC, in the  
 5 very first Article to create a “business trust,” to “manage, administer, collect, receive, dispose of and  
 6 distribute the trust property for the benefit of such persons as have acquired shares of beneficial  
 7 interests in the trust.” See Trust Agreement, Exhibit F. The trust interests are transferable. See  
 8 Articles VI, VII. Article XI grants powers to the trustee to “organize, own, operate and conduct any  
 9 business, trade, enterprise or industry of any kind, description or character whatsoever.” *Id.* It  
 10 continues:

11 (d) The Trustee(s) shall, such capacity, exclusively and absolutely, and without leave or  
 12 hindrance from the certificate holders have as full, absolute and plenary rights,  
 13 authority, power, and discretion as if absolute owners to establish, form, organize,  
 14 manage and conduct any business, trade, enterprise or industry of any kind, character or  
 15 description whatsoever; to acquire by purchase, exchange or otherwise, and to hold,  
 own, develop and operate and to sell, pledge, exchange, mortgage and convey or  
 otherwise dispose of property of every kind, character and description, real, personal and  
 mixed.

16 *Id.*, Article XI (d). Further powers include the purchase, sale or leasing of property, the investment  
 17 of funds, the borrowing or mortgaging of trust assets, to hold real property, to employ agents,  
 18 professionals or employees, and the specific powers enumerated in NRS 163.265 through 163.410,  
 19 which is itself titled “TRUST POWERS WHICH MAY BE INCLUDED IN A WILL OR  
 20 AGREEMENT BY REFERENCE.” NRS 163.265 *et seq.* The Trust Agreement also specifically  
 21 authorizes the trustee to file for reorganization:

22 (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust  
 23 created herein, and to participate in or consent to any voting Trust, **reorganization**,  
 24 dissolution, liquidation, merger, or other action affecting any such shares of stock or any  
 corporation which has issued such shares of stock.

25 Article XI (o) (*emphasis added*). RIVER GLIDER AVE, consistent with its intended purpose,  
 26 operates a business. Fundamentally it is not a passive vessel, liquidating investments for its  
 27 beneficiaries or formed for tax benefits or for smooth inter-generational asset transfers. In function,  
 28 RIVER GLIDER AVE has acquired title to eleven properties and actively operates a residential

1 rental enterprise. The trust and its trustee may negotiate lease agreements and real estate  
2 transactions, manages, maintains and repairs its properties, has its own debtor-in-possession bank  
3 account will pay taxes, create financial reports and take investment risks, including entering into  
4 agreements with lending institutions. RIVER GLIDER AVE did not have any imminent foreclosures  
5 on any of its properties when it filed for reorganization under Chapter 11.

### 7 **ARGUMENT**

8 The Trusts are profit-making enterprises. Its activity is the rental and maintenance of residential  
9 real estate. The Trusts hold titles to residential properties, collects revenue in the form of rents from  
10 tenants, pays utilities, pays a management company and will pay secured creditors on the properties  
11 on Debtor holds title, pursuant to Debtor's plan of reorganization. By virtue of holding title to  
12 various properties, which all have liens or mortgages or deeds of trust on them, the Trusts owes  
13 secured creditors. The Debtors have revenue to pay secured creditors. No other party or entity holds  
14 the title to the properties owned by the Debtors that could file for bankruptcy protection and  
15 preserve the properties. The Plan will provide the creditors with the fair market value of all of the  
16 properties and ensure the viability of the Trusts. Beyond the Plan, the Trusts will continue to own  
17 and operate its rental properties, pay the secured creditors, buy, sell and manage real estate, and  
18 engage in any other authorized business activity.

#### 20 **I. Debtors are Eligible for Relief under the Bankruptcy Code.**

21 For the purposes of clarification it would be helpful to review notable cases that distinguish  
22 business trusts and trusts that were not found to be business trust in a bankruptcy context. "[A]  
23 number of court-made definitions of 'business trust' exist and indeed perhaps the only thing all cases  
24 have in common is the recognition that they all differ." *In re Jin Suk Kim Trust d/b/a La Union Mall*,  
25 2011 Bankr. LEXIS 3086, \*12 (Bankr. D. Md., Apr. 8, 2011) (internal citations and quotations  
26 omitted). Further:

27 No case of which this Court is aware looked solely to the formation document in  
28 reaching its determination. The one overriding principle that emerges from the cases is  
that the determination of whether a trust is a business trust is fact-specific and focuses

on the purpose and operations of the trust.

*Id.* at \*16. A trust may be ineligible to be a debtor if it is only a device to preserve and distribute property to the heirs of the settlor, and if the trustee had no granted authority to run a business. *In re Nellie M. Hurst Trust*, \*7 1997 Bankr. LEXIS 997 (Bankr. Md. 1997) (“Ultimately, each decision is based on a very fact-specific analysis of the trust at issue.”) (citing *Shawmut Bank Connecticut, N.A. (In re Secured Equipment Trust of Eastern Air Lines, Inc.)*, 38 F.3d. 86, 89 (2d Cir. 1994)). See also *In the Matter of Evelyn Walker, As Trustee*, 79 B.R. 59, 62 (Bankr. M.D. Fla. 1987) (“[T]he purpose of the trust is without question to provide for support, maintenance, and comfort of the beneficiaries and *not to conduct a business for profit*.”). Despite its conclusion as to that trust, which the court determined was for inheritance purposes and not for business, the *Nellie M. Hurst Trust* case stands firmly against the proposition of a *per se* bar against any trust created through a will becoming a debtor under the Bankruptcy Code. *In re Nellie M. Hurst Trust*, \*7 1997 Bankr. LEXIS 997 (Bankr. Md. 1997). A trust can be, at once, an estate planning device and a business trust. In *In re Jin Suk Kim Trust d/b/a La Union Mall*, 2011 Bankr. LEXIS 3086, \*2 (Bankr. D. Md., Apr. 8, 2011), the trust was “established to be a generation skipping trust” that allowed for its res to be passed pursuant to the Trustee’s will. The primary asset of that trust was a shopping mall that the trustee continued to manage. *Id.* That Court determined, notwithstanding the estate-planning components of the Trust, that the Trust was intended to allow [the Trustee] to continue to manage the [shopping mall] and any other assets the Debtor acquired the same as she operated her other real estate ventures. It also allowed [the Trustee] to realize the value from the transfer if she chose while continuing to expand her real estate business as she saw fit. Despite instructions related to inheritance, the Court concluded that the Debtor was a business trust. *Id.* at \*18-19.

Some courts have addressed prohibitions or restrictions transferability of shares as an indication that a trust is not a business trust. See *In Re Parade Realty*, 134 B.R. 7, at 11 (Bankr. Hawaii, 1991). Here, the certificates of interest are transferrable. See Ex. A Trust Agreement, Articles VI, VII. There is no restriction on outside participants or owners who are not heirs.

Here, the individual Trust Agreements created each Debtor and it empowered the Debtors’ Trustee, Resources Group LLC, to continue create a “business trust” and to “manage, administer,

1 collect, receive, dispose of and distribute the trust property for the benefit of such persons as have  
2 acquired shares of beneficial interests in the trust.” See Trust Agreement, Exhibit A. It specifically  
3 explains that none of the Trusts are a partnership or joint stock association. *Id.* Pursuant to Article  
4 IX, the Trustee is permitted to enter further contracts or instruments, to conduct “business” (referred  
5 to separately from administration of assets). Five pages of authority for the trustee to engage in  
6 business and management activities follow. Nothing in the trust instrument indicates that the  
7 purpose of the trust is to transfer property between a grantor and his heirs, or restricting powers of  
8 the trustee to preserve some particularly identified res for beneficiaries. Nor does it restrict transfer  
9 of ownership of the beneficial interests. Rather, the trust instrument repeatedly reinforces the  
10 commercial intentions for the trust, not like a will, but like an operating agreement or articles of  
11 incorporation. This confirms the intent of the parties in creating the Trusts.

12 The Debtors’ Trustee continues manage the Debtor’s properties, pay the utilities and bills of the  
13 trust, and maintain lease agreements on behalf of each Trust to improve its income. Each Trust  
14 owns and operates a legitimate residential rental enterprise, and exists to conduct for profit business.  
15 It would be disingenuous to argue that as part of its reorganization efforts it does not have  
16 encumbered properties and liabilities that it needs to deal with through the Bankruptcy Court. In  
17 fact, part of the necessity of bringing this matter before this Court now is that several of the secured  
18 creditors refused to recognize the Debtor’s title and rights to the homes, despite having purchased  
19 the properties from lawful auctions or foreclosures with clear title processed through title  
20 companies. It appears that the agents and employees of the secured creditors had no understanding  
21 of the rights of non-first mortgage secured creditors – such as second deeds of trust, home equity  
22 lines of credit or Home Owners’ Association liens – all of which can result in an auction transferring  
23 title while leaving the property with the first lien in tact. To the Debtors and the Trustee’s surprise,  
24 the secured creditors were nearly all in complete denial that the Trusts bought liens at foreclosure  
25 and had assumed title from the original mortgagee. Indeed, the Trusts are forced to reorganize to  
26 preserve its rights precisely because the creditors refused in bad faith [or otherwise ignored] the  
27 Debtor’s repeated communications regarding the properties in attempt to get payment information,  
28 lien information or payoff values.



**II. The Trust's Registration Status Under Nevada Business Law Does Not Determine Whether the Trusts May Be a Debtor.**

It is not necessary to make a "business trust" election under state law to determine whether a trust is a "business trust" within the meaning of 11 U.S.C. § 101(9)(a)(v). *In re Morgantown Trust No. 1*, 155 B.R. 137 (Bankr. N.D. W.Va. 1993). In that case, the Morgantown Trust No. 1 itself contained language prohibiting it from becoming a West Virginia Business Trust. *Id.* at 138. Additionally, the Trustee was prohibited from managing or operating the Trust or transacting any business and could "deal with [trust property] only when authorized to do so in writing [by]... a majority in interest of the beneficiaries..." *Id.* at 139. There, not only did the Morgantown Trust No. 1. not register with any state agency as a business trust, it lacked the authority to so register. *Id.* While *In re Morgantown Trust No. 1* weighed the nature of the state law formation of that trust as a factor in its 11 U.S.C. § 101(9)(A)(v) analysis, most courts have ruled that factor to be irrelevant:

Whether an entity is eligible for relief under title 11 of the United States Code is purely a matter of federal law. To hold otherwise would result in different results in different states and an entity would be eligible for relief in one state but not another. Clearly this is not what Congress intended...

*Brady-Morris v. Schilling (In re: Kenneth Allen Knight Trust)*, 303 F.3d 671, 678-79 (6th Cir. 2002) (internal citations and quotations omitted). Indeed, in *Brady-Morris* the trust was not a registered Kentucky Business Trust, yet the Court upheld that Trust as a business trust for Bankruptcy Court purposes.

If Congress wanted Trust eligibility to be determined by reference to state law, it knew how to do that. *See* 11 U.S.C. § 544(b) (giving the trustee authority to avoid transfers that are voidable by reference to state law). Instead of relegating trust debtor eligibility to state law, Congress intentionally broadened the types of trusts that could become debtors--and left it broad for more than thirty years. The doors of the bankruptcy courts are open to business trusts for a reason: they are discrete economic entities as much as individuals and incorporated businesses. The Trusts are an economic entity and it is entitled to relief under the Bankruptcy Code.

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WHEREFORE, the Debtor respectfully requests that this Court enter a finding that the trust is an eligible business trust.

Dated this 4th day of November, 2012.

Respectfully submitted,  
/s/ Ryan Alexander  
Ryan Alexander, Esq.

# EXHIBIT A

**THE BOURNE VALLEY CT TRUST**

**Dated May 4th, 2012**

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# *Trust Agreement*

## OF THE

## BOURNE VALLEY CT TRUST

This Agreement of trust made May 4th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

### ARTICLE I

#### DECLARATION OF TRUST

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

### ARTICLE II

#### APPOINTMENT OF TRUSTEE

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

### ARTICLE III

#### GENERAL DUTIES OF TRUSTEE

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.



**ARTICLE IV**

**NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "BOURNE VALLEY CT TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

**ARTICLE V BENEFICIAL TRUST**

**CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

**ARTICLE VI**

**TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.

## **ARTICLE VII**

### **DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

## **ARTICLE VIII**

### **GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

## **ARTICLE IX**

### **LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

**ARTICLE X**

**DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

**ARTICLE XI**

**TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest



therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,

compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than one (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: If three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

### **ARTICLE XIII**

#### **BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

### **ARTICLE XIV**

#### **QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

**ARTICLE XV**

**GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s), but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

15.5 **Severability**. In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

15.6 **Headings**. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

15.7 **More Than One Original**. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation**. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**BOURNE VALLEY CT TRUST**

  
By: **RESOURCES GROUP, LLC**, Trustee  
Tyad Haddad, Manager



STATE OF NEVADA )

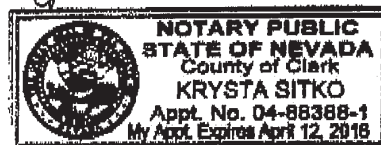
)ss.

COUNTY OF CLARK )

On JUNE 7, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared IYAD HADDAD, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

NOTARY PUBLIC *KRYSTA SITKO*



APPENDIX A  
LEGAL DESCRIPTIONS

<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3521 WILD WILLOW ST LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	SAPPHIRE POINTE PLAT BOOK 80 PAGE 6 LOT 68 BLOCK 3  SEC 07 TWP 20 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	410 HORSE POINTE AVE NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	PARKS UNIT 5 PLAT BOOK 94 PAGE 26 LOT 21 BLOCK 1  SEC 22 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	3171 CASTLE CANYON AVE HENDERSON
<u>ASSESSOR DESCRIPTION</u>	SEVEN HILLS LOT E UNIT-3 PLAT BOOK 75 PAGE 43 LOT 12 BLOCK 2  SEC 35 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5332 LA QUINTA HILLS ST NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	CORTEZ HGTS PLAT BOOK 113 PAGE 81 LOT 124  SEC 35 TWP 19 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	4254 ROLLINGSTONE DR SPRING VALLEY
<u>ASSESSOR DESCRIPTION</u>	GLENVIEW WEST TWNHS PLAT BOOK 30 PAGE 65 LOT 19  SEC 24 TWP 21 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	1452 BOURNE VALLEY CT PARADISE
<u>ASSESSOR DESCRIPTION</u>	CONCORDIA AT WIGWAM-UNIT 2 PLAT BOOK 110 PAGE 39

	LOT 43 BLOCK 14  SEC 14 TWP 22 RNG 61
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5733 LARKDALE ST PARADISE
<u>ASSESSOR DESCRIPTION</u>	CONCORDIA AT SANDHILL PLAT BOOK 105 PAGE 44 LOT 15 BLOCK 1  SEC 31 TWP 21 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	4449 LAGUNA GARDEN AVE NORTH LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	LAMB & TROPICAL PLAT BOOK 120 PAGE 36 LOT 148 BLOCK 5  SEC 29 TWP 19 RNG 62
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	8129 BACKPACKER CT LAS VEGAS
<u>ASSESSOR DESCRIPTION</u>	ELKHORN SPRINGS-PARCEL 2-UNIT 1 PLAT BOOK 80 PAGE 31 LOT 38 BLOCK 2  SEC 16 TWP 19 RNG 60
<u>LOCATION ADDRESS</u> <u>CITY/UNINCORPORATED TOWN</u>	5650 E SAHARA AVE 1011 SUNRISE MANOR
<u>ASSESSOR DESCRIPTION</u>	TERRASANTA UNIT 2 PLAT BOOK 93 PAGE 35 UNIT 1011 BLDG 3  SEC 04 TWP 21 RNG 62

**BENEFICIAL SHARE CERTIFICATE**

**FOR THE**

**BOURNE VALLEY CT TRUST**

BOURNE VALLEY CT TRUST

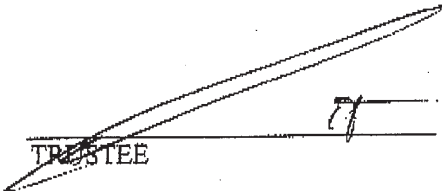
Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of 1,000 shares in the BOURNE VALLEY CT TRUST, which it holds subject to an agreement and declaration of trust thereof, dated May 4th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the BOURNE VALLEY CT TRUST are of the par value of \$10.00 dollars each.

No transfer hereof will affect the BOURNE VALLEY CT TRUST or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof, this the 4th day of May, 2012.

  
\_\_\_\_\_  
TRUSTEE

# EXHIBIT B

D U R H A M

J O N E S &

P I N E G A R

Durham Jones & Pinegar, P.C.  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110  
801.415.3000  
801.415.3500 Fax  
www.djplaw.com

Robert Bolick  
Attorney at Law  
rbolick@djplaw.com

October 29, 2012

Ryan Alexander, Esq.  
THE FIRM  
200 E. Charleston Blvd.  
Las Vegas, NV 89104

Re: The Bourne Valley Ct. Trust  
Dated May 4, 2012

Dear Mr. Alexander:

You asked that I provide you with an opinion concerning the above-referenced trust.

Generally, courts are very lenient and accommodating in upholding the validity of trusts. All that is required is a grantor (person creating the trust) who delivers the property to a trustee (or can even hold it himself in a fiduciary capacity as a trustee) on behalf of the beneficiaries. There is not even a requirement that the parties be separate – a single individual can be the grantor declaring himself as the trustee on behalf of himself and/or others as the beneficiaries. If there is any way for a court to uphold a trust's validity, they tend to take that course.

In this trust the grantors are defined in the initial paragraph as the "certificate holders" referenced in Article V. Although the specific identity of the grantors is not disclosed, they could easily be identified as whoever transferred assets into the trust.

The trustee is Resources Group, LLC, a Nevada LLC. This entity appears to be a properly formed LLC under Nevada law. Mr. Haddad is both the registered agent and the manager. The owners of the LLC are not listed. Whether the owners are Mr. Haddad or someone else is completely irrelevant. The LLC is clearly indicated as the trustee of the trust. Lastly, as indicated above, the trustee could be Mr. Haddad individually instead of the LLC owned, controlled or operated by him. It would still be a valid trust under Nevada law.

SALT LAKE CITY | OGDEN | ST. GEORGE | LAS VEGAS

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SA573



Ryan Alexander, Esq.  
October 29, 2012  
Page 2

The trustee executed the document on the last page. This clearly evidences the intent to create a trust and for the LLC to hold the assets in a fiduciary capacity as trustee. It appears that Mr. Haddad's signature is notarized. This was not necessary under Nevada law.

Further indication of its viability as a trust are: the duties of the trustee are set forth in Article III, contingent beneficiaries are provided for in Article VII and distributions are set forth in Article X.

What is not clear is the declaration under Article I to create a "business trust." This does not specifically reference NRS Chapter 88A, nor has the trust, to the best of my knowledge, filed a Certificate of Trust with the Secretary of State as required under NRS 88A.210. It is not clear to me whether the term "business trust" was a term of art simply indicating the intent that the trust conducts business.

Another issue is the creation of transferable certificates under Article V of the trust. While this would not be standard under most trusts, it certainly wouldn't invalidate it as a Nevada trust. Under Nevada law, unless beneficiaries are specifically prohibited from transferring or alienating their beneficial interests (which would be contained in a typical Spendthrift provision), they are permitted to transfer their interest. Transfer of beneficial interests are specifically permitted under Article VII of the trust.

Lastly, there is an issue whether the trust could be amended. Section 15.1 specifically allows for amendments to the trust by the beneficiaries and the trustee.

All of these facts, when taken together clearly evidence the intent to create a trust under Nevada law. Most courts would find it to be valid.

Please let me know if you have any further questions or areas which you would like me to address concerning this trust.

Very truly yours,

DURHAM JONES & PINEGAR, P.C.

  
Robert L. Bolick

RLB:drf

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# EXHIBIT C

**THE OLIVER SAGEBRUSH DRIVE TRUST**

**Dated June 20th, 2012**

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## *Trust Agreement*

### OF THE

### OLIVER SAGEBRUSH DRIVE TRUST

This Agreement of trust made June 20th, 2012, among the beneficial trust certificate holders, hereinafter called the Grantors, and RESOURCES GROUP, LLC of Clark County, Nevada, hereinafter called the Trustee(s).

### ARTICLE I

#### DECLARATION OF TRUST

This trust agreement is intended to create a business trust, hereinafter called the trust, and not a partnership or a joint stock association.

### ARTICLE II

#### APPOINTMENT OF TRUSTEE

The Grantors hereby transfer to the trustees all of their right, title and interest in the property described in the attached Appendix "A," attached hereto and made a part hereof.

### ARTICLE III

#### GENERAL DUTIES OF TRUSTEE

The Trustee shall hold the property described in Appendix "A" and all property hereafter acquired by him as Trustee, and all income and profits therefrom, hereinafter collectively called the trust property, in trust, and shall manage, administer, collect, receive, dispose of and distribute the trust property for the benefit of such persons as have acquired shares of beneficial interests in the trust, hereinafter called the beneficiaries.

#### **ARTICLE IV**

##### **NAME & PRINCIPAL OFFICE**

The Trustee(s) shall be collectively called and referred to as the "OLIVER SAGEBRUSH DRIVE TRUST," with its physical location principal office at "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101," and its mailing address as "900 S. Las Vegas Blvd., #810, Las Vegas, Nevada, 89101."

#### **ARTICLE V BENEFICIAL TRUST**

##### **CERTIFICATES**

The beneficial interests in the trust shall consist of 1,000 shares, each with a \$10.00 par value. The Trustee(s) may sell or exchange such shares for such sums as they consider proper. The trustees shall issue certificates, in such form as they deem proper, to the beneficiaries of such shares. The certificates shall entitle the owners thereof to participate in all dividends and other distributions of income or principal in the proportion which the number of shares owned by him or her bears to the total number of shares issued and outstanding.

In the event of loss or destruction of a share certificate, the Trustee(s) may issue a new share certificate, upon such conditions as the Trustee (s) may deem necessary and proper.

#### **ARTICLE VI**

##### **TRANSFER OF SHARE CERTIFICATES**

A beneficiary may transfer his or her share certificate in person or by a duly authorized attorney. Such certificates must be endorsed for transfer and submitted to the Trustee(s), who shall record such transfer on the trust books and issue new certificates to the transferee. No transfer shall be of any effect as against the Trustee(s) until it has been so recorded.



**ARTICLE VII**

**DISSOCIATION OF BENEFICIAL INTEREST SHAREHOLDER**

The death, insolvency, or incapacity of one or more of the Beneficial Interest Shareholders, or the transfer of shares, shall not operate to terminate or dissolve the trust or affect its continuity in any way. In the event of the death of a Beneficial Interest Shareholder, or a transfer of shares, the transferees, heirs, legatees, or legal representatives of the decedent or transferor shall succeed to his rights.

**ARTICLE VIII**

**GENERAL AUTHORITY OF TRUSTEE**

The Trustee(s) shall hold the legal title to all property at any time belonging to the trust and shall have absolute and exclusive power and control over the management and conduct of the business of the trust, free from any control or influence by the beneficiaries, aka Beneficial Interest Shareholders.

**ARTICLE IX**

**LIABILITIES OF TRUST**

Neither the Trustee(s) nor the beneficiaries shall ever be personally liable hereunder as partners or otherwise, but for all debts the Trustee(s) shall be liable for such to the extent of the trust property only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the Trustee(s) nor the beneficiaries shall be held personally liable under such instrument. No amendment shall ever be made to this declaration of trust, increasing or enlarging the liability of the Trustee(s) or the beneficiaries hereunder as herein stipulated. The Trustee(s) shall be indemnified by, and receive reimbursement from the trust estate against and from any and all personal liability, claim, damage and loss by him incurred or suffered in the administration of the trust estate, or in the conduct of any business provided for hereunder, except such as may arise from his own personal and willful breach of trust; but all such indemnification and reimbursement shall be limited to the trust estate alone, and under no circumstances and in no event, shall the beneficiaries or any of them be subjected to any personal liability by virtue thereof, or of any provision of this instrument.

**ARTICLE X**

**DISTRIBUTIONS**

The Trustee(s) shall distribute to the beneficiaries out of the net income of the trust such sums as they deem appropriate, the time and amounts of such distributions subject solely to their discretion. The beneficiaries shall share in such distributions in proportion to their percentage of ownership of the number of shares issued and outstanding.

**ARTICLE XI**

**TRUSTEE POWERS**

The purposes of this trust are to authorize and empower the trustees hereunder, as such, to organize, own, operate and conduct any business, trade, enterprise, or industry of any kind, description or character whatsoever; to buy and sell property of every kind, character and description, and to do anything, and transact any business with respect to any of said matters and properties which they could lawfully do in their individual capacity as absolute owners. Without in any way limiting or curtailing the generality of the foregoing purposes and powers the Trustee(s) shall, without further authority and without any control by the beneficiaries, possess all and singular, the following special rights, powers and authority:

- (a) As far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof in the name of RESOURCES GROUP, LLC said property shall be held by the Trustee(s) in trust according to the terms hereof. All conveyances of every kind and description, at any time made to or in the name of the Trustee(s) as Manager and Member of RESOURCES GROUP, LLC shall be held to vest the title to the property so conveyed in the Trustee(s) as such under this instrument.
- (b) Administer and dispose of all properties for the benefit of the beneficiaries hereunder in proportion to their respective interests, as represented by the trust certificates referenced hereinabove.
- (c) The Trustee(s) shall have the absolute management, control and disposition of all the trust estate and its business and affairs, of every kind and character.

- (d) The Trustee(s) shall, in such capacity, exclusively and absolutely, and without leave or hindrance from the certificate holders have as full, absolute and plenary rights, authority, power, and discretion as if absolute owners to establish, form, organize, manage and conduct any business, trade, enterprise or industry of any kind, character or description whatsoever; to acquire by purchase, exchange or otherwise, and to hold, own, develop and operate and to sell, pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed.
- (e) The Trustee(s) shall have the absolute and uncontrolled right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said trust or in their names as Trustee(s) thereof; to sell, transfer, assign and convey the whole or any part of the trust estate, invest and reinvest the proceeds thereof at any time in such manner and on such terms and for such consideration as they in their absolute and uncontrolled discretion may deem best; to collect any money, and pledge the assets of the trust as security therefore; to improve, repair and develop any property belonging to the trust estate in any manner they shall deem proper; to insure the lives of any persons for the benefit of this trust; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which they may deem necessary and proper in the exercise of the powers conferred hereunder; to purchase, hold, mortgage, pledge, exchange, sell, convey, and deal in real estate, stocks, bonds, securities of every kind and description, property, rights, privileges and franchises of every kind and character, in such cases and for such consideration and upon such terms and conditions as they may deem right and proper; to deal in, own, produce, store, and transport goods and commerce; and to own and hold lands, leases, rights, franchises and other properties for all purposes; own, construct and operate facilities, sales offices, warehouses, cars and all vehicles by them deemed necessary or convenient in the conduct of any business herein mentioned; to buy, sell and furnish gas or electricity for light, heat, power and any other purposes, and to obtain, hold and own franchises for all purposes, and to own, construct and operate any facility, business or enterprise of any kind or character whatsoever; either in connection with any of the business herein enumerated or otherwise; and finally, to do any act or thing of any kind or character, which in their judgment or discretion may be necessary, proper or expedient, in carrying into effect the purposes of this trust or any purpose specified in the declaration of trust, or in any amendments hereto, duly made and adopted.

- (f) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (g) To register any securities or other property held hereunder in the names of Trustee(s) or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee(s) shall show that all such investments are part of their respective funds.
- (h) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (i) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and utilization agreements.
- (j) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (k) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (l) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are

permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

- (m) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (n) To institute, compromise, and defend any actions and proceedings.
- (o) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (p) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.
- (q) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (r) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee(s), or by direct payment of such beneficiary's expenses.
- (s) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (t) To accept additions of property to the Trusts, whether made by the beneficiaries hereunder, or by any one interested in such beneficiaries.
- (u) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee(s) may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (v) To open and maintain safety deposit boxes in the name of this Trust.
- (w) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest

therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

- (x) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (y) The enumeration of certain powers of the Trustee(s) shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (z) The Trustee(s) shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transaction will be effected.
- (aa) The power to guaranty loans made for the benefit of, in whole or in part, any beneficiary or any entity in which any beneficiary has a direct or indirect interest.
- (bb) In regard to the operation of any business of the Trust, the Trustee(s) shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement,



compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

## **ARTICLE XII**

### **TRUSTEES, TERM, MEETINGS, AND COMPENSATION**

The compensation of the Trustee(s) for management of the trust property in accordance herewith shall be approved in writing and under such terms and conditions as agreed upon by the beneficial certificate holders of the Trust and the Trustee(s). Additionally, the Trustee(s) shall be reimbursed for all actual expenses incurred in the administration of any Trust created or administered hereunder.

There shall be no more than three (1) trustee, approved by the beneficial trust certificate holders, and each of whom will serve for a term agreed upon between the Trustee(s) and the beneficiaries. Absent such an agreement, the Trustee(s) shall serve calendar year terms, with each term expiring on December 31<sup>st</sup> of each year. The Trustee(s) shall serve said term indefinitely, unless the tenure is terminated by death, resignation, or incapacity to serve. The death, resignation, or incapacity to serve of any or all of the trustees shall not terminate the trust or in any way affect its continuity. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously. Any vacancy among the trustees shall be filled by the remaining trustees. Successor trustees shall execute a written consent to act as trustee under the terms of this declaration of trust. The trustees shall meet at such times and at such places as they deem advisable.

**ARTICLE XIII**

**BOOKS, RECORDS, AND ACCOUNTING**

The books of the Trust shall be open and available to the reasonable inspection of the beneficiaries. Trustees shall compile an annual report within 60 days after the end of the calendar year consisting of, but not limited to, the receipts, disbursements, earnings, assets and condition of the trust, including a financial statement prepared by an independent certified public accountant. A copy of such report shall be furnished to each beneficiary. The Trustee(s) is not discharged of his fiduciary obligations for the prior calendar year until said annual accounting and report is approved by the beneficiaries or otherwise confirmed by a court of competent jurisdiction.

**ARTICLE XIV**

**QUALIFIED SUBCHAPTER S TRUSTS**

**14.1 S-Corporation Stock.** To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee(s) desires to continue, make, or allow to be made an S corporation election, the Trustee(s) of such Trust shall have the power at any time, in such Trustee's sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

- (a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued but not paid to the Beneficiary prior to the death of the Beneficiary shall be paid to the estate of the Beneficiary.
- (b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.
- (c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361(d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.
- (d) The provisions of Article 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.
- (e) Any power provided in Article 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

**14.2 Effect on Beneficiaries.** In granting to the Trustee(s) the discretion to create one or more Qualified Subchapter S Trusts as herein provided, the beneficiaries recognize that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Amendments.** This declaration of trust may be amended in any particular except as regards to the liability of beneficiaries, by the unanimous vote of the Trustee(s),

but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates.

**15.2 Term and Termination.** This Trust shall continue indefinitely, subject to the rule against perpetuities, unless sooner terminated. The Trustee(s) may terminate and dissolve this trust at any time by unanimous vote, but only with the consent of the owners of the beneficial trust certificates totaling more than 80% of the total issued and outstanding trust certificates. Upon termination, for any reason, the Trustee(s) shall liquidate all trust property and distribute the same to the beneficiaries according to their proportionate share of the issued and outstanding trust certificates.

**15.3 Controlling Law.** This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustee(s) shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee(s), may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee(s) exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

**15.4 Perpetuities Savings Clause.** Unless terminated earlier in accordance with other provisions of this Trust, any Trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the beneficiaries; (2) all the issue of the beneficiaries who are living at the death of the beneficial trust certificate holders; and (3) all named beneficiaries who are living at the death of the beneficial trust certificate holders, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the Trust is then being governed.

**15.5 Severability.** In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect

insofar as legally possible.

15.6 **Headings.** The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

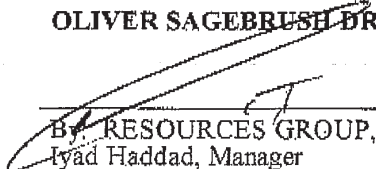
15.7 **More Than One Original.** This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

15.8 **Interpretation.** Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

**ACCEPTANCE OF TRUSTEE(S)**

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property.

**OLIVER SAGEBRUSH DRIVE TRUST**

 6-20-12  
By **RESOURCES GROUP, LLC**, Trustee  
Iyad Haddad, Manager

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared IYAD HADDAD, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC

## APPENDIX A

LEGAL DESCRIPTION(S)	
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	4085 OLIVER SAGEBRUSH DR . WHITNEY
<b>ASSESSOR DESCRIPTION</b>	DESERT INN MASTER PLAN LOT E PLAT BOOK 118 PAGE 33 LOT 14 BLOCK 1  SEC 15 TWP 21 RNG 62
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	2920 BAYLINER AVE NORTH LAS VEGAS
<b>ASSESSOR DESCRIPTION</b>	SOMERSET RIDGE 3 UNIT 1 PLAT BOOK 99 PAGE 31 LOT 88 BLOCK 3  SEC 29 TWP 19 RNG 61
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	3797 MONUMENT ST PARADISE
<b>ASSESSOR DESCRIPTION</b>	HERITAGE SQUARE SOUTH UNIT #2 PLAT BOOK 13 PAGE 16 LOT 47 BLOCK 12  SEC 18 TWP 21 RNG 62
<b>LOCATION ADDRESS</b> <b>CITY/UNINCORPORATED TOWN</b>	3425 E RUSSELL RD 142 PARADISE
<b>ASSESSOR DESCRIPTION</b>	SILVER CANYON CONDO AMD PLAT BOOK 78 PAGE 27 UNIT 142 BLDG K  SEC 31 TWP 21 RNG 62



**BENEFICIAL SHARE CERTIFICATE**  
**FOR THE**  
**OLIVER SAGEBRUSH DRIVE TRUST**

OLIVER SAGEBRUSH DRIVE TRUST

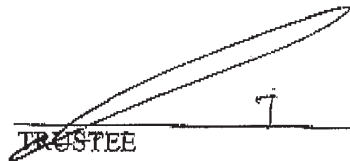
Certificate No. 001 1,000 shares

This certifies that **RESOURCES GROUP, LLC** is the holder of **1,000** shares in the **OLIVER SAGEBRUSH DRIVE TRUST**, which he holds subject to an agreement and declaration of trust thereof, dated June 20th, 2012, hereby referred to and made a part of this certificate, of which all persons dealing with this company shall take notice.

The shares of the **OLIVER SAGEBRUSH DRIVE TRUST** are of the par value of \$10.00 dollars each.

No transfer hereof will affect the **OLIVER SAGEBRUSH DRIVE TRUST** or the assets therein held thereby, until this certificate has been surrendered and the transfer recorded upon the books of the Trustee.

In witness whereof, the Trustee under said declaration of trust has signed his name in authentication hereof on June 20th, 2012.

  
\_\_\_\_\_  
TRUSTEE      7      6-20-12

# EXHIBIT D

DURHAM  
JONES &  
PINEGAR

Durham Jones & Pinegar, P.C.  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110  
801.415.3000  
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Robert Bolick  
Attorney at Law  
rbolick@djplaw.com

October 29, 2012

Ryan Alexander, Esq.  
THE FIRM  
200 E. Charleston Blvd.  
Las Vegas, NV 89104

Re: The Oliver Sagebrush Drive Trust  
Dated June 20, 2012

Dear Mr. Alexander:

You asked that I provide you with an opinion concerning the above-referenced trust.

Generally, courts are very lenient and accommodating in upholding the validity of trusts. All that is required is a grantor (person creating the trust) who delivers the property to a trustee (or can even hold it himself in a fiduciary capacity as a trustee) on behalf of the beneficiaries. There is not even a requirement that the parties be separate – a single individual can be the grantor declaring himself as the trustee on behalf of himself and/or others as the beneficiaries. If there is any way for a court to uphold a trust's validity, they tend to take that course.

In this trust the grantors are defined in the initial paragraph as the "certificate holders" referenced in Article V. Although the specific identity of the grantors is not disclosed, they could easily be identified as whoever transferred assets into the trust.

The trustee is Resources Group, LLC, a Nevada LLC. This entity appears to be a properly formed LLC under Nevada law. Mr. Haddad is both the registered agent and the manager. The owners of the LLC are not listed. Whether the owners are Mr. Haddad or someone else is completely irrelevant. The LLC is clearly indicated as the trustee of the trust. Lastly, as indicated above, the trustee could be Mr. Haddad individually instead of the LLC owned, controlled or operated by him. It would still be a valid trust under Nevada law.

SALT LAKE CITY | OGDEN | ST. GEORGE | LAS VEGAS

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SA594

Ryan Alexander, Esq.  
October 29, 2012  
Page 2

The trustee executed the document on the last page. This clearly evidences the intent to create a trust and for the LLC to hold the assets in a fiduciary capacity as trustee. It appears that Mr. Haddad's signature is notarized. This was not necessary under Nevada law.

Further indication of its viability as a trust are: the duties of the trustee are set forth in Article III, contingent beneficiaries are provided for in Article VII and distributions are set forth in Article X.

What is not clear is the declaration under Article I to create a "business trust." This does not specifically reference NRS Chapter 88A, nor has the trust, to the best of my knowledge, filed a Certificate of Trust with the Secretary of State as required under NRS 88A.210. It is not clear to me whether the term "business trust" was a term of art simply indicating the intent that the trust conducts business.

Another issue is the creation of transferable certificates under Article V of the trust. While this would not be standard under most trusts, it certainly wouldn't invalidate it as a Nevada trust. Under Nevada law, unless beneficiaries are specifically prohibited from transferring or alienating their beneficial interests (which would be contained in a typical Spendthrift provision), they are permitted to transfer their interest. Transfer of beneficial interests are specifically permitted under Article VII of the trust.

Lastly, there is an issue whether the trust could be amended. Section 15.1 specifically allows for amendments to the trust by the beneficiaries and the trustee.

All of these facts, when taken together clearly evidence the intent to create a trust under Nevada law. Most courts would find it to be valid.

Please let me know if you have any further questions or areas which you would like me to address concerning this trust.

Very truly yours,

DURHAM JONES & PINEGAR, P.C.



Robert L. Bolick

RLB:drl

LV\_106884.1

# EXHIBIT E

**THE PARADISE HARBOR PLACE TRUST**

**Dated June 8th, 2012**



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Appellant,

vs.

BANK OF AMERICA, N.A.,

Respondent.

Case No. 75603

Electronically Filed  
Dec 20 2018 09:22 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Department XXX  
The Honorable Jerry A. Wiese, District Judge  
District Court Case No. A-13-686277-C

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**INDEX TO RESPONDENT'S SUPPLEMENTAL APPENDIX  
VOLUME III**

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## **CERTIFICATE OF SERVICE**

I certify that I electronically filed on the 19<sup>th</sup> day of December, 2018, the foregoing **INDEX TO RESPONDENT'S SUPPLEMENTAL APPENDIX – VOLUME III** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows:

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena  
An employee of Akerman LLP